People with learning disabilities in the criminal justice system: a guide for carers and learning disability services

ARC England

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People with learning disabilities in the criminal justice system: a guide for carers and learning disability services

This guide is for you if you support someone with a learning disability who is in trouble with the law. You may be a service provider, a family carer, or an advocacy service.

The guide explains:

- what happens when people get into trouble
- what you can expect
- what rights people have
- where to go for help

The guide looks at all stages of the Criminal Justice System, from Police custody through to Courts, Prison and Probation.

People with learning disabilities/Autistic Spectrum Conditions (ASC) in the criminal justice system

People with learning disabilities, and with autism, are hugely over-represented in the criminal justice system. **People with ASC are 7 times more likely to come into contact with the Police** than the general population, **and 15% of young people in custody are on the autistic spectrum.** Young people with learning disabilities are 10 times more likely to find themselves in custody than non-disabled peers, and represent about 30% of people in custody.

It is thought that about **10% of the prison population has a diagnosed learning disability**, but around **60% of prisoners** (as well as those in custody) **have difficulties with communication skills**.

People with learning disabilities/ASC can get into trouble for a number of reasons:

- **Unusual or challenging behaviour**, which can be misinterpreted by the public and Police.
- **Social naivety**, which can mean that people are easily taken advantage of and manipulated for criminal purposes.

The Foundation for People with Learning Disabilities point out a number of problems for people with learning disabilities/ASC in the criminal justice system:

People may have **limited understanding** of what is going on at the time of arrest, detention and charging.

- **Appropriate Adults** (see p.12) are not always available in a timely fashion, and are not always well briefed about their role or aware of the specific support an individual may require.

- **Diversion from prosecution** (see p.16) is a scheme to remove those who have committed minor offences from the court process to social work or other agencies. However, due to recent cuts there may be little capacity to divert people with learning disabilities through alternative channels.

- **Having a fair trial** – the probation service and courts need to consider what 'reasonable adjustments' must be made to support offenders with a learning disability.

- **The general prison regime** (e.g. reception, induction, transfer and release) does not cater well for the needs of prisoners with learning difficulties or learning disabilities. They may not be able to access initiatives such as **The Thinking Skills Programme** to reduce re-offending because of their IQ level.

- **Health inequalities** – people with learning disabilities are more likely to experience health problems. Some prisons have introduced **health checks** for prisoners with learning disabilities to ensure their health needs are being adequately addressed, but this is not yet standard practice.

People with learning disabilities are also at higher risk than the general population of experiencing mental health problems, creating multiple disadvantages.

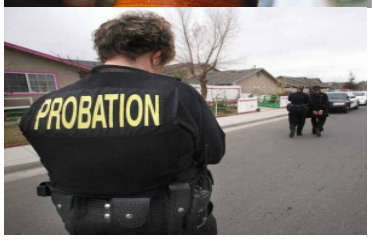
What happens when people get into trouble with the law?

Police are responsible for keeping the peace and investigating offences reported to them. They provide information and advice to the Crown Prosecution Service about the alleged offence(s) committed by individuals**.**

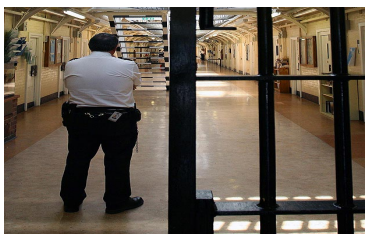
The **Crown Prosecution Service** (CPS) is responsible for deciding whether there is enough evidence to charge and prosecute an alleged offender. They also make representations to magistrates regarding suitability of bail prior to a trial or sentence hearing. If an offender is charged, the CPS is responsible for prosecuting the offence in court.

Magistrates deal with cases in the magistrates' courts including hearing trials. They usually sit in panels of three (known as the bench) and one of them is the chair of the bench.

Judges deal with cases in the Crown Court. Defence solicitors are responsible for representing defendants accused of an offence.



Probation Officers provide information and assessments on offenders appearing before the courts. They also have responsibility for supervising offenders on community orders and post-release licenses.



Prison Officers are responsible for the security and welfare of prisoners in their establishments.

Almost all criminal cases begin with an **offence being reported to the police**. After investigation they will **arrest an alleged offender** and if there is enough evidence they will recommend to the Crown Prosecution Service that the individual is **charged with a specific offence**. There will also be a decision made as to whether the defendant is **held in custody pending trial** or whether it is safe to **release them on bail** until the case is dealt with. This decision is made by the magistrates based on information provided by the National Probation Service (through pre-sentence reports), defence solicitor, and the Crown Prosecutor.

If a defendant pleads **guilty**, or is found guilty after a trial, the magistrates or the judge (depending on the seriousness of the offence) **impose a sentence**. It is often the case that the National Probation Service will have been requested to prepare a **Pre-Sentence Report** on the defendant and the information, assessments, and recommendations in the report will be used to help the magistrate or judge arrive at a decision.

Generally, the range of sentences that can be imposed include:

- **Conditional discharge** – **no further sanction** so long as the offender stays out of trouble for the duration of the discharge period.
- **Fine** – the level of the fine is usually **related to the seriousness of the offence** and must be paid within a set period of time.
- **Community Sentence** – this places the offender **under the supervision of the probation service** and there will be a range of requirements that must be completed (e.g. attendance at group programmes, performing Unpaid Work, residing at a specific residence, etc.). **Supervision can last from 6 months to 3 years** depending on the seriousness of the offence.
- **Suspended Sentence** – a **prison sentence** will be imposed but **suspended for a defined period of time**. As long as the offender stays out of trouble there is no further sanction.
- **Custodial Sentence** – magistrates can only impose **custodial sentences** for up to 12 months. Judges in the Crown Court can impose longer sentences including Life Sentences for very serious offences such as murder or manslaughter.

In detail: Police

Arrest and Detention

If a police officer thinks someone has committed a crime they can **be arrested and taken to a Custody Suite in a police station**. There will be a Custody Sergeant and some other people who are there to make sure 'detained persons' (DP) are kept safe and treated properly.

The police officers will work quickly to make sure the DP is released as soon as possible, but custody will probably be for **at least four hours**. If the crime is very serious, the DP will have to stay in for longer.

The police can hold people for up to 24 hours before they have to charge the DP with a crime or release them. They can apply to hold people for up to 36 or 96 hours if they are suspected of a serious crime, e.g. murder. A DP can be held without charge for up to 14 days if they are arrested under the Terrorism Act.

The Custody Sergeant will ask the DP lots of questions to make sure that they are looked after properly and have any medicine they need. They can ask a doctor to see the DP if they are unwell.

The Custody Sergeant will tell people what their rights are.

Your Rights

1. *The DP has the right to free legal advice.* ***It is highly recommended to take this.***

2. *The DP may speak to a solicitor and this can be done on the telephone or at the police station. The solicitor is there to help and tell the DP about the law. This will not cost you any money. The DP can decide not to have a solicitor, but can change their mind at any time.*

3. *The DP has the right to have someone told they have been arrested.*

4. *The DP can read the Codes of Practice, which sets out what the Police can and cannot do when someone is in custody.*

5. *If the DP is under 18-years-old and/or has mental health problems or a learning disability they can have someone with them at certain times. They are usually a parent, guardian or a carer and are called an* ***'appropriate adult'*** *(see p.12). If the DP doesn't have someone, the Police can arrange for someone to come from the Appropriate Adult Service. The job of the Appropriate Adult is to ensure that the Police respect the DP's rights.*

After the Custody Sergeant questions the DP, they may be placed in a **cell**, which they usually have to themselves. It should have a bed and be clean, tidy and have lights. The DP will normally wear their own clothes, but they will have to take their shoes off. They will be given food at meal times and are allowed drinks.

The Interview

When the police officers and the solicitor are ready, the DP will be interviewed about the crime the police think has been committed. If the DP has asked to speak to a solicitor they will be able to do this before the interview. The solicitor may come into the interview. If the DP has an Appropriate Adult they will be with you in the interview as well.

The interview is recorded and the DP can have a copy.

The DP does not have to say anything when they are interviewed, but if they do not say anything at all this might look bad in court. If the DP tells the police officers one story but changes it in court, they may not be believed.

After the interview

After the interview the police officer will usually put the DP back into a cell while they decide what to do next. The police have a choice of what they can do, and the decision will be explained to the DP. These include:

- Being offered a 'Police Caution'. **It is a very good idea to take legal advice on whether to accept this** as it will stay on your record. In the future it might mean you cannot do some jobs (like working with children), or visit some countries (like Australia).

- The police can **release the DP on police bail** if there is not enough evidence to charge them. You don't have to pay to be released on police bail, but will have to return to the police station for further questioning when asked.

The DP can be released on conditional bail if the police charge them and thinks that they may:

- commit another offence
- fail to turn up at court
- intimidate other witnesses
- obstruct the course of justice

This means the DP's freedom will be restricted in some way, e.g. the police can impose a curfew if the offence was committed at night.

Photos and samples

The police have the **right to take photographs of a DP.** They can also take **fingerprints and a DNA sample** (e.g. from a mouth swab or head hair root) as well as swab the skin surface of hands and arms**. They don't need permission to do this**.

The police **do** need both the DP's permission and the authority of a senior police officer to take samples like blood or urine, or to take dental impressions. This doesn't apply when they take a blood or urine sample in connection with drink or drug driving.

In detail: Appropriate Adults

If the detained person (DP) is under 18 and/or has a learning disability they are entitled to an 'Appropriate Adult' (AA).

For children, the police must first seek a parent, guardian, care organisation representative or social worker. If none are willing, available or suitable, the local Youth Offending Team (YOT) must ensure an AA is provided. The person they send may be paid or a volunteer but they should have relevant training and experience.

For adults with learning disabilities, the police should first seek someone who has **experience in learning disability**. Organised schemes exist in some areas but if the DP prefers a relative, guardian or other carer, the police should respect their wishes. Failing these, the police can ask any responsible person aged over 18.

If you are asked to be an Appropriate Adult it is your decision - the police cannot force you. Think about whether it is in the best interests of the DP. For children, it is usual for a parent to be the AA but sometimes they are unwilling, unable or unavailable. Even if they are not the AA, police must still tell parents that the child has been arrested, why, and where they are being held.

A person cannot be the Appropriate Adult if they:

- are under 18
- are employed by the police in any capacity
- are a suspect, victim, witness or otherwise involved in the investigation
- have received admissions prior to acting as the AA
- are a solicitor or independent custody visitor at the police station in that capacity
- are a parent who is estranged from the child and the child prefers to have someone else
- are a person suspected of involvement in terrorism
- are the principal of a child's educational establishment (with some exceptions)

The job of an Appropriate Adult is to help the Detained Person understand what is happening at the police station and explain their rights.

Complaints

If you think you have not been treated properly, you can tell your solicitor or the police officers in the custody suite. If you don't want to do any of these you can tell the Independent Police Complaints Commission (IPCC): http://www.ipcc.gov.uk/sites/default/files/Documents/publications/A_guide_to_the_police_complaints_system_leaflet.PDF.

Appropriate Adults are independent, meaning they do not work for the police.

An Appropriate Adult can:

- Give support, advice, and help the DP to understand what the police are saying
- Make sure that the police treat the DP fairly
- Help the DP to explain things to the police and to other people at the station

An AA cannot give legal advice, but can make sure the DP has a solicitor.

How can an Appropriate Adult help the DP in interviews?

An AA should be with the DP for police interviews. They should help the DP:

- **Understand the 'caution'** that is given by the police at the start of the interview
- **Communicate better** with the police and understand their questions
- **Ask for a break when necessary**. A break is for rest, or to ask for legal advice, or to talk to the AA in private
- Be with them when they are asked to **agree with any information** or to **sign any documents**

The Appropriate Adult should also help when:

- The **DP is searched by the police** (when it involves taking off any clothes)
- When **identification is being checked**, for example taking fingerprints or a DNA sample

If they are available, Appropriate Adults can also help:

- When a senior police officer is **deciding if the DP is allowed to be kept** at the police station for extra time
- When the **DP is told by the police that they are being charged** with committing a crime

In detail: Youth Offending Teams

Youth Offending Teams **work with young people that get into trouble with the law.**

They look into the background of a young person and try to help them stay away from crime.

They also:

- run local crime prevention programmes
- help young people at the police station if they are arrested
- help young people and their families at court
- supervise young people serving a community sentence
- stay in touch with a young person if they are sentenced to custody

When you may come into contact with a youth offending team

The youth offending team gets involved if a young person:

- gets into trouble with the police or is arrested
- is charged with a crime and has to go to court
- is convicted of a crime and given a sentence

Usually, the police are the first people to contact the youth offending team. But family members and friends can also contact them if they are worried about a young person's behaviour.

Who Youth Offending Teams are:

Youth Offending Teams are part of your local council and are separate from the police and the courts.

They work with:

- the police
- probation officers
- health, housing and children's services
- schools and education authorities
- charities and the local community

In detail: Liaison and Diversion

The job of Liaison and Diversion (L&D) services is to **identify people who have mental health, learning disability or substance misuse and associated vulnerabilities when they first come into contact with the criminal justice system** so that they can either be supported through the criminal justice system or diverted into a treatment, social care or other support service.

L&D services aim to improve health outcomes, reduce re-offending, and identify vulnerabilities earlier; thus reducing the likelihood that offenders will reach crisis point. The most important areas of operation for L&D services are: identification, assessment, screening and referral.

Identification: Criminal justice agencies, such as **police**, **courts** or **youth offending teams**, are **trained to recognise possible signs of mental health, learning disabilities** and/or substance misuse in offenders when they first come in contact with them. Custody/detention staff alert the L&D practitioner who moves to the screening stage. There is also an **opportunity to identify people with vulnerabilities at the court stage if they have not been identified earlier**.

Screening: Once someone is identified as having a mental health issue or vulnerability, the **L&D practitioner offers screening which will provide them with evidence** whether a further assessment is required or not. **The screening identifies the need, level of risk and urgency.**

Assessment: Using screening tools, an **L&D practitioner will do a more detailed assessment of the offender and their vulnerability**. This highlights people's needs and whether they should be referred for treatment or further support.

Referral: Following assessment, the L&D practitioner may **refer the person to mainstream health and social care services** and other relevant interventions and support services. This will also include **support to their first appointment** and **monitoring progress.**

Liaison & Diversion services are not yet available in all parts of the country, for more information go to http: //www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/

Throughout, **data about the health needs of the person are recorded** and used by agencies such as **police, judges and probation** so that they can make informed decisions about case management, sentencing and disposal.

The police and judiciary should make appropriate decisions, based on the evidence and information presented to them. Liaison and Diversion services will also provide a route to treatment for people **whose offending behaviour is linked to their illness or vulnerability with the principle of preventing crime, reducing re-offending and providing better and more timely information to agencies in the criminal justice system.**

In detail: Crown Prosecution Service (CPS)

About the Crown Prosecution Service

When the police think that someone has committed a crime, the Crown Prosecution Service will decide if that person should go to court.

How does the CPS decide who goes to court?

The CPS follows a set of rules called the Code for Crown Prosecutors to decide if someone should go to court. There are 2 parts to these rules:

Part 1 - Is there enough evidence?

This means: is there enough information to make it clear that something has happened. The CPS need to be sure that there is enough information for a court to be able to decide if a crime has happened. If there is not enough information, then they cannot let a person go to court, even if the police think they might have done something very serious.

Part 2 - Is it in the public interest for this person to go to court?

Public Interest means things that matter to everyone. The CPS will decide if it is important to everyone if this person goes to court.

About decisions the CPS makes

CPS decisions are not about saying if they think someone committed a crime or not. This is for the court to decide. CPS decisions are about whether something is right for a court to look at. When making a decision they can only look at the evidence or information that the police have found.

If they later get new information, they can change their decision. This means that they can stop a person from having to go to court or change the charges – this means they might ask the court to decide if the person has broken a different law.

How can people have a say about the CPS?

If you want to comment on the service there is information about how to do this here www.cps.gov.uk.

Local Crown Prosecution Service Office

You can find details of your local CPS office here: http://www.cps.gov.uk/contact/local.html

If things go wrong

If you want to make a complaint and are not happy with the CPS's reply to you, then you can contact the **Parliamentary and Health Service Ombudsman (PHSO).** There is more information here www.ombudsman.org.uk.

In detail: Court

People with learning disabilities/ASC who end up in Court are entitled to **'Reasonable Adjustments'**. Reasonable Adjustments are changes to the normal way things are done that will help the person to understand things and cope better.

These are things like:

- Letting the person **see the courtroom before** a trial.
- Having **short breaks** during the trial.
- Staff explaining any difficult words and **keeping things simple**.
-

There are additional things court staff should think about when they decide on the sentence for a person who has broken the law. The 'sentence' explains the things the person has to do because they have broken the law.

Some of the things staff can do to help people with a learning disability or learning difficulty are:

- Make sure the person understands their sentence. (This means what they have got to do and what they are not allowed to do).
- If the person has to pay a 'fine' make sure that they understand their money and how to pay.
- Make sure the person can do any courses or classes that might help them.

In detail: Prison

All prisons must have a '**Disability Liaison Officer (DLO).**' They are also sometimes called an '**Equalities Officer**' or a '**Diversity Officer**'. They work in the prison and know about disability issues. **They can help prisoners with learning disabilities and learning difficulties.**

They also give information to other staff to **help them support a prisoner with learning disabilities or learning difficulties.**

Healthcare staff can help prisoners with some types of problems. **Education staff** can also help prisoners sometimes. In some prisons, each prisoner will have a 'personal officer' who can give them support and information.

There are some additional things prison staff should think about if they are working with a prisoner with learning disabilities or learning difficulties. These are:

- When a person first arrives in prison they should be **asked if they have a learning disability or learning difficulty.**
- Prisoners with learning disabilities or learning difficulties are more vulnerable and **should not be put in dangerous situations.**
- Prisoners with learning disabilities and learning difficulties **have equal rights.**
- Staff should try to find **courses and activities** the prisoner can understand.
- Staff will need to give prisoners with learning disabilities or learning difficulties **extra time when helping them plan for their life after leaving prison.**
- They will need **extra time to plan their release**.

In detail: Probation

People with learning disabilities will probably need extra help to understand what they must do when on probation. This includes help with some everyday things like sorting out the person's money, finding them a house or a job and joining different groups.

Probation staff should work with the local Community Learning Disability Teams to help people with learning disabilities on probation. Staff should also work with other types of support teams and with other criminal justice staff to make sure that the right people know what support the person needs.

Probation means the person is serving a sentence even though they're not in prison.

They could be put on probation because:

- they are serving a community sentence
- they have been released from prison on license or on parole

While on probation, they may have to:

- do unpaid work
- complete an education or training course
- get treatment for addictions, like drugs or alcohol
- have regular meetings with an Offender Manager and agree a 'sentence plan'.

For more information about probation and what it might entail, please visit https://www.gov.uk/guide-to-probation

If you break the rules of your probation

You could go back to court if you break any rules of your probation. For example, if you:

- do something your sentence bans you from doing
- commit another crime
- miss meetings and appointments without a good reason
- behave in an aggressive, racist or other unacceptable way at a meeting or appointment

You can also be taken back to prison if you break the conditions of your license or parole.

Restorative Justice (RJ)

An RJ service **supports communication between the person who caused the 'harm' (the offender) and the person who experienced the harm (the victim).** You may be offered RJ, or you can request it. This runs either:

- **alongside** the criminal justice system,
- or **as part of it**, in combination with any of the sentences listed on pg 8
- or **as part of diversion** from Court, following arrest.

You have the right to a safe and competent RJ service provided by trained facilitators. **The other party must agree to take part**, and it is the job of the trained facilitators to make this offer to them. You may have an advocate or supporter (or both) with you through the preparation and the restorative process.

In detail: Restorative Justice (RJ)

Restorative Justice is a **voluntary and safe** communication between the person harmed by a crime or conflict and the person who caused the harm, **supported by a trained facilitator**. This form of support can be offered at any stage of the Criminal Justice System including:

- **diversion**, that is after an arrest and instead of going to Court
- **after a Court case** and before a sentence has been decided on
- **alongside** either a community sentence or a prison sentence
- at any time **after a prison sentence** has been served.

It is **essential that the two parties have a chance to prepare properly** to ensure that the potential benefits are achieved for both. Where one of the parties has a learning disability they are **likely to benefit from the support of an Advocate**, both in the preparation for a Restorative Process, and in the actual process. This may be an important part of ensuring that the participant's voice is clear and heard by the other party. **Everyone is entitled to 'safe and competent' Restorative Justice services** and to quality information to make an informed choice about the different Restorative Process options available to them.

Nationally, RJ services are patchy, more developed in some areas than others. You can learn more about RJ services through the **Restorative Justice Council website** and as services are developing, find out more about what is available in your area.

References/Further help

This guide was prepared with reference to the following websites:

'The arrest and detention of disabled children: A Guide for Parents'
Cerebra
General enquiries: 01267 244200 Email: info@cerebra.org.uk
Postal address: Cerebra 2nd Floor Offices, Lyric Buildings King Street Carmarthen SA31 1BD.
Website http://w3.cerebra.org.uk

Foundation for People with Learning Disabilities
http://www.learningdisabilities.org.uk/help-information/learning-disability-a-z/c/criminal-justice-system/

Clinks website
http://www.clinks.org/criminal-justice/guide-criminal-justice-system

'What happens if you are arrested?' Derbyshire Police easy read leaflet
http://www.derbyshire.police.uk/Documents/Contact-Us/Easy-Read---What-Happens-If-You-Are-Arrested.pdf

'Positive Practice, Positive Outcomes: A handbook for professionals in the Criminal Justice System working with offenders with learning disabilities."
You can get a copy of the 'Positive Practice, Positive Outcomes' (2011) book from: https://www.gov.uk/government/publications/positive-practice-positive-outcomes-a-handbook-for-professionals-in-the-criminal-justice-system-working-with-offenders-with-a-learning-disability

http://www.appropriateadult.org.uk/index.php/practice/guidance

https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/

https://www.gov.uk/guide-to-probation

https://www.gov.uk/youth-offending-team

To find your local YOTS service: https://www.gov.uk/government/collections/youth-offending-team-contact-details

Restorative Council Justice website: https://www.restorativejustice.org.uk/

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For more information about the project and ARC, please visit our website: www.arcuk.org.uk

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