

WORKING WITH CHILDREN WITH DISABILITIES IN THE COURTS

Submitted by the Child Witness Institute

KEY CONCEPTS	
Children with disabilities	Physical disabilities
Communication disabilities	Deaf or hearing impaired witnesses
Intellectual disabilities	Accommodations for witnesses with disabilities

Great reliance has been placed on *Project Ability Reference Guide, 2017 (Oregon)* for this note.

1. Points to note:

- The child is foremost a child and should not be defined by their disability.
- Internationally statistics indicate that children with disabilities are a particular target of sex offenders, because these children are more vulnerable as a result of their impaired cognitive abilities and limited social skills.
- Vulnerability is exacerbated by the fact that these children are more dependent on caregivers, they may not be aware that the behaviour perpetrated against them is inappropriate, or may not know how to report this behaviour.

2. Bias

Personnel in the criminal justice system must first and foremost examine themselves for possible biases, fears and assumptions that they may have about persons with disabilities, as this will impact on their ability to:

- develop rapport with the witness
- trust the credibility of the witness
- evaluate the evidence of the witness accurately.

Society tends to view people who are different in a negative way, and this is exacerbated by myths and stereotypes that are inadvertently accepted as true. People with disabilities are people, not disabilities, and it is important when working with people with disabilities that positive and respectful language is used. This will have an impact on the rapport that must be developed. Although empathy is really important when working with witnesses who have experienced traumatic events, language that suggests pity should be avoided as this will only affect communication negatively.

In some instances, the physical appearance of the witness may be disturbing for the court official, especially where they have had very little interaction with persons with disabilities. There is nothing unusual about feeling like this and it simply requires a little time to adjust. Greater exposure to people with differences will result in these feelings disappearing.

3. Defining disability

Disability is defined as a medical, educational, or psychological condition that interferes with an individual's ability to:

- speak, understand, and use language (communication)

- think and reason (intellectual)
- behave appropriately, socially and emotionally, in most settings (socio-emotional)
- see, hear, move, and be healthy (physical).

In order to understand disability in children, one needs to understand typical child development, which focuses specifically on the 4 areas identified above. The typical development of a child will form a baseline from which it is possible to identify the differences in those children with disabilities. Development occurs in certain predictable stages. The speed at which children pass through these stages will vary from one individual child to another, although there are general age ranges for acquiring different skills.

- Physical development includes:
 - increases in height, weight, head circumference
 - motor development
 - gross motor skills – crawling, walking, running
 - fine motor skills – holding items and writing.
- Intellectual development includes:
 - accumulating and processing knowledge
 - reasoning and judgment.
- Speech and language development includes:
 - Speech: the production of speech sounds that become words, usually mastered by 8 or 9
 - Language: the use of words and gestures to communicate, and includes expressive language (being able to send a message) and receptive language (being able to understand a message).
- Socio-emotional development includes:
 - Social development: learning how to behave appropriately in specific situations
 - Emotional development: acquiring self-esteem, confidence and establishing personal identity and discovering one's role within the family, community and society.

The above is a very brief summary of the typical stages in the development of an individual. When the speed of a particular child's development is significantly different from their peers of the same age, then it is considered to be a developmental delay. It is not the role of the court official to make such a formal assessment or diagnosis as they are not qualified to do this. Rather, they need to recognise the delay in order that they can communicate more effectively with the child.

Disabilities vary in severity and complexity from one child to the next. For example, two children who have been diagnosed with Downe's Syndrome may have widely different functioning and abilities. One may have very limited communication skills while the other may have more advanced communication skills. Also, certain disabilities are much more frequent, such as learning disabilities.

4. Types of disabilities

4.1. Communication disabilities

Communication difficulties are present in a large number of disabilities or disorders, such as autism spectrum disorder (ASD), intellectual disabilities, learning disabilities, syndromes and physical disabilities such as cerebral palsy. Irrespective of the disability, it is the role of the court official to

adapt to the child's communication abilities in order to assist the child to communicate effectively with the court.

Communication disabilities can be categorised into speech difficulties and language difficulties:

- speech difficulties: problems with the production of understandable sounds
- language difficulties: problems with sharing thoughts, ideas, feelings and information
 - expressive language: what and how the child speaks
 - receptive language: what the child hears and understands.

4.2. Intellectual disabilities

Individuals with intellectual disabilities, depending on the severity, will present with the following:

- Immature conversation style (simple vocabulary, shorter sentences, concrete in thought)
- Immature social behaviours (seem younger in presentation than chronological age)
- Difficulty with abstract concepts (time, complex humour)
- Literal interpretation of words and gestures
- Limited or immature problem-solving skills
- Tendencies toward compliance and pleasing others
- Impulsivity in decision making due to intellectual capacity
- Difficulty with short-term memory and working memory
- May require more time to process and may take longer to learn new concepts (need for repetition to master skills).

4.3. Physical disabilities

A physical disability is a limitation on a person's physical functioning, mobility, dexterity or stamina. Physical disabilities also include impairments which limit other facets of daily living, such as respiratory disorders, blindness, and deafness.

5. Preparation

In order to assist a child with a mental disability to communicate with the court, the court official will need to have sufficient information to be able to perform this task. According to the *Project Ability Reference Guide*, 2017 (Oregon), the following 5 questions will assist with the preparation necessary for working with a child with a disability:

- Does this child have a disability or difficulty with:
 - Speaking, understanding, and/or using language? (Communication)
 - Socializing, feeling, and behaving? (Social/emotional behavior)
 - Thinking and reasoning? (Intellectual)
 - Hearing, vision, movement, and health? (Physical)
- How does the disability affect this child?
- What strengths and abilities does this child have?
- What further information is required about the disability and the child?
 - Are there medical or educational records available for review?
 - Who might be available for a general consultation on this disability?
- How can the setting and the questions be structured for a successful interview?

Where applicable, the court official should try to gather information about the child's level of functioning before meeting with a child with disabilities. This information can be obtained from:

- School records that document level of functioning, current strengths, weaknesses, and academic/behavioral accommodations at school, where available
- Medical records, including specific diagnoses, medications, and therapies received
- Other collateral reports, such as social worker or psychologist reports
- Histories provided by caregivers and adults who work and interact with the child.

Parents or caregivers are very good sources of information. They have the best understanding of how the child communicates and functions as well as the current accommodations already established for the child.

Other information that may be relevant would include:

- Does the child take any medications?
- How do they affect the child depending on the time of day? (This information can be very useful for the court in determining when the child should testify)
- Is the child experiencing any side effects?
- Has the child been without medications for some time and experiencing any adverse effects?
- Does the child have a special stuffed animal or toy that helps calm them when upset? Can the child bring this toy to the interview?

6. General accommodations for children with disabilities

The following accommodations can be useful for communicating with children with disabilities:

- Meet with the child before the trial and explain to the child what will happen. Give the child a tour of the court and the different rooms that will be used and provide explanations of the roles of relevant personnel.
- Use the child's name frequently throughout the interview to maintain attention and ground them.
- Spend time establishing rapport and use the opportunity to evaluate the child's speech and language as well as the child's ability to respond to open-ended, more abstract questions. Building rapport also allows the child to relax and feel safe.
- When the child is provided with instructions, these must be done one at a time and the child must be given an opportunity to process them before moving on to the next one.
- Where the child does not provide much information or is unable provide a narrative in response to an open-ended prompt (e.g., "Tell me everything"), then the court official can use more focused and direct questions, to elicit more information e.g. the following example from 2017 *Project Ability Reference Guide* Page 38:

"I: Sam, tell me everything you did during your birthday party.
Sam: Ate cake and opened presents.
I: Okay, so tell me the first thing that happened at your birthday party.
Sam: My friends came over.
I: Your friends came over, then what happened next.
Sam: We played.

I: You played, then what did you do?
Sam: Mom got the cake.
I: After the cake, then what happened?"

- Using tools during the interview can help elicit more details. Tools include maps, drawings, anatomically detailed dolls or body drawings, and asking the child to use gestures or show body positioning.
- Depending on the age of the child, maps can be used to explain where something happened and can ground a child. Ask the child to draw a map, then refer to the map and use it to help structure questions, including where the child and/or alleged perpetrator were, who else was there, and peripheral details of the surroundings. Ask the child to explain what they are drawing as this can elicit additional details.
- Dolls should be used only after a disclosure has been made.
- Gestures include having the child show how something occurred i.e. how they were pushed or hurt.
- Be patient and pause often!
- Give the child time to speak, process questions, and express everything they want to share before posing the next question.
- Do not fill in the blanks for a child if the child is not speaking in full sentences.
- When asking questions, remember:
 - Use short sentences with only one concept per sentence.
 - Start with open-ended questions and prompts.
 - If these are difficult for the child, then move toward focused and direct questions.
 - Move back to open-ended prompts whenever possible.
 - Use yes/no (closed-ended questions) as a last resort.
 - Avoid using double negatives.
 - Don't ask "why" or "if" questions.
 - Use the child's words whenever applicable and clarify terms the child uses.
 - Allow the child to express feelings or no emotions at all.
 - Allow for long silences.
 - Don't use baby talk.
 - Focus on a specific event, which can anchor the child and help the child provide additional details of that event.
 - Instead of asking about dates and times, ask about locations (e.g., what house, what rooms, any other place).
 - Pay careful attention to the child's responses to questions. Where, for instance, a child repeats the same answer, this could mean that they are tired, have lost interest or don't understand.

7. Accommodations for communication difficulties

Where children experience difficulties with communication, the following are some of the techniques that can be used to assist the child to communicate:

- Look at the child when they speak and notice if they are using hand gestures with words when speaking.

- Before the child has to testify, explain that you might need to repeat a word to make sure that you understand what they are saying. i.e. “Jane, it’s my job to make sure I don’t guess what you mean. I may repeat words you say to make sure I heard you correctly.”
- Provide positive reinforcement if the child corrects you when misunderstood as this will give them the confidence to continuing doing so, if necessary.
- Offer the child the option to write or draw a picture in response to a question.
- Allow the child to stutter, stammer, and pause, and do not fill in the word that the child is trying to say
- If the child’s articulation is difficult to understand, offer the child the option to write a word or narrative, if developmentally appropriate.

The following accommodations can be used for receptive (understanding what is being said) and expressive (being able to express oneself) language difficulties.

Receptive difficulties (understanding):

- Pause after every question as this gives the child time to understand the question and formulate a response.
- Use the child’s name as this grounds the child in the moment.
- Ask one question at a time and give the child a chance to answer the question before moving to another question.
- Stress the importance of the child stating if they do not know an answer, and practice this with them.
- Pay attention to the child’s eye contact, body language, and other cues, such as changing the subject or responding with a meaningless response or repetition, which might indicate the child does not understand the question.
- Periodically check in with the child to make sure the question was understood. e.g. “Sam, was that a hard question to understand?” If he says yes, then offer to ask the question in a different way.

Expressive difficulties (speaking):

- Pause after a question as the child may require extra time to formulate a response before being able to say it aloud
- If the child has difficulty expressing thoughts, ask if writing or drawing would be easier than speaking. Offer the child different communication methods, such as writing a response, drawing a picture, drawing a map, using anatomically detailed dolls or body drawings, or using gestures to show what happened.
- Repeat the child’s statements periodically to make sure you understood, and use positive reinforcement if the child corrects you.
- Clarify pronouns and use proper nouns whenever possible.
- Not all children will speak in full sentences, but do not fill in the blanks.
 - If a child starts to answer a number of questions with automatic responses such as “I don’t know,” then check to see whether the child is having difficulty with the questions. Ask the child if the question was a difficult one and then ask it in another way. Offer to state the question differently.

“Interviewer: You said Fred hit you. Tell me all about Fred hitting you.

Child: I don't know.
 Interviewer: Is that a hard question?
 Child: Yes.
 Interviewer: Okay, let me ask it differently. Where did Fred hit you?
 Child points to arm.
 Interviewer: Show me how Fred hit you.
 Child punches arm.
 Interviewer: What did Fred hit your arm with?
 Child shows a fist.”
 2017 Project Ability Reference Guide Page 46

- Pay attention to any signs that the child is tired, agitated or frustrated.
- Interviewers should be cognizant of any learning disability

8. Accommodations for children with ADHD

This is information that should be obtained from the parent or caregiver or social worker report. It is not always obvious that a child suffers from ADHD. The following accommodation strategies are useful for attentional challenges affecting communication:

Accommodations for hyperactivity:

- Limit distractions in the interview room.
- Be patient if the child speaks loudly and quickly as they might not possess the self-awareness necessary to regulate voice or pace in the moment. If the child's pace or loudness is not disrupting the narrative, then sit patiently and listen. However, if the child speaks so quickly that the narrative is difficult to track, check in with the child to make sure you understand what's being said. Take notes of important details in the narrative. When the child pauses or finishes a narrative, relay any pieces of salient detail and ask the child to clarify. Paraphrasing can help organize and direct the child to continue with a more cohesive narrative.

“Hazel: I went into the room. It was dark and spooky. Things seemed to be everywhere and I was totally freaked out. I am running around, bumping into things, and I kept hearing them. They were crazy loud. I didn't know what to do and bumped into the bed, then fell on some shoes. I was crying and my leg hurt. There was crashing and I kept trying to find my phone. I couldn't because it was dark. I get freaked in the dark. It still was loud and I was scared.
 Interviewer: Okay, Hazel, let me make sure I understood you. You said you went into a dark room and heard them. Who did you hear?
 Hazel: Mom and Dad
 Interviewer: So you heard Mom and Dad and they were loud. You said you were trying to find your phone in the dark, then you heard crashing. Is that correct?
 Hazel: Yes.
 Interviewer: Tell me all about the crashing.”
 2017 Project Ability Reference Guide Page 48

- Allow opportunities for the child to move and squirm in the seat or move about the room as long as they are safe. Children with hyperactive tendencies often struggle with the internal need for movement (kinesthetic energy) as opposed to having to use mental energy to focus on a conversation. When children have opportunities to release the kinesthetic energy inside them, they are actually able to attend better to conversations.
- Offer play dough, a picture to colour or draw so that the child can be occupied while talking.
- If you sense that a child is too distracted, say the child's name and ask the child to look at you. Repeat your question when the child looks at you.

Accommodations for children with attention issues without hyperactivity:

- Provide clear interview instructions.
- Constantly check to make sure they are following you to assess how well they are attending.
- Observe how much you speak versus the child speaks. If you are speaking more than the child, the child may lose interest or become distracted.
- Use the child's name to ground them and retain their attention.
- Ask the child to repeat a question if there are concerns about inattention. For example: "John, I just want to check that you understood my question. Tell me in your words what I just asked."
- Only ask one question at a time.
- Listen for patterned responses from the child, which may indicate the child has disengaged from the process.

9. Accommodations for children with intellectual disabilities

The approach adopted for an individual child will depend on the type and extent of the disability. When dealing with children with an intellectual disability, it is very important to gather information about the child's mental age, as this is a helpful indicator for the child's performance and can determine the interviewer's approach and manner of questioning the child. The following general accommodations can be used for children with intellectual disabilities:

- These interviews should begin and progress in a similar manner as interviews with typically developing children.
- Always attempt to use open-ended prompts/questions during interviews, but scaffold questions using focused and/or direct questions as needed to accommodate the child.
- Give the child clear introductions and a full explanation of the questioning process.
- Speak slowly and explain that it is okay for the child to take breaks when they need it.
- Do not use "baby talk" with a child even if the child has a much lower mental age than chronological age, as this is disrespectful. Use plain language.
- Assess the child's language skills throughout the interaction as this will guide how interview questions are posed.
- Children with intellectual disabilities tend to provide less-detailed, shorter narratives in response to open-ended prompts, but the information tends to be accurate as compared to children with the same mental age.
- Asking general questions that are more focused or direct ("What happened after Johnny touched?") can elicit more details about an event.

- Using open-ended questions and prompts that include the child's words can help structure the child's story and still allow for free recall.
- Limit the use of closed-ended (yes/no) and multiple choice questions.
- Children with intellectual disabilities have been found to be more suggestible when specific or suggestive questions are repeated several times.
- Ask one question at a time, and pause after asking questions. Do not rush children if they take a long time to respond. Give children time to think about and find the words needed to explain their experiences.
- Constantly check to see whether the child understands the questions, as these children may not tell you when they do not comprehend a question.
- Don't ask "why" questions.
- Offer breaks during the session, especially if the child is showing signs of stress, fatigue, or discomfort. They may not be able to say that they need a break.
- Signs of stress or fatigue include:
 - Withdrawal and/or not answering questions
 - Distraction (looking around, changing topics)
 - Fidgeting, hand wringing, rocking in the chair
 - Humming/groaning
 - Covering face, hiding.

10. Accommodations for persons who are blind or visually impaired

Generally, people who are blind can be perfectly capable of walking by themselves. However, there are times when a sighted guide is required. If it is necessary to guide a blind person, there are some basic techniques that should be followed.

- In addition to guiding a blind person carefully, be respectful. Always ask first before offering assistance.
- Allow the blind person to hold your arm just above the elbow. To start walking with a blind person, place the back of your hand on the back of the blind person's hand. This will let them figure out where your arm is. Then, the blind person can hold your arm just above the elbow.
- Don't grab onto the blind person. The blind person should always have the control to let go if need be.
- The blind person may have a cane or guide dog, in which case allow them to use the hand without their cane or guide dog.
- Ensure the blind person is a step behind you, slightly to your left or right side.
- Walk at a comfortable pace.
- Look out for any obstacles and advise the blind person accordingly.
- When guiding a blind person through a doorway, move your arm behind your back when going through the doorway so that their hand can remain on your elbow.
- When approaching a staircase, inform the blind person and tell them whether the stairs are going up or down.
- Remain one step ahead of the blind person on the stairs and inform them when you have reached the top or bottom.
- Do not leave the blind person stranded. Tell them when you are leaving and only leave them if they have reached their destination or are comfortable navigating their surroundings.

11. Accommodations for persons who are deaf or hearing impaired

Although persons who are deaf or hearing impaired will make use of a special interpreter, intermediaries may need to assist them in court. Be aware of the following:

- Always face a deaf person and make eye contact while talking to them. Do not look away or cover your mouth as many deaf people rely on lip reading to understand.
- Do not stand too close to a deaf person. Stand a metre away as this is important for hearing-aid users, lip-readers and signers.
- Speak clearly, slowly and steadily. Do not shout, mumble or exaggerate your mouth movements as this makes lip-reading difficult.