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# FBI Law Enforcement

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# Handle with Care

## Dealing with Offenders Who Are Mentally Retarded

By  
ARTHUR L. BOWKER, M.A.



**O**ffenders who have mental retardation comprise between 5 and 10 percent of the Nation's prison population.<sup>1</sup> Unfortunately, a great deal of confusion exists about these individuals. One study involving 100 police officers, 75 lawyers, and 35 judges found that "...while criminal justice system personnel may have some understanding of mental retardation, they are confused and uncertain about how to deal with this population in a professional manner."<sup>2</sup> As a result, law enforcement risks making offenders with mental retardation victims of circumstances, and the court system either sentences and commits them

inappropriately or fails to punish them adequately.<sup>3</sup>

When dealing with offenders who have mental retardation, law enforcement officers usually base their reactions on two misconceptions. They view them either as "crazy" people who cannot refrain from committing dangerous and criminal acts or as child-like individuals who deserve pity, are not competent to stand trial for their actions, and must be diverted from the criminal justice process whenever possible.

Mental retardation must not, however, be viewed as an excuse or defense for criminal behavior. Affected individuals may warrant

diversion from prosecution and the correctional process, just as other suspects might. Similarly, some individuals with mental retardation, like other offenders, may warrant serious sanctions by the criminal justice process for their criminal behavior. Thus, law enforcement officials, prosecutors, and the courts should view offenders with mental retardation in much the same manner as they would other suspects or defendants.

In order to do this, criminal justice professionals must fully understand the terms "mental retardation," "mental illness," "competency," and "insanity at the time of the act." What follows is an

explanation of these concepts, as well as specific advice on handling offenders who have mental retardation, both in the squad room and in the courtroom.

### **Mental Retardation vs. Mental Illness**

Many people erroneously believe that mental retardation and mental illness are the same condition. However, there are distinct differences between the two. Mental illness can strike anyone at any time, regardless of the individual's intellectual capacity. Individuals who have a mental illness may have visual, auditory, and/or tactile hallucinations and/or delusions.

Conversely, mental retardation is a permanent condition that develops in individuals prior to age 18. It manifests itself in significantly below average intellectual functioning, as evidenced by intelligent quotient (IQ) testing, and substantial limitations in adaptive behavior—that is, social functioning or life skills—as indicated by psychological testing. Individuals identified as having mental retardation can also become mentally ill or abuse substances. ("Dual diagnosed" is the term applied to people with mental retardation who also experience substance abuse, mental illness, and/or character disorders.) But, with education and care, many people who are mentally retarded can become productive members of society.

### **Identifying Offenders with Mental Retardation**

Individuals with mental retardation are not always easy to identify, especially those who function

well socially. In fact, most do not readily admit they are mentally retarded, due to embarrassment, fear, and a desire not to be labeled "slow."

The question remains, then, how can law enforcement officials detect such individuals? The answer: They must observe behavior, analyze responses to questions, and contact collateral sources of information, such as school personnel and relatives.

Although police officers cannot positively diagnose retardation, they can identify likely affected offenders based on positive responses to several of the following questions:

- Does the individual wear clothing inappropriate for the season?
- Does the individual move awkwardly as if poorly coordinated?
- Does the individual use "simple words," reflecting only a limited vocabulary level?

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to obtain the services  
of qualified forensic  
psychologists to  
evaluate the  
competency of all  
offenders with mental  
retardation.  
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*Mr. Bowker, an investigator with the Office of Labor Management Standards, U.S. Department of Labor, Cleveland, Ohio, formerly headed the Mentally Retarded Offender Unit of the Cuyahoga County, Ohio, Adult Probation Department.*

- Does the individual parrot or repeat questions?
- Does the individual reside in a group home?
- Does the individual attend special education classes?
- Does the individual work or reside in a center for people with mental retardation?

While a person who is *not* mentally retarded may exhibit one or more of the above behaviors, police officers should err on the side of caution. That is, when officers suspect they have an offender with mental retardation, they should proceed as if the individual is mentally retarded until provided evidence to the contrary. This protects the offender's rights and prevents victimization in a custodial arrest situation. It also protects the department and increases the likelihood of successful prosecution if the case goes to trial.

The arresting officer may still place the offender in jail if the situation warrants such action.

## Street Tests

Patrol officers may find these "street tests" helpful in recognizing citizens who are mentally retarded. Officers should verify whether the individuals can:

1. Button their coats easily
2. Give coherent directions from one location to another
3. Repeat a question in their own words
4. Write their names clearly and without difficulty
5. Read and understand a newspaper
6. Recognize coins and make change
7. Tell time with ease
8. Use a telephone

(Source: *The Arc, Training Key #353, "Contacts with Individuals Who are Mentally Retarded," 2-3.*)

However, offenders with mental retardation should never be placed in cells with individuals who might abuse or victimize them.

Police officers may also question the offenders. In doing so, they should follow a few simple guidelines.

### Interviewing Offenders with Mental Retardation

When conducting interviews, officers should, first and foremost, ensure that offenders understand their Miranda rights. If any doubt exists, the interviewer should consult a prosecuting official to determine whether to continue the interview or to stop and obtain the assistance of a qualified individual trained in dealing with people who are mentally retarded.

Officers should also make sure suspects understand the questions asked. To accomplish this, they should use easy-to-understand language and ask open-ended questions—not questions that merely

require yes-or-no responses. In addition, officers should speak in a normal tone of voice; mental retardation does not affect hearing.

Offenders with mental retardation often try to please those in authority. As a result, they might confess to police, not out of guilt, but from a desire to please. They may also plead guilty to an offense without understanding all the ramifications.

Therefore, law enforcement officials should take care during interviews of suspects with mental retardation to ensure they do not lead or direct them to give inappropriate answers. Where warranted, officers should obtain assistance from professionally trained individuals. These guidelines apply not only to suspects but also to victims and witnesses with mental retardation.

Interviews should be well-documented, particularly when offenders disagree or elaborate on particular issues. By documenting interviews, officers can establish

the facts regarding suspects' criminal actions and their understanding of their rights. Further, this documentation can provide insight into whether suspects are competent to stand trial.

### Competency

Competency relates to many different issues. For example, individuals may be competent to get married but not to handle their finances or to make out a will. Criminal justice professionals must consider whether offenders with mental retardation are competent to understand their Miranda rights, to enter a plea, and to stand trial. A related issue involves whether individuals with mental retardation are competent to serve as trial witnesses.

Competency to stand trial is grounded in the 5th and 14th amendments. It protects individuals from prosecution when they cannot defend themselves because of mental illness or retardation. A finding of "not competent to stand trial" stops the criminal proceedings until the defendant can be restored to competency.

Mental retardation does not automatically make offenders incompetent to stand trial. Courts must be willing to obtain the services of qualified forensic psychologists to evaluate the competency of all offenders with mental retardation.

Unfortunately, because offenders with mental retardation often go undetected, their competency may never be questioned. In fact, a Cuyahoga County, Ohio, study of offenders on probation who were mentally retarded determined that competency evaluations had been ordered on only 27 percent of them.<sup>4</sup>

This study underscores the need to identify and evaluate offenders with mental retardation before they stand trial. Doing so not only protects the individual but also prevents the conviction from being overturned on appeal.

In determining competency, officials must establish whether offenders can help their attorneys prepare their defenses and assist in court. Offenders with mental retardation should also have a working understanding of the courtroom, including all of its participants and their respective roles.

### Court-Appointed Experts

Court-appointed experts, namely forensic psychologists or psychiatrists, serve many purposes. They assist the court in determining whether offenders are competent to stand trial, and if declared incompetent, whether they could become competent through training and education.

For individuals declared fit for trial, court-appointed experts advise the court throughout the proceedings to ensure a fair trial. They also help offenders understand any plea agreement that the court may consider.

Although cases involving offenders with mental retardation require extensive use of experts, prosecutors and courts should be aware that not all psychologists are qualified to determine issues of competency. For example, in one case, a court-appointed psychologist used an IQ test to determine the intellectual age of an offender. When the psychologist gave the defendant's intellectual age as 7, the court incorrectly interpreted this to mean that

he could not be held responsible for his actions, just as a 7-year-old child would not be held accountable.

However, the intellectual age aspect of this particular test was not widely accepted and is, in fact, no longer used. Unfortunately, this offender, who had a history of violent behavior, returned to his group home, where he continued to terrorize the other residents.

In another case, a court-appointed psychologist determined during an evaluation that an individual was "moderately retarded." However, further investigation revealed that this individual had attended regular classes in high school and had been on the honor roll. A subsequent

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**Individuals with mental retardation are not always easy to identify, especially those who function well socially.**

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evaluation by a qualified forensic psychologist revealed the individual was not mentally retarded and was merely "faking," hoping to receive lenient treatment.

### Insanity at the Time of the Act

Insanity at the time of the act is a legal defense grounded in the concept that an insane individual is incapable of forming *mens rea*, or evil

intent. Jurisdictions have different standards regarding insanity defenses. Basically, such defenses consist of the following elements: Whether individuals have a mental illness or disability and whether that disability impaired their capacity to distinguish between right and wrong or their ability to conform to the law at the time they committed the criminal act.

Some people believe that individuals with mental retardation automatically meet the disability prong of the test. However, this view fails to take into account the various levels of retardation, ranging from borderline to profound. Depending on their level of retardation, offenders may not meet the disability definition used for insanity defenses. Courts rely heavily on experts to determine whether an individual's level of retardation constitutes a disability.

Law enforcement officers can address the other components of the insanity defense by thoroughly investigating the criminal act and by interviewing the offender. Officers need to determine early in the investigation if offenders know the difference between right and wrong, if they knew they were committing a crime, and whether they could have refrained from the act. The following actions may indicate that offenders understood the meaning and consequences of their actions:

- Admitting to looking for a situation in which they were least likely to be apprehended
- Admitting to interrupting the act when they thought they might get caught

- Attempting to conceal involvement in the act
- Showing remorse prior to apprehension
- Expressing remorse for the act itself, not just for their apprehension.

Some psychologists also use the "police officer at the elbow" test. That is, they ask offenders with mental retardation if they would have committed the act if an officer had been "at their elbow" or nearby. A "no" answer is a good indication that individuals knew they were doing something wrong and possessed the ability to control their actions. In short, such an individual cannot successfully plead insanity.

### Conclusion

Law enforcement agencies are charged with enforcing all laws equally, and criminal acts committed by offenders with mental retardation should be no exception. Law enforcement officers, prosecutors, and the courts need to take retardation into account but not use it as an excuse to divert the offender from the criminal justice process.

How successfully an agency deals with offenders who are mentally retarded depends on the professionalism and knowledge of its staff.<sup>5</sup> With a little extra effort, the criminal justice community can learn to handle this often-overlooked and frequently misunderstood segment of the population. ♦

### Endnotes

<sup>1</sup> C.O. McDaniel, "Is Normalization the Answer for MROs?" *Corrections Today*, April 1987, 184-188; and M. Santamour, "The Offender with Mental Retardation," *The Prison Journal*, 1986, 66, 3-18



<sup>2</sup> J. Schilt, "The Mentally Retarded Offender and Criminal Justice Personnel," *The Council for Exceptional Children*, September 1979, 16-22.

<sup>3</sup> *Ibid.*

<sup>4</sup> A. Bowker and Robert E. Schweid, "Habilitation of the Retarded Offender in Cuyahoga County," *Federal Probation*, December 1992, 48-52.

<sup>5</sup> For more information on mental retardation, contact The Arc, 500 E. Border Street, Suite 300, Arlington, TX 76010, 817-261-6003 or 800-433-5255. The Arc is a national organization on mental retardation.

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