

**Working with Persons on the Autism Spectrum in the Criminal Justice System**

New York Association of Treatment Court Professionals  
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**What is Autistic Spectrum Disorder (ASD)**

- Heterogeneous group of neurodevelopmental syndromes
- Severity – on a continuum
- @ 1% population
  - 4:1 male to female
- Lifelong
  - Not always recognized during childhood
  - Variable severity/prognosis
- Main Symptoms
  - Impairment in social communication and social interaction
    - Verbal and nonverbal
  - Repetitive patterns of behavior

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**Diagnosis – DSM-V**

- Early Diagnosis - @2 years old
  - Delayed language development
  - Repetitive behaviors
  - Atypical social responsiveness
    - Poor eye gaze and pointing
  - Atypical development (pretend play)
- Late Diagnosis – Asperger's Syndrome
  - Identified at school
  - Identified through criminal justice system

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## What is Asperger's Syndrome

- Hans Apserger – 1944
- No significant delays in language or cognitive development
- Impaired social development
- Repetitive interests and behavior patterns
- Today – included in ASD

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## Causes

- NOT – vaccine, parenting style
- Gene-environment interaction
- Multiple factors acting on the central nervous system
  - Pre and Perinatal Factors
    - Advanced age of parents
    - First born
    - Birth traumas
- Immunological Factors
- Genetic Factors
  - Family studies
  - Gene studies

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## Brain Studies

- Cortical Abnormalities
  - Brain volume, structures (amygdala, striatum)
  - Brain functioning (frontal lobes)
- Some – EEG abnormalities

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## Comorbid Disorders

- Intellectual Disability (@30%)
- Learning Disability - many
  - @75% - some degree
- Seizure Disorders - @ 25%
- Tic Disorders - @9%
- Psychiatric Illness (ADHD, Mood Disorders)
- Substance Abuse Disorders

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## Why Overlooked

- Overlooked – aloof, passive, lack of remorse
  - Can appear Schizoid, Schizotypal, Antisocial Personality Disorders
- More likely - High Functioning
- Difficulty finding reliable developmental history
  - Need collateral sources
  - Need records
- For defendants – impaired self awareness

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## ASD and the Legal System

- Higher prevalence rates in forensic settings
- Criminal Patterns
  - Aggression – if someone disturbs their routine
  - Taken Advantage of
    - Lonely
  - Abnormal, Repetitive Interests
    - Stealing, stalking, arson, sex crimes
    - Ignore legal sanctions
  - Actively Seek Inappropriate Relationships
    - Fail to disengage
    - "Mind blindness" – inability to understand mental state of others

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### Criminal Justice System

- Witnesses and Victims
  - Do they recognize the crime?
  - Can they communicate effectively with police and prosecutors?
  - Can they testify effectively?
- Defendants
  - Competency to Proceed Issues
  - Competency to Waive Miranda Rights
  - Mitigation
  - Mental State at the Time of Offense

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### Alternatives to Incarceration

- Deferred Prosecution
- Mental Health Court

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### RAP Sheet Tipoffs

- "Discharged to the Office of Mental Health"
- "Dismissed Article 730"
- "Discharged other agency"
- Charges in multiple states
- Long gap between arrest and sentence on felony charges
- "Discharged Max Expiration of Sentence"

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### Legal Standards for Fitness

All persons are presumed to be competent.

A person is considered unfit to proceed when, because of mental disease or defect, he or she:

- 1) cannot understand the proceedings and/or the nature of the charges OR
- 2) cannot assist the attorney assigned to represent him or her.

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### Who can request a 730 Exam

- Defense attorney
- Prosecutor
- Judge

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### Mechanics of Article 730

- An examination **MUST** be ordered if the court is made aware the accused **MAY** be unfit.
- The exam can be ordered anytime between arraignment and sentence.
  - Violations of probation
  - Conditional discharge
  - Extradition matters

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### The 730 examination

- The examination is conducted by two "qualified examiners" (psychiatrist or psychologist).
- If the examiners are not in agreement, a third examiner will see the accused.
- The defense attorney has a right to be present; the prosecutor does not.
- The defense attorney's role is as an observer.

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### Considerations of the Examiners

#### Ability of the accused:

- to perceive, recall and relate
- to interact with defense counsel
- to understand the process of trial
- to withstand the stress of the courtroom
- to consider the options in the case

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### Mechanics of 730: Post Exam

- Reports are returned to court.
- *The defense and prosecution are entitled to copies of the reports.*
- Any party can request a hearing.

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### Post Exam Proceedings

- If all parties agree with the findings in the reports, the findings are “confirmed.”
- If the accused is deemed “fit,” the case proceeds as usual.
- If the accused is deemed “unfit,” the accused is committed to the NYS Office of Mental Health or OPWDD
- Misdemeanor cases are dismissed.

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### Reasons to contest the opinions:

- Defendant doesn't believe s/he is ill
  - Defendant doesn't want to go to state hospital
  - Defendant insists on having a hearing.
  - Honest disagreement with the opinions
  - Information the examiners didn't have (e.g. Rikers calls; family contact; evidence of change in mental status, etc.)
- Keep in mind: Fitness is not static. If time passes, a new exam may be needed.

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### Mental Health Court's and Therapeutic Jurisprudence

- Problem Solving Courts like mental health courts seek to use the authority of the court to foster the welfare of the individuals appearing before it.
- A new type of approach involving partnership with D.A., defense, mental health professionals; leadership, i.e., taking the court from where it is to where it has never been; and stewardship, guiding it to the future and making it last.

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**BROOKLYN MENTAL HEALTH COURT**

- Officially began on October 1, 2002
- Court Staff
  - Clinical Director
  - Assistant Clinical director
  - 3 Forensic Coordinators

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**Evaluations**

- Both defense counsel and district attorney must agree to evaluations.
- Psychiatric and psychosocial reports received from a social worker on the clinical team of the court and a consulting psychiatrist:
  - History
  - Diagnosis
  - Assessment of dangerousness
  - Recommendation as to eligibility for treatment

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**Plea Offer and Treatment Plan**

- Defendant pleads guilty as the "price of admission" and agrees to a jail term in the event of failure.
- Generally, the case is dismissed if defendant is successful in his program for 12-18 months for a first felony offender.
- Second (or more) felony offenders may receive a sentence of misdemeanor probation or a conditional discharge upon successful completion after 18-24 months.
- Misdemeanants receive a dismissal after one year.
- Some special cases (arson, attempted kidnapping).

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## Identification of Clients

- Defendants returned fit for trial (those accused who previously lacked a rational understanding of the court process or were unable to assist defense counsel with their case). CPL Article 730
- Referrals-
  - Other Judges
  - Assistant District Attorney
  - Defense Attorney

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## Strict Judicial Monitoring

- Defendants appear in court weekly
  - re-enforces court's authority
  - creates a courtroom "community"
  - allows immediate correction of public safety threats
- Clinical responses/rewards/sanctions
- Graduation on successful completion or sentence to agreed upon jail term (although no hair trigger)

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## PROGRESS IN TREATMENT

### **FOUR PHASES OF TREATMENT**

- Phase one-Adjustment
- Phase two-Engagement
- Phase three-Progress
- Phase four-Continued Progress and Preparing to Graduate

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## Things to look for

- **Common symptoms of autism in adults include:**
  - Difficulty interpreting what others are thinking or feeling
  - Trouble interpreting facial expressions, body language, or social cues
  - Difficulty regulating emotion
  - Inflection that does not reflect feelings
  - Difficulty maintaining the natural give-and-take of a conversation; prone to monologues on a favorite subject
  - Tendency to engage in repetitive or routine behaviors
  - Only participates in a restricted range of activities
  - Strict consistency to daily routines; outbursts when changes occur
  - Exhibiting strong, special interests

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## Case Example: Mr. T

**Demographics:** 44 year old, immigrant, supportive family, same job – 15 years

**Offending Behavior**

- Harassment former coworkers
- Hundreds threatening phone calls
- Incessant pursuit of young girl
- Offered her large amounts of money

**Charged** – Harassment, Violating multiple OVP's  
Faced 2-6 years in prison

**Defense attorney** – Noticed something off  
Arranged psychological testing

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## Case Example: Mr. T

**Autistic Traits** –

- Rigid, obsessive compulsive, poor control of problematic behavior
- Poor judgment in terms of girl
- Fixated on getting job back
- Poor understanding of social situations/interpersonal boundaries
- Missing social cues

**Mental Health Court** –

- Succeeded - program to address stalking behavior
- Adapted well – new routine
- Graduated successfully

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### Mr. A- Chronology of Events

**Demographics:** 22-year-old, single

**Offending Behavior**

**Harassment ex-girlfriend**

- Unwanted contact (messages)
- Threats (Instagram)
- Posting flyers (disseminating personal info)

**Order of Protection Issued**

**Mailed complainant's attorneys**

Racist, misogynistic, antisemitic

**Charged – Violating multiple OVP's**

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### Mr. A- Referral BMHC

**Social Worker's Assessment**

**Personal History** (neglect, school problems, substance abuse, homeless, social isolation)

**Psychiatric History** (ASD, BPD)

**Clinical Presentation**

**Palpable rage** (Complainant deserved to suffer)

**Obsessed** with complainant

**Psychiatrist's Assessment**

**Concerns** (lack of empathy, violent impulses, likely ASPD, poor insight, unmotivated for treatment)

**Recommendations** – Rejection (poor candidate)

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### ASSESSING for risk with persons on the spectrum

- Autism can be confused with Psychopathy at first glance.
- Persons with autism may confess violence whereas someone with psychopathy will usually deny it.
- Autistic persons have a more naïve interpersonal style whereas someone with psychopathy has a more manipulative interpersonal style. A person with Autism may be more likely to engage in reactive violence whereas someone with psychopathy is more likely to engage in planned violence

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**Assessing for Risk- Things to consider**

- Focus on the behavior, not the diagnosis
- Assess theory of mind- **Do they have the capacity to understand the mental state of others**
- Do they grasp social nuances or misinterpret social intentions?
- Do they show inappropriate social approaches? Do they back off when it is pointed out to them?
- Can they engage in reciprocal social behavior?
- How do they react to being overwhelmed (social interactions can be overwhelming for persons with social deficits)?
- Do they have interests that could turn dangerous?
- Is there Comorbid Psychosis?
- Is there social isolation?

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- **Stressors:** Have there been any recent setbacks, losses, or challenges? How is the individual coping with stressors?
- **Emotional and Developmental Issues:** Is the individual dealing with mental health issues? Is the individual behavior a product of those issues? What resources does the individual need?
- **Motivation:** What motivated the individual to engage in the behavior of concern? What is the individual trying to solve?

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**Things to consider when developing a treatment plan**

- **Behavioral** – Could therapy or MH treatment help
- **Vocational/Educational-** We all do better with a purpose and this population tends to do better with routine
- **Relationship building** – Decrease isolation and assist with building social skills
- **Monitoring** – Regular Court appearances tend to increase accountability. Keep in mind the level of stress that the client feels when com

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**BMHC Goals with our Autistic Population**

- To address clinical issues that have been identified by making connections to services and supports that will allow participants to live successful lives
- To assist participants in developing a sense of purpose and concrete direction to live the healthy lifestyle of their choosing
- To prevent incarceration and provide the tools, skills, etc. that would prevent future arrest
- To identify gaps in the service continuum and advocate for appropriate program development
- To provide a program based on compassion, structure and support

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**Take Away**

1. **The Do's and Don'ts**
  - Presume – competence (treat with respect)
  - Realize - what we say can be misinterpreted
  - Use - concrete, simple language
  - Give – options (not just yes or no)
  - Check – “Did you understand?”
  - Provide – specific accommodations (e.g. time to process, quiet space)
2. **Keep in mind - ASD a diverse population (comorbidities)**
3. **They can succeed in mental health court**
  - If it is a good match - Need to assess – risk of failure

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**Questions?**

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