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*Focusing on individuals with autism, intellectual disability, and related disabilities*



## Legal Brief

### Sexuality and Developmental and Intellectual Disability



**Elizabeth A. Harkins Monaco, Ed.D.**  
Assistant Professor  
William Paterson University



**Meaghan M. McCollow, Ph.D., BCBA-D**  
Assistant Professor  
California State University, East Bay

Educators, families, and individuals with disabilities must work together to understand the importance of building appropriate programs of sexual health. In 2018, NPR held a series on the sexual abuse of individuals with intellectual disability (Shapiro, 2018), renewing the conversation about this population's high risk of sexual abuse. People with intellectual disabilities were sexually assaulted nearly 82,100 times between 2008 and 2012 according to the United States Justice Department (Harrell, 2014), and the National Survey on Abuse of People with Disabilities (Baladerian, Coleman, & Stream, 2013) reported the sexual abuse was repeated with 90% of the individuals (Harkins Monaco, Gibbon, & Bateman, 2018). These types of data are believed to be vastly underreported (Wissink, van Vugt, Moonen, Stams, & Hendricks, 2015) because victims are either not reporting these crimes or authorities are not taking action. The White House Council on Women and Girls (2014) found only 12% of reported cases became investigations between 2005 and 2010, and 75% of those cases were dismissed. This means a perpetrator could engage in sexual misconduct without facing consequences or become a repeat offender. For women and men with developmental disabilities, the percentage of risk is much higher at 80% and 30%, respectively (Disability Justice, 2019).

But why are these kinds of crimes some of the most difficult to investigate? To start, victims with intellectual disability may have language difficulties or may not have a means of communication. And when individuals are able to verbally communicate, they may have trouble organizing their thoughts, using appropriate details, or sequencing events. In addition, individuals may not understand concepts like consent or receive appropriate education regarding sexual health and happiness. Or, they may be dependent upon others for personal care. These factors further complicate how these individuals navigate an investigation or trial (Shapiro, 2018).

## Relevant Cases

In 1989, a sexual assault of a young woman with an intellectual disability gained national attention. In New Jersey, 13 high school athletes convinced a classmate with an intellectual disability to go into a basement with them, promising her a date with her crush. In the basement, she was assaulted with a baseball bat and broomstick, and forced to perform oral sex. Six left when the assault began, but no one stopped or reported it. It took until 1993 for four of the athletes to be convicted—three with aggravated sexual assault and one with conspiring with others (Shapiro, 2018).

In another case, the Supreme Court determined a 26-year-old woman with intellectual disability and without verbal communication could not not communicate refusal for sex and, therefore, dismissed the charges of rape against a 28-year-old male. This decision was made based on the woman's testimony in court with a board of the printed words "yes" and "no." The defense also argued that the woman could have indicated protest physically (e.g., biting, kicking, screaming) but did not (Tepfer, 2012).

## Federal Law

While there is no federal law specifically related to sexuality and disability, there is a history related to sexual health and individuals with disabilities. The *Buck v. Bell* decision in 1927 allowed for involuntary sterilization of Carrie Buck, reflecting a period in history in which eugenics dehumanized people with developmental and intellectual disabilities (Disability Justice, 2019). While *Buck v. Bell* has never officially been repealed, it has been discredited following other court cases regarding forced sterilization (Disability Justice, 2019). However, forced sterilization

is still a concern today. The National Council on Disability highlighted the concern of control over reproductive rights for individuals with disabilities in an overview on the rights of parents with disabilities (NCD, 2012). Together, these highlight attitudes held toward sexuality and disability.

### Sexuality Education in the United States

Legislation in 24 states and D.C. mandates that public schools teach sexuality education, and 33 states and D.C. also require participation in HIV/AIDS education (National Conference of State Legislatures [NCSL], 2016). Only 21 states mandate sexuality education alongside HIV education, and 20 states require “sex and/or HIV education must be medically, factually or technically accurate” (NCSL, 2016). State definitions of “medically accurate” vary, from requiring the department of health review curricula for accuracy to mandating curricula be based on information from peer-reviewed and factually sound medical resources (NCSL, 2016).

### Comprehensive Sexuality Education Resources

In a comprehensive article on disability and sexuality, Adlakha, Price, and Heidari (2017) discuss the sexual and reproductive rights of individuals with disabilities. Framing sexual rights within other rights, particularly through the Americans with Disabilities Act for the United States, Adlakha et al. (2017) discuss the ways in which individuals with disabilities have been blocked from the full experience of humanity.

Future of Sex Education [FOSE], (2012) advises comprehensive sexuality education will maintain and improve sexual health, prevent disease, and reduce sexual health-related risk behaviors. Comprehensive programming helps students navigate age-appropriate physical, mental, emotional, and social dimensions of sexuality by promoting the importance of appropriate sexual health-related knowledge, attitudes, and skills, alongside a personal value system. Developing this kind of comprehensive programming can be challenging. We recommend the following:

1. **Identify a team of qualified, trained professionals.** Go beyond parents/caregivers to include other family members, friends, or community resources such as religious institutions, support or social groups, recreational programs, and sexuality educators. In schools include a combination of general educators (health/PE teachers), special educators, emotional support providers (social workers/school psychologists), social support providers (speech and language pathologists, paraprofessionals), administrators, and other related service providers as needed for activities of daily living (occupational therapists, physical therapists, reading specialists; Niles & Harkins Monaco, 2017). Don't forget to include the individual.

2. **Identify any differences in belief systems** of the individual, his/her/their family, and the overall support team. Specifically, identify any religious, cultural, and social considerations alongside the individual's wants and needs, relationship priorities, sexual health and safety, and emotional health.
3. **Identify who is responsible for skills training across settings.** Ideally, individuals will work collaboratively with the qualified, diverse team, but educators must recognize that for some students, school environments are their only opportunities to develop these skills (Niles & Harkins Monaco, 2017). ■

### References

- Addlakha, R., Price, J., & Heidari, S. (2017). Disability and sexuality: Claiming sexual and reproductive rights. *Reproductive Health Matters*, 25, 4–9.
- Baladerian, N. J., Coleman, T. F., & Stream, J. (2013). *A report on the 2012 national survey on abuse of people with disabilities*. Los Angeles, CA: Spectrum Institute.
- Disability Justice. (2019). Sexual abuse. Retrieved from <https://disabilityjustice.org/sexual-abuse/>
- Future of Sex Education (FOSE). (2012). Retrieved from <http://www.futureofsexed.org/resources.html>
- Harkins Monaco, E. A., Gibbon, T., & Bateman, D. F. (2018). *Talking about sex: Sexuality education for learners with intellectual disabilities and autism spectrum disorders*. New York, NY: Rowman and Littlefield Publishing.
- Harrell, E. (2014). *Crimes against persons with disabilities, 2009–2012 statistical tables*. Washington, DC: US Department of Justice.
- National Conference of State Legislatures (NCSL). (2016). *State policies on sex education in schools*. Retrieved from <http://www.ncsl.org/research/health/state-policies-on-sex-education-in-schools.aspx>
- National Council on Disability (NCD). (2012). *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*. Washington, DC: Author.
- Niles, G., & Harkins Monaco, E. A. (2017). Supporting gender and sexual diversity through inclusive sexual education for students with IDD. *DADD Online Journal (DOJ)*, 4(1), 177–189.
- Shapiro, J. (2018). *How prosecutors changed the odds to start winning some of the toughest rape cases*. Retrieved from <https://www.npr.org/2018/01/16/577063976/its-an-easy-crime-to-get-away-with-but-prosecutors-are-trying-to-change-that>
- Teper, D. (2012, October). *Supreme Court sets accused rapist free*. Retrieved from <https://www.ctpost.com/news/article/Supreme-Court-sets-accused-rapist-free-3910077.php#ixzz2SAsis25n>
- White House Council on Women and Girls. (2014). *Rape and sexual assault: A renewed call to action*. Washington, DC: Author.
- Wissink, I. B., van Vugt, E., Moonen, X., Stams, G. J., & Hendricks, J. (2015). Sexual abuse involving children with an intellectual disability (ID): A narrative review. *Research in Developmental Disabilities*, 36, 20–35. doi:10.1016/j.ridd.2014.09.007 PMID:25310832