



SEXUAL ABUSE OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Brief Three: Gaps in the Criminal Justice System

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NOTE FROM THE EDITOR

This series focuses on Ohio's developmental disabilities system of programs and services, including government agencies, private organizations, and public and private providers. It is true that many individuals with developmental disabilities are abused by a family member or friend in the home and some may never participate in the state's system of programs and supports for people with developmental disabilities. However, most individuals with developmental disabilities do receive services from the DODD, county boards, and providers that the state oversees, and policies aimed at improving the system's responses to sexual abuse are an effective starting point. While all individuals with disabilities are more likely than the general population to experience sexual abuse, the vulnerabilities of individuals with developmental disabilities are unique. Since Ohio's developmental disabilities system has different policies and procedures, both operationally and administratively, from the system of supports for individuals with other disabilities, this report focuses only on the developmental disabilities system.

INTRODUCTION

Sexual assault against individuals with developmental disabilitiesⁱ is far more common than most Ohioans imagine. While local news stories occasionally report incidents of sexual abuseⁱⁱ or the prosecution of abusers, these stories are treated as singular events, not evidence of a systemic problem. In reality, research points to a strikingly high prevalence of sexual assaults of individuals with developmental disabilities in Ohio and nationwide. Since 2007, the Ohio Department of Developmental Disabilities (DODD) has substantiated 258 allegations of the sexual abuse of individuals with a developmental disability committed by individuals without a developmental disability and it is likely that many more abuses go unreported or unsubstantiated.

Despite the prevalence of sexual abuse against individuals with developmental disabilities, in Ohio there is inadequate research and no statewide coordinated effort across all involved groups—including state agencies, researchers, care providers, victim advocates, law enforcement, families, and individuals with disabilities—designed to specifically confront sexual abuse and develop new strategies to prevent sexual assaults on individuals with developmental disabilities. It is critical for Ohio to address the void between anecdotal stories of abuse and the statistics that indicate the wider failure to prevent and prosecute these crimes.

This brief is the third in a series on sexual abuse of individuals with developmental disabilities. Brief One of this series discussed the factors that contribute to the prevalence of sexual abuse in the developmental disabilities system and provided recommendations of ways that policies could mitigate some of these contributing factors. Brief Two focused on support services for individuals with developmental disabilities who experience sexual abuse and provided recommendations for ways to improve those services in Ohio. This third brief discusses the gaps in the criminal justice system’s identification and conviction of offenders. Together, these briefs identify the social and systemic factors that make sexual abuse against individuals with developmental disabilities so common, the barriers to support and justice when such abuse occurs, and recommendations to address these issues in Ohioⁱⁱⁱ.

ⁱ For the purposes of this report, “developmental disabilities” follows the definition outlined in the Developmental Disabilities Act, section 102(8) and is used to encompass impairments of general intellectual functioning or adaptive behavior that is manifested before an individual reaches age 22. This definition is not without problems; however, it is commonly used in rules and laws.

ⁱⁱ For the purposes of this report, “sexual abuse” is defined broadly, using a clinical definition of any assault or crime of a sexual nature performed with a minor or nonconsenting adult. Some of the cited source material may use somewhat different definitions of sexual abuse or sexual assault.

ⁱⁱⁱ This report does not include the specific issue of peer-to-peer abuse, in which an individual with developmental disabilities is abused by another individual with developmental disabilities. Peer-to-peer abuse is fraught with additional complications, since often the abuser is also a victim and may not fully understand his or her actions. Though it is not discussed explicitly, recommendations provided in this report could also help reduce instances of peer-to-peer abuse.

HOW COMMON IS SEXUAL ABUSE OF PEOPLE WITH DISABILITIES?

In 2012, Dr. Nora Baladerian and the Disability and Abuse Project surveyed individuals with any type of disability, family members of individuals with disabilities, caregivers of individuals with disabilities, and responders to abuse. This survey was the first national survey of its kind focusing on incidents of, responses to, and attitudes toward abuse and victimization of both adults and children with any disability^{iv}. An analysis of the survey results revealed that 70% of respondents with any disability reported that they had been victims of abuse, with 41.6% of respondents with any disability reporting some type of sexual abuse^v. One third (34%) of respondents with a developmental disability reported being victimized by some type of sexual abuse [1]. The Disability and Abuse Project survey indicated that, of individuals with any disability who reported abuse, over 90% experienced abuse on more than one occasion and 46% experienced abuse more frequently than they could count [1]. Likewise, a different study indicates that children with developmental disabilities and mental health diagnoses are 4.6 times more likely to be sexually abused than children with no disabilities [3].

^{iv} The Disability and Abuse Project 2012 National Survey on Abuse of People with Disabilities included participation by approximately 7,300 people, including approximately 2,501 people with all types of disability. Because the sample population was voluntary and not a random population, prevalence rates may include sample bias.

^v For the purposes of this report, the term “victim” is used to represent individuals who have experienced abuse in order to avoid confusion in the discussion of state policies, rules, and laws that use that term. The term “victim” is problematic and has been replaced with the term “survivor” by many experts and individuals. Disability Rights Ohio recognizes that individuals who experience abuse often do not identify themselves as victims and we respect and encourage the empowerment that can come from the use of other terms.

GAPS IN THE CRIMINAL JUSTICE SYSTEM

The criminal justice system, from the first responders that handle initial reports of sexual abuse to the prosecutors that oversee the prosecution of abusers, has many gaps that lead to increased vulnerability for individuals with developmental disabilities and to the failure to convict abusers. This brief examines the main areas in which sexual abusers of individuals with developmental disabilities fall through the cracks of the criminal justice system and provides recommendations to repair those cracks. Employees and caretakers who work with individuals with developmental disabilities do not always understand when and how to properly report suspected abuse, despite receiving training on mandated reporting. Ohio has insufficient training available for forensic interviewers and law enforcement officers to identify and accommodate the unique needs of all individuals with developmental disabilities during investigations of sexual abuse. Likewise, prosecutors may rely on stereotypes or misunderstandings about individuals with development disabilities when making decisions about whether to prosecute a sexual abuse case. Ohio's system of abuser registries and background checks can also present problems. In denying justice to the victims of sexual abuse and allowing abusers continued access to victims, these gaps perpetuate the problem of sexual abuse of individuals with developmental disabilities.

Reporting of Suspected Abuse

Because sexual abuse may not have any visible physical signs and is often committed by individuals the victim trusts, it is crucial for people who work, care, and socialize with individuals with developmental disabilities to know about the emotional and behavioral signs of sexual abuse and to report suspected abuse as soon as possible [4]. Signs of sexual abuse often manifest as changes in behavior. Employees or acquaintances who do not know and interact with victims often may not be able to identify a behavioral sign of abuse, even if they have had training, simply because they do not know the victim well enough to identify behavioral changes [5]. In Ohio, all direct care workers and other employees of the developmental disabilities system are mandated to report any instance of possible abuse, including sexual abuse, but employee reporting requirements are not the same for all positions in all state agencies, and instances of possible abuse are not always reported correctly or in a timely manner.

The inconsistencies in reporting may be due, in part, to differences in mandated reporting requirements among different state agencies and the facilities they oversee. The state's web of reporting requirements makes it very difficult for employees who have worked in multiple jobs or multiple systems to understand their legal reporting requirements and for facilities and authorities to ensure that every suspected abuse is reported. According to representatives at the Ohio Department of Developmental Disabilities (DODD), the state has an

unofficial system of accepting all abuse reports, regardless of whether they are reported to the correct person or agency. This type of policy - often called a “no wrong door” policy - is the best way to ensure that all reports are investigated, regardless of how they are reported. For example, a direct care worker employed at a developmental disability facility is required to report suspected abuse of an individual with both a developmental disability and a mental health disability (often referred to as dual diagnosis) to law enforcement and DODD if a patient resides at a facility licensed by DODD. However, if the individual resides at a state mental health licensed facility, the incident report should go to the Ohio Department of Mental Health and Addiction Services (OhioMHAS), and not DODD. Under the “no wrong door” policy, the report should be taken by any agency, and the state employee taking the report should ensure that it gets to the appropriate DODD staff. However, since Ohio’s policy is currently unofficial, employees may not know how to ensure that reports find their way to the proper investigators. An official state policy in code or rule and corresponding protocols would reduce the possibility that reports could be mishandled.

The high turn-over rates of direct care employees in Ohio can also contribute to failures to report. According to a 2013 study, direct care workers in Ohio’s developmental disabilities system had the lowest hourly rates (\$8.00 per hour on average) and some of the poorest benefits compared with Ohio’s nursing home, home health, and mental health systems [6]. Likely as a result, Ohio’s developmental disabilities system has a direct care worker turnover rate of 34%, meaning that 34% percent of direct care employees leave a position within the first year [6]. The Department of Developmental Disabilities requires that employees receive training on mandated reporting within 90 days of hiring, but employees employed for less than three months might not receive the required training, or may not take training seriously because of the poor pay and benefits. Such employees may not have a complete understanding of exactly what their reporting requirements are when they witness signs of sexual abuse.

Reports can also be delayed or lost when employees report suspected abuse through their employer. Ohio law requires that employees of the developmental disabilities system make reports of suspected abuse to either a law enforcement agency, the local county board of developmental disabilities, or DODD. However, some direct care workers only report to their supervisors or the facility in which they work, anticipating that the supervisor or facility will make the report to the appropriate agency. Facilities receiving reports act as a middleman that can either delay or disrupt a report. If both the reporting employee and the supervising facility delay nearly 24 hours in making their report of a suspected sexual abuse, significant physical evidence of abuse could be lost in those 48 hours. Moreover, if the supervisors or facilities have an interest in suppressing the report, they may avoid contacting law enforcement or local county boards at all. Streamlining the state’s reporting requirements and minimizing the “middleman” effect by clarifying that direct care workers must report to both supervisors and law enforcement or county boards would help address some of these issues.

FORENSIC INTERVIEWERS, POLICE, AND PROSECUTORS

Forensic Interviews

Forensic interviewing is an effective way of collecting initial evidence once suspected sexual abuse is reported. Forensic interviewing is a specialized type of investigative interviewing that is intended to get detailed information about possible abuse that a person may have experienced or witnessed. These interviews can be used in criminal investigations and to assess the safety, medical, and psychological needs of a victim or witness of crime. Forensic interviews are commonly conducted for children, and some forensic interviewers are also trained to interview individuals with developmental disabilities. A sexual abuse victim's eyewitness testimony can be very important evidence to substantiate and prosecute an abuse allegation, and an improper or inadequate interview can affect the quality of evidence.

In Ohio, training for forensic interviewers is focused on working with children. Individuals with developmental disabilities, especially adults, may need different methods than the method used with children to elicit the necessary details during an interview. Since forensic interviews are common for children who may have experienced or witnessed a crime, there are many forensic interviewers trained to interview children in Ohio. These interviewers typically operate through Ohio's approximately 25 Child Advocacy Centers (CACs). Occasionally, when a forensic interview for an adult with developmental disabilities is needed, a forensic interviewer trained to work with children will conduct the interview. Individuals with developmental disabilities have different responses and cognitive abilities than children, and adults with developmental disabilities may be aware and resentful that they are being treated like children in such an interview [5]. In this situation, the victim may not be comfortable and trusting of the interview process, potentially limiting the quality of the interview.

The delay or absence of an immediate, appropriate investigation can be due to the fact that Ohio's system does not currently have adequate support for interviewing and collecting eyewitness evidence from individuals with developmental disabilities. For the best results, interviews of individuals with developmental disabilities in investigations of allegations of sexual abuse should be performed by someone trained as a forensic interviewer. While some forensic interviewers may take continuing education seminars to begin to develop the skills to interview individuals with developmental disabilities, such training is typically limited to a single course of only a few hours and may not cover the vast scope and myriad complexities of the disability community, particularly populations with developmental disabilities. As a result, in some areas in Ohio - especially rural and underserved areas - specifically trained forensic interviewers are not available. The Ohio Bureau of Criminal Investigation (BCI) has employees with specific training to conduct forensic

interviews who can be available to underserved and rural areas, but only local police can request that resource from BCI.

Law Enforcement, Prosecutors, Witness Credibility, and Convictions

Beyond the initial forensic interview, the investigation of a sexual assault of an individual with developmental disabilities and the prosecution of abusers are in the hands of Ohio's law enforcement and local prosecutors. In spite of recent efforts to improve the situation, Ohio's law enforcement and prosecutors are not required to have significant training on working with individuals with developmental disabilities, and as a result, some have an unfair bias against individuals with developmental disabilities. Testimony of individuals with developmental disabilities can be considered unreliable by peace officers and prosecutors. If evidence is considered insufficient, prosecutors are unlikely to file criminal charges against sexual abusers of individuals with developmental disabilities.

LAW ENFORCEMENT TRAINING

In Ohio, peace officers receive minimal basic training on working with individuals with developmental disabilities, and there are no requirements for additional training on how to interact with victims or witnesses with developmental disabilities. Even law enforcement officers' training on conducting sexual assault investigations does not always include specific coursework on conducting investigations in cases with individuals with developmental disabilities. The lack of access to trained peace officers can be a barrier to justice because law enforcement and other officials may not believe that individuals with development disabilities are capable of assisting with a sexual abuse investigation, even if their disability does not affect their ability to understand or detail the crime. Victims with developmental disabilities may not be trusted to provide an accurate account of the abuse they experienced because common but inaccurate stigmas and stereotypes can create a credibility bias against individuals with developmental disabilities. If officers have a better understanding of individuals with developmental disabilities, they are more likely to recognize credible victims and witnesses with developmental disabilities and take the necessary investigative steps to solve sexual abuse cases.

Ohio's basic police academy training does not include any disability-specific course work that focuses on interactions and investigations for individuals with developmental disabilities. In 2014, Ohio offered two courses focused specifically on working with individuals with disabilities as continuing education courses through the online electronic Ohio Police Officer Training Academy (eOPOTA). These courses, "Law Enforcement Officer Response to People with Autism," which included content on other developmental disabilities as well as autism, and "De-escalating Mental Health Crises," could be very beneficial to all peace officers by helping them understand accommodations and appropriate

responses to individuals with disabilities. Courses like these could also help dispel stereotypes and stigmas about individuals with disabilities. In 2014, peace officers were required to take one hour of a continuing professional training course in the critical subject area of “Crimes against Families.” The two courses on disabilities described above were included in the 12 possible course offerings eligible to fulfill the requirement.

The Department of Developmental Disabilities conducts additional training on investigating abuse of individuals with developmental disabilities, but this training is optional and is provided primarily to officers specializing in victim services. While such training is laudable, it likely does not reach all of the first responders, investigators, and small police districts that may be relied upon to investigate cases of sexual abuse of individuals with developmental disabilities.

The limited availability of training for peace officers and pervasive stigma against individuals with developmental disabilities can contribute to the myths and stereotypes of individuals with developmental disabilities.

Accompanying the analyses of Ohio’s criminal justice system are real examples of abuse reports received by Disability Rights Ohio. While these examples are real, all identifying information has been removed or altered to ensure confidentiality.

EXAMPLE 1

An individual with developmental disabilities reported sexual assault by a neighbor to the police. During the course of the investigation, local police denied the victim accommodations needed due to the victim’s disability, made discriminatory comments about the victim’s capacity, and insinuated that the victim should have fought back against the assault. No charges were filed against the alleged abuser.

PROSECUTOR TRAINING

Even when adequate interviews and evidence are collected by police officers, most cases of sexual abuse of individuals with developmental disabilities still do not result in the conviction of abusers. This could be, in part, because local prosecutors may have a lack of knowledge of individuals with developmental disabilities and a credibility bias against them. Like peace officers, Ohio’s prosecutors and judges do not have a required basic training course specifically covering individuals with disabilities, including developmental disabilities. The absence of training can lead to a misunderstanding about the ability of an individual with developmental disabilities to comprehend and explain the circumstances of their abuse. Requiring or incentivizing continuing education courses could decrease unjust credibility bias and, in so doing, may increase prosecutors’ comfort level and willingness to prosecute cases on behalf of victims with developmental disabilities.

Local prosecutors decide whether to pursue charges against an abuser based on the amount and quality of evidence and the credibility of witnesses

and victims. A prosecutor may question the reliability of testimony by a victim or witness with developmental disabilities, even when the person's disability does not impact their understanding of the crime. Prosecutors may be less likely to take on cases with victims with developmental disabilities because Ohio's criminal justice system incentivizes prosecutorial victories. In some local prosecutor offices, a case that may be more of a risk because the victim or witness may face stigma and an unjust credibility bias could be dropped in favor of a case that will boost statistics. Prosecutors who fail to pursue criminal cases because of the victim's disability may be in violation of the Americans with Disabilities Act (ADA) and its non-discrimination provisions.

EXAMPLE 2

An eyewitness observed the rape of a nonverbal victim with developmental disabilities by a direct care worker. After an investigation by police finding that the alleged abuser had a history of sexual offenses and in spite of statements from the eyewitness, the case did not go to trial because the local prosecutor did not believe the collected evidence would be sufficient, particularly with a nonverbal victim.

ABUSER REGISTRIES AND BACKGROUND CHECKS

A critical step in preventing sexual abuse is to ensure that known abusers are not able to work in positions that would give them access to individuals with developmental disabilities. As such, it is critical that offender registries are as accurate and complete as possible and that thorough background checks are performed for every employee. Because abuser registries can include individuals who are found to have substantiated allegations of abuse even if the abuser was not convicted in court, these registries can alert employers to applicants who should not have access to vulnerable populations .

While Ohio's developmental disabilities system has an abuser registry, Ohio's mental health system does not, even for abusers with substantiated allegations of abuse. As a result, the state's ability to track abusers is fragmented, and abusers may fall through the cracks. An abuser employed at an Ohio mental health facility could abuse, be caught and fired for that abuse, and then move on to employment at an Ohio developmental disabilities facility or nursing facility without being flagged as an offender, as long as that abuser was not convicted in court. In a criminal justice system where many abusers do not even have charges filed against them, this is a serious concern. A streamlined, statewide registry of abusers from all state systems, including the adult protective services system and the mental health system, would help to eliminate this problem.

In addition to the gaps in abuser registries, basic criminal background checks are not applied as well as they should be in Ohio. The state has background check requirements for employees in the developmental disabilities system,

but DRO has seen evidence that these checks may be ignored by unscrupulous providers. Background checks typically take up to 30 days to be returned from the Ohio Bureau of Criminal Investigation (BCI), so some employers hiring for high-turnover positions may ignore or delay background check requirements to avoid the cost of checking an employee who may leave employment by the time the background check results have arrived.

In early 2014, DODD convened a Health and Safety Systems Panel that analyzed the issue of providers failing to obtain required background checks. The panel found that too many providers were not consistently conducting background checks or conducting them too late, and the state's policy of allowing employees to work unsupervised for up to 60 days before a background check is received was too lenient. To address these issues, the panel recommended that the state simplify and streamline the background check process as much as possible,

RECOMMENDATIONS

revise state laws and rules to impose a fine for providers that fail to obtain timely background checks for employees, and reduce the time allowed for an employee to work unsupervised before a background check is returned. [9]

The goal of preventing sexual abuse of individuals with developmental disabilities and bringing abusers to justice is daunting, even in a perfect system. Ohio's imperfect criminal justice system allows far too many abusers to continue to prey on individuals with developmental disabilities. DRO believes that the following suggestions will help close the gaps in Ohio's criminal justice system, providing a safer environment for all individuals with developmental disabilities.

Reporting Requirements

- Ohio should reform and streamline its reporting requirements across state agencies to avoid confusion, and continue to encourage quick action when abuse is suspected.
- There should be an official “no wrong door” policy created in the Ohio Revised Code or Ohio Administrative Code for reported abuses. Such a rule would clarify that any employee or agency receiving a report must ensure that reports are filed with the appropriate agency, even if the initial contact agency is not the legally appropriate one to receive the report. This would not absolve mandated reporters from reporting requirements but would ensure that all reports are immediately addressed.
- Ohio's developmental disabilities system should continue to improve pay and conditions for direct care workers in order to improve care, incentivize employee longevity, and increase compliance with mandatory reporting.

Forensic Interviewers

- Forensic interviewers should have the opportunity to receive training specifically on interviewing individuals with diverse disabilities, and especially developmental disabilities.
- The state should ensure that a sufficient number of forensic interviewers are available to meet demand for immediate forensic interviews of individuals with developmental disabilities, especially in underserved and rural areas.

Training and Education for Law Enforcement and Prosecutors

- Ohio peace officers should receive more mandatory basic training to work with individuals with disabilities, including individuals with developmental disabilities. Training should include education combatting stereotypes and stigma of individuals with developmental disabilities and specific techniques

for investigating cases involving people with developmental disabilities. It is critical for officers to understand the correct ways to address all individuals, evoke a sense of trust, and gather appropriate investigative evidence, especially in cases of sexual abuse.

- Local prosecutors should be required periodically to attend continuing legal education courses (CLEs) related to working with individuals with disabilities. Ohio's prosecutors should be very careful not to discriminate against individuals with disabilities when choosing whether to prosecute "risky" cases on behalf of individuals with developmental disabilities.

Improve Abuser Registries and Background Checks

- Ohio should have a streamlined, more transparent statewide abuser registry system, capturing all state systems, including mental health. As much information as possible should be made public, including service provider records.
- As recommended by the Health and Safety Systems Panel, the state should simplify and streamline the background check process as much as possible for providers, and the state should fine providers that fail to obtain timely background checks. The state should also reduce the amount of time that an employee without a criminal background check can legally work unsupervised.

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