Supporting Individuals with Autism in Court: Tools and Strategies for Effective Support

WASHINGTON STATE SUPREME COURT DISABILITY JUSTICE TASK FORCE

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This document was developed by the Disability Justice Task Force, under the Support of the Washington State Supreme Court. Justice G. Helen Whitener served as the Supreme Court Co-Chair along with King County Superior Court Judge David Whedbee through the duration of the Task Force. This guide is designed to support more equitable and accessible practices for people with disabilities. It is intended for use by the court professionals, legal system partners, and community partners across Washington and may be freely referenced or modified with appropriate attribution. However, it may not be republished in full or under another name without express authorization from Washington State Supreme Court and the Disability Justice Task Force.

Message from the Co-Chairs

We are honored to present this guide on supporting individuals with autism in the court system. As co-chairs of the Disability Justice Task Force, we acknowledge the courts' increasing responsibility to understand and address the diverse needs of the people we serve.

Autism is a lifelong neurodevelopmental disability that affects approximately 1 in 36 children and many adults[1]. However, countless individuals remain undiagnosed, particularly those who are women, people of color, immigrants, or low-income. Individuals with autism appear in every part of our legal system, including juvenile, family, civil, and criminal courts. Yet too often, they encounter confusing, overwhelming, or harmful environments due to inaccessible processes and widespread misunderstanding.

This guide was created to help courts enhance their service to individuals with autism across various legal contexts. It reflects a range of perspectives, including research, clinical knowledge, and the firsthand lived experiences of those who have navigated the system. The recommendations are designed to be practical, realistic, and aligned with judicial standards. They address areas such as communication access, early identification, court accommodations, staff training, and collaborative system responses.

We invite court leaders at all levels to utilize this guide as a resource for reflection and improvement. By enhancing our court practices, we fulfill our legal responsibilities and promote greater clarity, accessibility, and fairness for all participants.

Sincerely,

Justice G. Helen Whitener
Co–Chair Disability Justice Task Force
Washington State Supreme Court

Judge David Whedbee
Co-Chair Disability Justice Task Force
King County Superior Cour

[1] Centers for Disease Control and Prevention. “Data & Statistics on Autism Spectrum Disorder.” Updated March 2023. Accessed May 30, 2025. https://www.cdc.gov/ncbddd/autism/data.html.

Washington State Supreme Court Disability Justice Task Force Members

Co-Chairs

Justice G. Helen Whitener, Co-Chair, Washington State Supreme Court

Judge David Whedbee, Co-Chair, King County Superior Court

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Shoshana Kehoe-Ehlers, Attorney, Office of Public Defense, Seattle, Washington

Ashley Callan, Superior Court Administrator, Spokane County

AOC Staff

Joslyn Nelson, Senior Court Program Analyst, Disability Justice Task Force

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Executive Summary

Individuals with Autism frequently encounter court systems that misinterpret or overlook their needs, leading to inequitable outcomes across civil, criminal, family, and juvenile court settings.[2] Despite existing legal protections, many courtroom practices, ranging from communication expectations to physical environments, are rooted in neurotypical norms, which unintentionally create barriers to full participation.

This guide provides courts with a set of practical, research-informed strategies to enhance access and procedural fairness for individuals on the autism spectrum. It is grounded in lived experience, disability research, and emerging reform models.

Key sections include:

- **Understanding Autism in Legal Contexts**: Courts often misinterpret autistic communication, behavior, or demeanor. This section outlines how masking, stress, and sensory overload can affect participation.
- **Behaviorism and Legal Systems:** This section cautions against overreliance on compliance-based models, such as Applied Behavioral Analysis (ABA), and emphasizes the need for informed choice and respect for neurodivergent expression.[3]
- **Overrepresentation and Systemic Risk:** This section explores why individuals with autism, particularly those who are Black and Brown, LGBTQ+, or undiagnosed, are disproportionately represented in the court system.[4] It highlights key systemic factors contributing to these disparities and presents strategies that courts can adopt to reduce inequitable outcomes.
- **Police Interaction and Entry Points:** This section describes how behaviors such as “stimming” or not responding verbally can be misinterpreted during law enforcement contact, thereby increasing the risk of escalation.

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[2] Wilkerson, Jazmone, Felicia Lopez-Wright, and Leigh Ann Davis. *Improving Outcomes for People in Contact with the Criminal Justice System Who Have Intellectual or Developmental Disabilities.* Council of State Governments Justice Center, April 2022. https://csgjusticecenter.org/publications/improving-outcomes-for-people-in-contact-with-the-criminal-justice-system-who-have-intellectual-or-developmental-disabilities/

[3] Wilkenfeld, Daniel A., and Ari D. Ne'eman. “Ethical Concerns with Applied Behavior Analysis for Autism Spectrum Disorder.” *Kennedy Institute of Ethics Journal* 30, no. 1 (2020): 31–69. https://doi.org/10.1353/ken.2020.0003.

[4] Movement Advancement Project and Center for American Progress. *Unjust: How the Broken Criminal Justice System Fails LGBT People of Color*. August 2016. https://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-poc

- **Family and Juvenile Court:** This section highlights risks to autistic youth and caregivers when their needs or communication styles are misunderstood in custody, dependency, or juvenile matters.
- **Trauma and Courtroom Stress:** This section informs on and emphasizes trauma-informed approaches, including quiet spaces, communication supports, and recognition of overload.
- **Criminal Legal Involvement:** This section discusses the risks of false confessions, plea misunderstandings, and harm in jails and prisons, while also advocating for early diversion and support.
- **Concerns with ABA and Alternatives**: This section notes the controversy surrounding ABA and outlines more affirming, culturally responsive therapy options.
- **Promising Court Models:** This section features Detention Alternative for Autistic Youth (DAAY Court) in Nevada and emerging neurodiversity-informed reforms in other states.
- **Implementation and Training:** This final section provides tools for court system change, from accommodations to staff education

Courts that adopt these practices can reduce harm, improve access, and build systems that honor the rights, dignity, and needs of individuals with autism.

Introduction

Individuals with autism are present throughout the legal system as parents, youth, defendants, victims, litigants, and witnesses. Yet courtroom norms often reflect neurotypical expectations around eye contact, emotion, speech, and demeanor, which can lead to misjudgments about credibility or intent. These misunderstandings may result in serious consequences, including wrongful convictions, loss of parental rights, or denial of housing, benefits, and legal protections.

Many individuals with autism find the courtroom overwhelming, unclear, or physically distressing. Sensory stimuli, high-pressure language, and rigid procedures can lead to shutdowns, miscommunication, or perceived noncompliance. These responses are often misunderstood, particularly when legal professionals are not familiar with neurodivergent communication styles.

Structural risks compound these challenges. Individuals with autism, especially those who are undiagnosed or have multiply intersectional marginalized identities, are more likely to face poverty, misdiagnosis, exclusion from school, and early system contact.[5] Once in court, they may struggle to access accommodations, communicate with court staff, explain their needs, or receive appropriate evaluation and support.

Creating accessible courts involves more than just meeting legal requirements; it is about ensuring fairness, dignity, and equal participation for everyone, including those with disabilities. Courts do not require a complete overhaul to achieve this objective; instead, they need thoughtful and informed changes. With proper training, procedural flexibility, and clearer communication, courts can better recognize disability-related needs, reduce unnecessary legal complexities, and promote equitable outcomes. This guide provides practical strategies to promote meaningful inclusion while upholding judicial integrity and maintaining public trust.

[5] National Council on Disability. *Examining Criminal Justice Responses to People with Mental Illness and Intellectual Disabilities,* 2015. https://www.researchgate.net/publication/313841691_Criminal_justice_responses_to_people_with_mental_illnesses

Language Note:

We acknowledge that many autistic individuals prefer identity-first language (e.g., “autistic person”), which affirms autism as a core part of identity rather than something separate or negative. In this guide, we use person-first language (e.g., “individual with autism”) as a deliberate stepping stone, specifically to support court systems that are still learning how to engage with disability respectfully. The goal was to make the guide accessible and implementable in court environments that may not yet be familiar with identity-first framing.

The guide is intended to evolve over time. As courts build their capacity and as community standards continue to shift, future versions may revisit language use to more fully reflect identity-first norms. This version reflects where we are now, a bridge between current system readiness and the fuller inclusion we are working toward.

I. Understanding Autism in Legal Contexts

Autism is a lifelong neurodevelopmental condition that affects how individuals perceive and interact with the world. This includes differences in communication, social interaction, sensory processing, and behavioral regulation.[6] Many individuals experience courtrooms as inaccessible due to verbal pressure, unclear expectations, or misinterpretation of behavioral cues.

For example, an individual who avoids eye contact, speaks in a monotone voice, or needs time to process information may be perceived as dishonest or defiant. These traits are often the result of stress or sensory overload rather than an unwillingness to participate.

Some individuals mask their autistic traits, suppressing their natural behavior to appear "neutral" or "composed" (see glossary for definition of masking). While masking can prevent immediate judgment, it is exhausting and may lead to inaccurate assessments of capacity or distress. Courts that rely on surface demeanor risk misjudging credibility and need.

I.I. Caution Around Behaviorism in Legal Contexts

Legal systems often reflect mainstream cultural expectations about how people "should" behave, expectations rooted in Western, able-bodied, and neurotypical norms.[7] Eye contact, rapid verbal responses, and emotional restraint are often interpreted as signs of truthfulness, credibility, or capacity. These assumptions mirror behaviorist approaches that prioritize external compliance and appearance over lived experience and internal understanding.

[6] National Institute of Mental Health (NIMH). "Autism Spectrum Disorder." Updated March 2023. https://www.nimh.nih.gov/health/topics/autism-spectrum-disorders-asd

[7] Bascom, Julia. "What is Stimming and Why Does it Matter?" *Autistic Self Advocacy Network,* April 2012. https://autisticadvocacy.org/2012/04/what-is-stimming-and-why-does-it-matter/.

Individuals with autism may “stim”, “script”, go silent, or react intensely under stress.[8] These are adaptive responses to overwhelm or confusion, not signs of aggression, defiance, or incompetence. However, courtroom norms can punish such behaviors by viewing them as disrespectful or uncooperative.

When court processes rely too heavily on surface behavior, they risk punishing those whose neurotype does not conform to expected standards. Courts can ease this by expanding their understanding of behavior, focusing on context, and training all staff to distinguish between conduct that is disruptive versus conduct that is simply different.

Best Practices

- Avoid interpreting tone, eye contact, or body language as signs of truthfulness.
- Provide plain-language materials and visual guides to courtroom processes.
- Allow written responses and assistive technology for communication.
- Allow pauses, clarifying questions, or support persons without penalty.
- Ensure that court personnel are trained to recognize and understand neurodivergent communication styles.

II. Pathways into the Legal System: Systemic Risk and Overrepresentation

Many individuals with autism encounter structural barriers well before they enter a courtroom. These barriers often begin in school, healthcare, and community service systems, where needs are misunderstood, unsupported, or unacknowledged. This can lead to behavioral referrals, dependency cases, or court entanglements that stem more from unmet needs than from actual wrongdoing.[9]

[8] Cowley, A., & Holton, A. E. (2023). “Autistic Adults’ Experiences with the Criminal Justice System: A Qualitative Thematic Synthesis.” *Autism*, 27(5), 1285–1300..https://journals.sagepub.com/doi/10.1177/13623613231198916?icid=int.sj-full-text.citing-articles.88

[9] Ravins, Michael. *Autism Spectrum Disorder (ASD) and the Criminal Justice System: An Introduction for Professionals.* FST 1.4 Special Edition. Concordia University, 2021. https://www.csp.edu/wp-content/uploads/2021/02/FST-1.4-Special-Edition-Autism-Spectrum-Disorder-ASD-and-the-Criminal-Justice-System-An-Introduction-for-Professionals.pdf

Individuals with autism, especially those who are LGBTQ+ or come from historically underserved communities in education and healthcare systems, are disproportionately represented in the legal system[10]. Communication differences, sensory needs, and behavioral rigidity are often misinterpreted by authority figures, particularly in school and policing contexts. Once involved in the system, these individuals may face escalated charges or inappropriate placements due to inadequate accommodations or a lack of neurodiversity-informed support.

Courts must understand this path to implement equitable practices that prevent unnecessary legal entanglements. Addressing these gaps means better screening, earlier diversion, disability-informed training for all personnel, and individualized accommodations from the outset.

Studies show:

- Anywhere from 40–80% of autistic adults are unemployed or underemployed.[11]
- People with developmental disabilities are up to 7x more likely to have police contact.[12]
- Delayed diagnosis is more common in Black, Latino and Indigenous communities.[13]
- Autistic youth are often removed from their homes without disability-informed assessments, most commonly by child welfare or law enforcement, but sometimes initiated through schools, courts, or medical professionals.[14]

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[10] LGBTQ+ and Autism Spectrum Disorder: Experiences and Challenges," *National Library of Medicine*, , https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7430467/.

[11] Roux, A. M., Rast, J. E., Anderson, K. A., & Shattuck, P. T. *National Autism Indicators Report: Transition into Young Adulthood*. Life Course Outcomes Research Program, Drexel University, 2015. https://drexel.edu/autisminstitute/research-projects/project/national-autism-indicators-report/

[12] Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, Vera Institute of Justice, April 2019, https://vera-institute.files.svdcdn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf.

[13] Magaña, S., Lopez, K., Aguinaga, A., & Morton, H. "Access to Diagnosis and Services Among Latino Children with Autism Spectrum Disorders." *Intellectual and Developmental Disabilities*, vol. 51, no. 3, 2013, pp. 141–153. https://doi.org/10.1352/1934-9556-51.3.141

[14] Slayter, Elspeth, and Cheryl Springer. "Child Welfare-Involved Youth with Intellectual Disabilities: Pathways Into and Placements in Foster Care." *Intellectual and Developmental Disabilities* 49, no. 1 (2011): 1–13. https://doi.org/10.1352/1934-9556-49.1.1.

Without intervention, these systemic risks lead to long-term legal entanglements for behaviors rooted in unmet support needs, rather than any intent or malice.

Best Practices

- Investigate whether unmet disability-related needs contribute to the legal issue.
- Promote diversion programs that connect people to services, not punishment.
- Train court staff to identify the need even when no formal diagnosis exists.
- Review case outcomes for patterns of racial and disability-based disparity.
- Partner with local service organizations for support planning and alternatives to detention.

III. Police Interaction and System Entry

Court involvement often starts with police contact. For individuals with autism, particularly those who are Black, Brown, non-verbal, or have co-occurring mental health conditions, these interactions can be fatal.[15]

Autistic behaviors, such as avoiding verbal commands, stimming, or walking away, are often perceived as aggression or defiance. Officers may escalate situations due to misunderstandings or a lack of training.[16] When crisis response involves law enforcement instead of health or disability support systems, the risks increase dramatically.

Nationally, people with disabilities account for nearly half of all individuals killed by law enforcement, a staggering and disproportionate figure[17]. Many individuals with autism have been fatally shot while experiencing sensory meltdowns, holding harmless objects, or failing to respond to commands in expected ways. For example, in 2022, Linden

[15] National Public Radio (NPR). "When People with Disabilities Encounter Police." *NPR*, March 2020. https://www.npr.org/2020/03/23/820329781/when-people-with-disabilities-encounter-police
[16] The Arc. "Policing & People with Disabilities Webinar Series: Community-Based Strategies for Reform." https://thearc.org/resource/policing-people-with-disabilities-webinar-series-community-based-strategies-for-reform/
[17] David M. Perry and Lawrence Carter-Long, *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability*, Ruderman Family Foundation, 2016, https://rudermanfoundation.org/white_papers/media-coverage-of-law-enforcement-use-of-force-and-disability/.

Cameron, a 13-year-old autistic boy in Utah, was shot multiple times by police after his mother called for help during a mental health crisis.[18] He survived, but the case drew national outrage and underscored the urgent need for disability-informed crisis response.

Youth are also at risk. Many enter the juvenile system after school-based police interventions or emergency calls for behavioral distress. Once labeled "troubled" or "noncompliant," their chances of re-entry into supportive settings diminish.

Best Practices

- Fund non-police crisis response options that include disability-trained responders.
- Ensure law enforcement has ongoing training on developmental disability and communication access.
- Encourage courts to scrutinize police behavior and escalation in disability-related arrests.
- Include developmental disability in all use-of-force and response-to-resistance reviews.
- Prioritize treatment, not punishment, when police referrals stem from disability-related behavior.

IV. Disability Misdiagnosis and Underdiagnosis

Many individuals with autism, especially women, people of color, immigrants, and LGBTQ+ people, go undiagnosed or are misdiagnosed with mental illness, defiance, or personality disorders[19]. This leads to a failure to access needed supports, as well as confusion in legal proceedings.

[18] Associated Press, "Utah Police Shooting of Autistic Boy Raises Questions," *NPR*, September 8, 2020, https://www.npr.org/2020/09/08/910729270/utah-police-shooting-of-autistic-boy-raises-questions.
[19] Mandell, D. S., et al. "Racial/Ethnic Disparities in the Identification of Children with Autism Spectrum Disorders." *American Journal of Public Health*, vol. 99, no. 3, 2009, pp. 493–498. https://pubmed.ncbi.nlm.nih.gov/19106426/

Undiagnosed individuals may not receive accommodations, diversion options, or appropriate services.[20] Courts may attribute their behavior to "noncompliance" rather than unmet access needs. This disproportionately affects marginalized communities that already face systemic mistrust and exclusion. Furthermore, legal systems often rely on psychiatric labels to determine eligibility for services or decisions regarding capacity, further marginalizing those whose disability has never been formally recognized.

Best Practices

- Avoid requiring formal diagnosis as a condition for access or credibility.
- Promote developmental screening tools in all areas of court processing.
- Include cultural humility and implicit bias training in evaluation and assessment protocols.
- Partner with local clinics or universities to support no-cost evaluations when needed.
- Accept self-identification of disability as a starting point, not a barrier to access.

V. Communication and Sensory Barriers

Court settings are often fast-paced and involve complex communication under stressful conditions. For many individuals with autism, these circumstances can be overwhelming. Common barriers include glaring lighting, echoing in courtrooms, unfamiliar procedures, and insufficient time to process or clarify.[21]

Individuals with autism may utilize "scripting", "echolalia", "repetition" (see glossary for these definitions), or alternative forms of communication. Some may become nonverbal when under stress. These forms of communication are frequently misinterpreted, particularly when decision-makers depend on tone or behavior to evaluate understanding, intent, or remorse.

[20] Lewis, L. F. "Realizing a Diagnosis of Autism Spectrum Disorder as an Adult." *Archives of Psychiatric Nursing*, vol. 30, no. 3, 2016, pp. 383–388. https://pubmed.ncbi.nlm.nih.gov/26940281/

[21] Ashburner, Jill, Laura Bennett, Sylvia Rodger, and Jenny Ziviani. "Understanding the Sensory Experiences of Young People with Autism Spectrum Disorder: A Preliminary Investigation." *Australian Occupational Therapy Journal* 60, no. 3 (2013): 171–180. https://doi.org/10.1111/1440-1630.12025.

Masking is common among autistic women and LGBTQ+ individuals, which can make communication appear flat or guarded. Courts that emphasize performance and emotional display[22] inadvertently penalize those who do not express themselves in expected ways.

Best Practices

- Provide clear, concrete, step-by-step instructions and visual schedules when possible.
- Accept communication differences and avoid assumptions based on tone or body language.
- Offer breaks and minimize sensory triggers in waiting areas and courtrooms.
- Permit use of AAC devices or writing tools to aid communication.
- Train staff on masking, shutdowns, and nontraditional responses to stress.

VI. Family and Juvenile Court: Risks, Misunderstandings, and Missed Supports

Like their counterparts, family and juvenile courts often rely on traditional expectations concerning communication, emotional expression, and behavior. While these norms are well-established, they often do not align with how some individuals with autism naturally interact or process information. These expectations can disadvantage both autistic youth and parents[23] when courts misunderstand autism-related traits or lack a disability-informed context.

VI.I. Parents with Autism

Parents with autism may face harsh judgment based on how they speak, respond, or manage stress. Flat affect, literal communication, or avoidance of eye contact can be

[22] Zuckerman, Katharine E., Olivia Lindly, Karen B. Sinche, and Christina Nicolaidis. "Parental Concerns, Provider Response, and Timeliness of Autism Spectrum Disorder Diagnosis." *Journal of Pediatrics* 166, no. 6 (2015): 1431–1439.e1. https://doi.org/10.1016/j.jpeds.2015.03.007.

[23] Slayter, E. M., & Springer, C. "Child Welfare Involvement among Children with Autism Spectrum Disorders: A Population-Based Study." *Child Maltreatment*, vol. 16, no. 1, 2011, pp. 17–23. https://texascasa.org/wp-content/uploads/2023/06/Youth_with_Disabilities_in_the_United_St_2016.pdf.

misinterpreted[24] as detachment or incapacity. A parent who requests structure, reminders, or a regulated environment might be perceived as demanding or disorganized when expressing their access needs, and therefore, may be wrongly assumed to be unable to adequately parent.

Parenting evaluations, which are often used to inform custody and visitation decisions, may overlook important factors such as communication differences, executive functioning issues, or sensory sensitivities. When conducted by evaluators without training in neurodivergence, these assessments may pathologize rather than understand these differences.

VI.II. Autistic Youth in Court Systems

Youth with autism face a significant risk of entering court systems through exclusionary practices, often referred to as "school pushout," dependency referrals, or behavioral misunderstandings. Behaviors such as shutdowns, meltdowns, or "elopements" (see glossary for these definitions) are frequently labeled as "willful disobedience," resulting in suspensions, arrests, or removal from the home.

This overrepresentation is magnified for youth of color, nonspeaking youth, and LGBTQ+ youth[25], and those without formal diagnoses. Rather than receiving trauma-informed, developmentally appropriate supports, autistic youth may be funneled into institutional care, residential placements, or detention facilities, often with few accommodations and even fewer pathways out.

VI.III. Educational and Service Gaps

Many youths with autism in court do not have effective IEPs, school-based services, or developmentally appropriate mental health support. Failing to identify and address these needs often results in punitive consequences for behaviors rooted in stress,

[24] Crane, L., et al. "Parenting and Autism Spectrum Disorder: An Investigation of Perceptions, Experiences and Support Needs." *Journal of Autism and Developmental Disorders*, vol. 49, 2019, pp. 2381–2391. https://link.springer.com/article/10.1007/s40489-020-00210-1

[25] Morgan, P. L., et al. "Are Minority Children Disproportionately Represented in Early Intervention and Early Childhood Special Education?" *Educational Researcher*, vol. 42, no. 6, 2013, pp. 317–325. https://pmc.ncbi.nlm.nih.gov/articles/PMC3966630/

trauma, or sensory overload. Delays in diagnostic evaluation can worsen outcomes and postpone services for years.

VI.IV. Substance Misuse Risks

Although substance misuse patterns vary, research shows that individuals who have autism engage in substance misuse are more likely to do so in response to trauma, isolation, or untreated mental health needs[26]. This risk is particularly high among youth who are court-involved, institutionalized, or disconnected from supportive resources. Courts often treat substance misuse punitively rather than recognizing it as a sign of unmet need, especially for autistic teens who lack communication access or culturally responsive care.[27]

Programs addressing substance addiction rarely account for neurodivergence, and those that do are often inaccessible to low-income or court-involved youth. Autistic youth in residential or congregate care settings are particularly vulnerable to developing substance-related struggles without consistent, developmentally appropriate support.

Best Practices

- Encourage courts to use evaluators with demonstrated experience in autism when making parenting or custody assessments.
- Screen all court-involved youth for developmental disabilities using appropriate, trauma-informed tools.
- Integrate school records, IEP plans, and education-based evaluations into court decision-making.[28]
- Try to avoid institutional or group home placements unless necessary, and ensure all placements are sensory-accessible and autism-informed.

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[26] Elizabeth Weir, Carrie Allison, and Simon Baron-Cohen, "Understanding the Substance Use of Autistic Adolescents and Adults: A Mixed-Methods Approach," *The Lancet Psychiatry* 8, no. 10 (2021): 833–846, https://pubmed.ncbi.nlm.nih.gov/34217427/

[27] Katherine E. McCauley et al., "Barriers to Substance Use Treatment for Autistic Adults: A Qualitative Study," *Autism* 27, no. 1 (2023): 247–258 https://www.liebertpub.com/doi/abs/10.1089/aut.2024.0213#:~:text=Some%20struggled%20to%20get%20accommodations,lack%20of%20trauma%2Dinformed%20care.

[28] U.S. Department of Education. *2018 IDEA Section 618 Data Products.* https://www2.ed.gov/programs/osepidea/618-data/index.html

- Prohibit the use of police or court referrals for school-based disability behavior without imminent risk.
- Support the development of diversion opportunities tailored to neurodivergent youth that prioritize care over punishment.
- In substance misuse cases, prioritize neurodivergent-affirming addiction supports, not detention.
- Connect families and youth to wraparound services that include educational, behavioral, and disability-specific supports.

VII. Trauma in the Courtroom

Many individuals with autism enter the courtroom with prior trauma, whether from school discipline, institutionalization, discrimination, or past legal involvement. The courtroom can be a source of re-traumatization: it is loud, unfamiliar, hierarchical, and often confrontational.

Individuals with autism may respond to this environment with shutdowns, dissociation, or heightened anxiety[29]. Yet courts may misinterpret these responses as disinterest or disrespect, or emotional flatness. In reality, they are signs of overload and distress.

These misinterpretations have significant consequences. Individuals with autism may be perceived as unremorseful, unfit, or dishonest simply because they cannot mask or exhibit expected behaviors under stress. This dynamic is particularly harmful for those with a history of abuse or prior court involvement, where mistrust of authority is intensified by the fear of being misunderstood or penalized for their neurology.

Trauma also impacts communication. Under stress, a person may lose access to verbal language, struggle to process questions, or exhibit unusual effects. These are not signs of guilt or incompetence; instead, they indicate that the environment is inaccessible.

Best Practices

- Offer support persons or advocates who can help interpret and support the individual in real time.

- Create options for quiet waiting areas, sensory-friendly courtroom spaces, and remote appearances when possible.
- Allow for pauses, written responses, or alternative communication methods during proceedings.
- Avoid confrontational questioning styles when possible, especially for youth or trauma survivors.
- Provide training for judicial officers and court staff on trauma-informed, disability-aware practices.

VIII. Communication and Masking in Court

Individuals with autism often communicate in ways that differ from traditional courtroom norms. They may use literal language, struggle with reading or responding to indirect questions, or need extra time to process and reply. Some individuals may utilize assistive technology or alternative communication methods, while others may appear quiet, exhibit a "flat affect", seem overly formal, or exhibit visible anxiety.

Courts often misinterpret traits of Individuals with autism who do not make eye contact, who speak in a monotone, or display repetitive movements (such as rocking or fidgeting), may be perceived as untrustworthy, evasive, or emotionally disengaged[30]. These assumptions reflect neurotypical biases, not actual evidence of intent, capacity, or credibility.

One of the most misunderstood dynamics in court is **masking**[31] the suppression of autistic traits in order to blend in or avoid punishment. Masking can involve mimicking typical eye contact, forcing speech when nonverbal, or hiding sensory discomfort. It is especially common among women, people of color, and LGBTQ+ individuals, many of whom go undiagnosed as a result.

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[30] Colleen M. Berryessa, "Defendants with Autism Spectrum Disorder in Criminal Court: A Judges' Toolkit," *Court Review* 56, no. 1 (2020): 10–17 https://pubmed.ncbi.nlm.nih.gov/23925965/#:~:text=Abstract,psychopathy;%20sentencing;%20therapeutic%20jurisprudence.

[31] Price, Devon. *Unmasking Autism: Discovering the New Faces of Neurodiversity*. New York: Harmony, 2022. See also NPR, "Unmasking Autism: The Ways We're Taught to Hide Who We Are," April 14, 2022. https://www.npr.org/2022/04/14/1092869514/unmasking-autism-more-inclusive-world.

Masking in court may cause legal professionals to underestimate a person's stress, misjudge their level of need, or even deny accommodations. Over time, chronic masking can lead to exhaustion, burnout, anxiety, and miscommunication. In high-pressure settings, it may also increase the risk of unjust outcomes, such as false confessions or compliance with plea deals that the person does not fully understand.[32]

Best Practices

- Avoid using tone, eye contact, or a flat affect (see glossary for definition) as indicators of credibility or remorse.
- Allow all individuals, especially those with communication disabilities, to pause, ask for clarification, or respond in writing.
- Accept echolalia, scripting, or movement as valid forms of communication or regulation.
- Train court officers to recognize masking, especially among women and people of color.
- Permit self-advocates or trained professionals to explain how the person communicates best.

IX. Autism and Criminal Legal Involvement

Individuals with autism are disproportionately represented in the criminal legal system[33], often not due to criminal intent, but because of behaviors that are misunderstood as suspicious, noncompliant, or dangerous. Traits such as blunt speech, avoidance of eye contact, or sensory overwhelm are frequently misread by police, prosecutors, and judges.

Undiagnosed or unsupported individuals who experience autism may plead guilty to avoid overwhelming proceedings, even when they are innocent. Others might agree to plea deals without fully understanding the consequences due to challenges in

[32] David A. Snow, "Interrogated with Intellectual Disabilities: The Risks of False Confession," *Stanford Law Review* 70, no. 3 (2018): 643–689. https://www.stanfordlawreview.org/print/article/interrogated-with-intellectual-disabilities/

[33] King, C., & Murphy, G. H. "A Systematic Review of People with Autism Spectrum Disorder and the Criminal Justice System." *Journal of Autism and Developmental Disorders*, vol. 44, 2014, pp. 2717–2733. https://doi.org/10.1007/s10803-014-2046-5

processing complex language or dealing with high-stress interactions. False confessions[34] can also occur, particularly during prolonged interrogations when the individual is fatigued, confused, or eager to escape the situation.

Jails and prisons are particularly harmful environments for individuals with autism[35]. Overstimulation, lack of structure, and social unpredictability can worsen sensory sensitivity, distress, trauma responses, and self-harming behaviors. Accommodations are often minimal or absent.

Best Practices

- Ensure disability screenings are performed early, ideally at initial appearance or diversion point.
- Permit access to support persons or advocates during questioning or plea discussions.
- Avoid relying on demeanor when assessing guilt, competency, or risk.
- Provide simplified and accessible explanations of legal rights and consequences.
- Whenever possible, divert individuals with autism with autism into community-based alternatives.

Applied Behavior Analysis (ABA) is the most common therapy prescribed for individuals with autism, particularly children. It is often recommended in dependency and family court cases, as well as in parenting plans and diversion services. However, ABA remains controversial.

Adults on the autism spectrum and advocacy groups express significant worries[36] regarding ABA's emphasis on compliance and normalizing behavior. Many recount

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[34] North, A. B., Russell, G., & Gudjonsson, G. H. "High Functioning Autism Spectrum Disorders and the Risk of False Confessions." *Journal of Forensic Psychiatry & Psychology* 27, no. 3 (2016): 385–408. https://www.researchgate.net/publication/272122143_High_functioning_autism_spectrum_disorders_An_investigation_of_psychological_vulnerabilities_during_interrogative_interview

[35] Peraire, Marc, Patricia Cantos, María Sampedro-Vidal, Lucía Bonet-Mora, and Francisco Arnau-Peiró. "Characterization of Autism Spectrum Disorder Inside Prison." *Revista Española de Sanidad Penitenciaria* 25, no. 1 (2023): 30–39.https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10236

[36] Bottema-Beutel, K., & Crowley, S. "Pervasive Undesirable Consequences of Applied Behavior Analysis for People with Autism." *Perspectives on Behavior Science*, vol. 44, 2021, https://www.researchgate.net/publication/351347083_Pervasive_Undisclosed_Conflicts_of_Interest_in_Applied_Behavior_Analysis_Autism_Literature

lasting trauma from having to hide innate behaviors, such as stimming, scripting, or using alternative communication methods.

Although ABA is frequently labeled as "evidence-based," this designation is more indicative of historical funding trends than of its overall effectiveness. It is among the limited therapies that are consistently covered by insurance, leading to a skewed perception of it as the standard choice. For numerous families, ABA is often the only viable option, even when it clashes with their beliefs or leads to distress.

Courts should avoid mandating therapy that may conflict with the individual's needs or consent.[37] Informed choice must be central, especially in cases involving children, foster care, or disability service mandates.

Best Practices

- Do not mandate ABA without offering informed alternatives and family input
- Recognize that ABA's availability reflects insurance policy, not universal appropriateness
- Allow families to opt out of ABA if it conflicts with cultural, developmental, or trauma-informed considerations
- Respect lived experience, especially from autistic adults who have received or rejected ABA
- Evaluate therapy success based on well-being, not on reduction of neurodivergent traits

[37] Dawson, M. "The Misbehavior of Behaviorists: Ethical Challenges to the Autism-ABA Industry." *Autonomy: The Critical Journal of Interdisciplinary Autism Studies*, vol. 1, no. 1, 2013. http://www.larry-arnold.net/Autonomy/index.php/autonomy/article/view/AR1

X. Alternative Support Models

Adequate support does not require behavioral compliance. Numerous affirming, developmentally appropriate, and culturally responsive options are available, although they are less frequently funded or referenced in legal contexts.

These alternatives emphasize relationship-building, emotional regulation, and effective communication,[38] rather than behavior correction. They are particularly advantageous for youth who have experienced trauma and for families seeking respectful, non-coercive support.

Best Practices

- Accept and encourage non-ABA therapies when aligned with family preference and clinical fit, but not limited to, the following:
    - Occupational therapy for sensory and motor support
    - Speech-language therapy with AAC integration
    - DIR/Floor time or relationship-based developmental models
    - Peer-led mentoring, coaching, or community support programs
    - Mental health counseling with neurodivergent-affirming providers
- Address barriers in funding and/or access by partnering with local nonprofits or disability networks.
- Revise therapy expectations to focus on functional support and individual outcomes, not the suppression of autistic characteristics.

XI. DAAY Court and Other Promising Models

The Detention Alternative for Autistic Youth (DAAY) Court in Clark County, Nevada, is the first program in the United States specifically designed to meet the needs of autistic youth[39] within the juvenile justice system. In response to the high rates of court

[38] Casenhiser, D. M., Shanker, S. G., & Stieben, J. "Learning Through Interaction in Children with Autism: Preliminary Data from a Social-Communication-Based Intervention." *Autism*, vol. 17, no. 2, 2013, pp. 220–241. https://journals.sagepub.com/doi/10.1177/1362361311422052

[39] Thompson, J. "DAAY Court Provides Hope for Autistic Youth in the Justice System." *Judicature*, vol. 106, no. 3, 2022, pp. 26–31. https://judicature.duke.edu/articles/daay-court-provides-hope-for-autistic-youth-in-the-justice-system

involvement among neurodivergent youth, DAAY Court offers a structured and supportive alternative to detention.

Instead of relying on traditional disciplinary approaches, DAAY Court emphasizes connection, consistency, and coordination across systems. It unites judges, educators, providers, and families to identify the root causes of system involvement and provide developmentally appropriate services. The court team undergoes ongoing training on disability and trauma, and youth engage in a tailored process that prioritizes stability, communication access, and long-term well-being.

The program includes:

- Regular check-ins with a dedicated judge and team.
- Service coordination with school and mental health providers.
- Family engagement and education.
- Connection to disability-specific supports, including mentorship and behavioral therapy.
- Use of Applied Behavior Analysis (ABA) as one therapy option, though not the only one available.

Best Practices

- Support replicating and scaling programs adapted to local needs, like DAAY Court, in other jurisdictions.
- Ensure service plans are not limited to one form of therapy (e.g., ABA) but reflect informed choice and family context.
- Collaborate with local schools, disability organizations, and community providers to offer coordinated support.
- Collect and evaluate outcomes based on long-term well-being, rather than just compliance or recidivism.
- Prioritize meaningful inclusion of families, cultural responsiveness, and communication access for all youth served.
- Integrate ongoing feedback from individuals with autism and disability-led organizations into the program design and review process.

XII. I. Best Practices in Other States

Although DAAY Court stands as a unique model[40], other states are starting to adopt neurodiversity-informed practices in their justice systems. These efforts reveal an increasing understanding that traditional court processes often fall short for many individuals with disabilities, especially those who are autistic.

California:[41]

- Pilot programs in some counties include developmental screenings at intake
- Court navigator programs help participants understand and follow court processes.
- Juvenile justice departments are partnering with disability service agencies to create coordinated paths for diversion.

New York:[42]

- Trauma-informed probation models that include sensory supports and flexible scheduling.
- Inclusion of autism-specific training in juvenile court professional development
- Local efforts to embed disability assessment earlier in dependency and delinquency cases.

XII. Autism and Jury Participation

Individuals with autism are legally eligible to serve on juries and should not be dismissed based on diagnostic labels alone[43]. Like all prospective jurors, they bring unique perspectives and are entitled to reasonable accommodations under the Americans with Disabilities Act (ADA). Courts are best served when they have a presumption of inclusion, not exclusion. Courts have a responsibility to ensure that jury

[40] National Juvenile Defender Center & Justice for Families. *Youth in the Justice System: The Experience of Autistic Youth*, 2021. https://njdc.info/wp-content/uploads/2021/11/NJDC-Autism-and-Youth-Justice-Report.pdf
[41] California Department of Developmental Services. *Criminal Justice Involvement and Autism Spectrum Disorders: A Report to the Legislature*, 2022. https://www.dds.ca.gov/publications/autism-and-criminal-justice-report
[42] New York State Unified Court System. *Trauma-Informed Care in New York State Courts*, 2021. https://ww2.nycourts.gov/whatsnew/pdf/Trauma-InformedCourts2021.pdf
[43] U.S. Department of Justice, Civil Rights Division. *ADA Requirements: Public Accommodations*. Accessed May 21, 2025. https://www.ada.gov/resources/public-accommodations/.

service is accessible, not only as a civic duty but as a matter of equity and legal compliance.[44] Excluding individuals with autism based on perceived deficits, discomfort with difference, or communication style is discriminatory and undermines the representativeness of the jury system.

Jury service is a fundamental component of civic participation. However, individuals with autism are frequently excluded from jury pools not because of incapacity, but due to misinterpretations of communication styles, sensory needs, or rigid procedural norms[45]. In some cases, individuals may be dismissed based on broad assumptions rather than individualized assessments.

Barriers include:

- Lack of accommodations for sensory sensitivities or processing needs
- Inflexible scheduling or lengthy proceedings without breaks
- Assumptions that individuals with autism lack impartiality or comprehension
- Communication styles misinterpreted as disinterest, bias, or confusion
- These exclusions not only raise legal and ethical concerns but also deprive courts of diverse perspectives critical to fair trials.

Best Practices:

- Ensure courts provide reasonable accommodations under the ADA, including alternative formats, quiet spaces, or assistive technology
- Offer plain-language jury instructions and visual aids
- Allow modified questioning formats during voir dire to avoid misjudging communication differences
- Train jury management staff to recognize and support neurodivergent prospective jurors

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[44] United States Courts. *Guide to Judiciary Policy, Volume 5, Chapter 2: Jury Administration – Americans with Disabilities Act Compliance*. Washington, D.C.: Administrative Office of the U.S. Courts. Accessed May 21, 2025. https://www.uscourts.gov/rules-policies/judiciary-policies/jury-management.

[45] Kelly, Hannah R., et al. "Autism and the Criminal Justice System: An Investigation of Juror Decision-Making in Mock Trials." *Journal of Autism and Developmental Disorders* 50, no. 9 (2020): 3203–3216. https://link.springer.com/article/10.1007/s10803-018-3803-7#:~:text=Abstract,%2C%20unremorseful%2C%20rude%20and%20aggressive.

- Avoid blanket dismissals and instead engage in individualized assessments
- Clearly communicate the right to request accommodations in jury summons and voir dire materials, using plain language and multiple formats (e.g., print and digital)
- Ensure disability accommodations are available without forcing disclosure of diagnosis, focus on needs, not labels
- Offer sensory-friendly jury waiting areas or quiet rooms for individuals who experience sensory overload
- Allow written or assisted communication during voir dire if verbal answers are difficult or stressful
- Permit modified dress codes for those with sensory sensitivities (e.g., no requirement for specific shoes or formal attire if uncomfortable)
- Include scenarios in training that address neurodivergent communication and processing differences so that staff and judges do not misread flat affect, fidgeting, or eye contact avoidance
- Track demographic and disability-related jury exclusions to assess equity and identify patterns of dismissal
- Engage autistic advocates and disability experts in revising jury management policies and education
- Consider offering staggered scheduling or virtual orientation materials to accommodate different cognitive and processing styles

XIII. Implementation Tools for Courts

Even when courts recognize the need for change, implementing it can be challenging without the use of structured tools. Courts benefit from clear pathways, a shared language, and staff engagement strategies that foster trust and accountability. Disability-informed change requires both top-down support and cross-role coordination. Judges, clerks, probation officers, evaluators, and attorneys need an aligned understanding, not just one-time training.

Best Practices

- Appoint a disability access lead or liaison within each court.
- Incorporate neurodivergent voices into policy development, feedback, and evaluation processes.
- Incorporate court-specific accessibility guidance into local rules or standing orders.
- Develop accommodation templates, court orientation materials, and sensory-friendly modifications to support individuals with diverse needs.
- Track data on accommodation requests, service referrals, and diversion outcomes.

XIV. Training and Professional Development

Court professionals frequently report discomfort or uncertainty when working with individuals with autism. Many have had limited exposure to disability justice frameworks or have only received training on overt physical disabilities.

Training must extend beyond compliance or legal checklists[46] to promote lasting cultural change. It should encompass disability history, lived experience, trauma-informed practice, and intersectionality. Courts that invest in reflective, skill-building sessions experience stronger engagement, fewer misunderstandings, and more equitable outcomes.

Best Practices

- Offer role-specific training on autism, communication access, trauma, and procedural fairness.
- Include sessions led or co-facilitated by individuals with autism, families, and disability advocates.[47]

[46] National Council on Disability (NCD). *The Impact of Court and Legal System Training on Disability Justice*, 2021. https://ncd.gov/publications/2021/court-training-and-disability

[47] Civil Rights Education and Enforcement Center (CREEC). *Disability Justice Training Toolkit for Courts*, 2020. https://creeclaw.org/disability-justice-training-courts

- Encourage self-assessment, reflection, and ongoing learning, not just policy review.
- Build incentives or recognition into continuing judicial education requirements
- Create learning collaboratives across jurisdictions to share best practices.

XV. Closing Reflections

Individuals with autism, like all people, deserve a legal system that recognizes them clearly, responds to their needs with integrity, and upholds their full humanity. Yet across the country, many continue to face processes that misinterpret difference as defiance, punish disability-related behaviors, or exclude those who communicate, process, or engage in non-traditional ways.

These challenges are not solely the result of individual bias. They reflect deeper design flaws in court practices, assumptions, and systems that were never created with individuals with neurodivergence in mind. The recommendations in this guide are not just technical solutions; they represent structural shifts that necessitate rethinking how access, fairness, and safety are defined in court spaces.

Implementing these practices is not about perfection; it's about taking responsibility. Responsibility to ensure that individuals are not criminalized for unmet needs. Responsibility to engage individuals with autism not as problems to solve, but as individuals with rights, perspectives, and contributions to offer, and responsibility to evolve, even when it means challenging longstanding norms.

Disability justice offers courts more than a checklist; it offers a way forward. A way to reduce harm, improve outcomes, and foster trust with communities that have too often been silenced or surveilled. It urges us to prioritize care over control, belonging over bureaucracy, and access over assumptions.

Courts have a powerful role in modeling what inclusive justice looks like. By grounding reform in lived experience, affirming neurodiversity, and building systems that support rather than suppress individual differences, the legal system can begin to repair what has been neglected for too long.

This is not only possible, but also necessary; the opportunity to lead is here. The courts' next decisions will shape the legacy of justice for generations to come.

Quick Reference: Supporting Individuals with Autism in Court

✅ **Do not assess credibility based on tone, eye contact, or affect**

These traits are neurologically variable and not signs of dishonesty or capacity.

✅ **Allow extra time for processing and responses**

Stress and sensory overload can delay communication.

✅ **Permit alternative communication (e.g., writing, AAC, support persons)**

Many autistic individuals rely on supports to express themselves clearly.

✅ **Accept scripting, stimming, or silence as adaptive, not disruptive**

These behaviors regulate stress and are not defiance.

✅ **Use plain language and avoid indirect or abstract phrasing**

Clarity improves understanding and reduces misinterpretation.

✅ **Offer breaks and reduce sensory triggers when possible**

Lighting, noise, and unpredictability can cause shutdowns or distress.

✅ **Provide accommodations based on need, not just formal diagnosis**

Many are undiagnosed due to systemic barriers or bias.

✅ **Screen early for developmental disability in juvenile/family cases**

Misunderstood needs often lead to deeper involvement in the system.

✅ **Avoid rushed pleas, check understanding in the person's own words**

Masking can hide confusion or pressure to comply.

✅ **Do not exclude autistic jurors based on assumptions**

Offer accommodations and assess ability individually.

✅ **Respect therapy preferences do not require Applied Behavior Analysis (ABA) as the only option**

Some families decline ABA due to trauma concerns or cultural mismatch; informed choice should be honored.

Glossary of Terms

Applied Behavior Analysis (ABA)

Behavior modification therapy is often prescribed to autistic children. While once considered standard, ABA has drawn criticism for prioritizing compliance and suppressing autistic traits rather than supporting autonomy or well-being. Some courts still refer families to ABA without understanding the concerns raised by individuals with autism and disability advocates.

Augmentative and Alternative Communication (AAC)

Communication methods for individuals who are non-verbal or have speech differences include speech-generating devices, letter boards, communication apps, and American Sign Language (ASL). Courts must allow and accommodate the use of AAC to ensure full participation in the judicial process.

Autism Spectrum Disorder (ASD)

A lifelong neurodevelopmental condition that affects communication, social interaction, behavior regulation, and sensory processing. Autism exists across a broad spectrum of traits and support needs. It is neither a mental illness nor an intellectual disability, although it may co-occur with both.

Developmentally Appropriate Practice

An approach that tailors legal processes or expectations to an individual's cognitive, emotional, and sensory profile, rather than relying solely on their age. This is essential in both juvenile and adult courts when working with neurodivergent populations.

Disability Justice

A movement and framework led by people with disabilities that centers on intersectionality, collective care, access, and structural change. Disability justice extends beyond compliance (e.g., ADA) to actively shift power and reduce systemic harm.

Diversion

Legal alternatives to prosecution or incarceration exist that redirect individuals toward services, education, or support. Diversion programs can reduce harm for individuals with autism who enter the justice system due to unmet needs rather than intent.

Echolalia

The repetition of words or phrases, whether immediately or after a delay, serves as a form of meaningful communication for many individuals with autism, particularly those who are non-verbal or semi-verbal. Echolalia is frequently misinterpreted as mere parroting or an indication of a lack of comprehension.

Elopement

The act of leaving a safe or supervised space without warning, often due to distress, sensory overload, or a need for regulation. In individuals with autism, elopement is not necessarily an act of defiance but a communication of unmet needs or a coping response to overwhelming environments.

Flat affect

Refers to a reduced outward display of emotion, such as limited facial expressions, monotone speech, or minimal gesturing. In autistic individuals, flat affect is often neurological rather than emotional. The person may feel a full range of emotions internally, but their external expression may not meet neurotypical expectations. This difference is frequently misunderstood in legal settings, where affect is incorrectly used to judge credibility, remorse, or intent.

Masking

The intentional or unconscious suppression of autistic traits in order to “pass” as neurotypical may include mimicking eye contact, using scripted speech, or concealing distress in court, which is often misinterpreted as dishonesty, indifference, or a lack of capacity.

Neurodivergent

Describes individuals whose brains function differently from neurotypical standards, including those with autism, ADHD, disabilities, and other cognitive differences. The term emphasizes diversity rather than focusing on deficits.

Neurodivergent-Affirming Support

An approach that values and respects cognitive differences without trying to "normalize" behavior. These models prioritize emotional regulation, communication support, and autonomy instead of compliance or behavioral correction.

Repetition

Repetition refers to the repeated use of words, phrases, questions, or actions, such as echolalia (repeating what others say), repeated body movements, or asking the same question multiple times. For many individuals with autism, repetition can serve a calming, communicative, or processing function and is not necessarily a sign of defiance or confusion.

Scripting

Repeating phrases from movies, books, or previous conversations is often used as a way to communicate, self-soothe, or navigate social situations.

Sensory avoidance

Behaviors used to reduce exposure to overwhelming sensory input include covering ears in loud environments or avoiding bright lights and crowded spaces.

Sensory Processing Differences

Differences in how people experience and respond to sensory input, such as light, sound, and touch, can overwhelm individuals who are autistic in courtrooms with fluorescent lighting, echoing spaces, or tight seating, thus affecting their communication and behavior.

Stimming

Short for "self-stimulatory behavior," it refers to repetitive movements or sounds (e.g., rocking, hand flapping, humming) used by individuals with autism to regulate stress,

emotions, or sensory input. This behavior is often misunderstood in legal contexts as being disruptive or compulsive.

Trauma-Informed Practice

A framework that recognizes the impact of trauma on behavior and communication. In courts, this means creating emotionally safe spaces, avoiding punitive assumptions, and modifying procedures to minimize harm and retraumatization.

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