Autism Spectrum Disorder and Online Sex Offense

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Introduction:

PURPOSE: This paper is a review of findings regarding individuals living with Autism Spectrum Disorder (ASD) who have been accused of child pornography offenses.

WHO: The primary audience for this paper is defense attorneys. But it is also for prosecutors who are considering the disposition of cases involving ASD and child pornography charges.

HOW: This paper is designed to provide the reader a full spectrum of education on this topic. Each section starts with a "*Bottom line*" sentence that gives you a summary statement of the relevant issue(s). This is followed by a "*Deeper Dive*" of comprehensive materials that include multiple quotes and research citations you can use in your pleadings. Feel at liberty to cut-and-paste anything in this paper to build your request for an expert, pretrial motions, opening statement, closing argument, the direct of your expert, and sentencing mitigation. Don't worry about citing me (Doc Simpson), but you should give proper citations for the direct quotes of the authorities in this document. If you need the original document to review, contact me and I'll get those to you.

This course draws heavily from *Caught in the Web of the Criminal Justice System: Autism, Developmental Disabilities, and Sex Offenses.* Edited by Lawrence A. Dubin, J.D. and Emily Horowitz, Ph.D. (June 21, 2017). I recommend you add this important book to your collection.

WHAT:
A recent CDC study reported that 2.2% of American adults are on the autism spectrum. *"High-functioning autism*" is synonymous with the phrase *Asperger's Syndrome*. In 2013 the APA published the Diagnostic and Statistical Manual of Mental Disorders -version 5 (DSM-5) in which Asperger's Syndrome was condensed into the general title *Autism Spectrum Disorder*. But researchers continue to use the titles *high-functioning autism* and *Asperger's Syndrome* to talk about individuals on the "*higher end*" of the spectrum. This distinction is important for the reader to keep in mind because this paper is about individuals with high-functioning autism on the spectrum. Appendix A has a complete DSM-5 description of ASD.

WHY: ASD is a neurological condition that should be considered at every stage of the legal process – mens rea, ability to consent to the police interview, competency to assist counsel, pretrial motions, voir dire of the members, educating the jury during the findings phase, arguments in findings, mitigation in sentencing, and appropriate post-conviction therapeutic treatment.

Part I: Autism and Child Pornography

ASD is a central dynamic to consider at every stage of the legal process when working with a defendant accused of accessing online child pornography.

Deeper Dive:

We begin with an important position paper that was crafted in 2008 by the leading ASD organizations at that time.

A. Principles for Prosecutors Considering Child Pornography Charges against Persons with Asperger's Syndrome

Preface

Among the difficulties faced by young persons afflicted with Asperger's Syndrome (AS) and their families is the misinterpretation of the atypical behavior of the AS patient as dangerous and criminal. AS, defined in DSM-IV, is an "Autism Spectrum Disorder" (ASD) typified by extreme social and emotional immaturity, the inability to "read" others or respond appropriately in social settings, lack of intuitive awareness of social/moral/legal constraints, and intense and narrowly directed repetitive activities. These features combine to create a risk of engaging in behavior offensive toward others but with no offensive purpose. These individuals tend to have the technical skills for computer use, to which they gravitate because, unlike social interactions which are unpredictable, whimsical, and semantic-guided, computers are predictable, logical, and syntax-guided. These are intellectually intact people, with good computer skills but extraordinary brain-based naivete, acting in social isolation, compulsively pursuing interests which often unknowingly take them into forbidden territory.

Accessing child pornography is not currently known to be a frequent behavior of young persons with AS, but enough cases have arisen to demonstrate the need for prosecutors to inform themselves of the condition and adopt a policy of restraint in the investigation and prosecution of such cases. Given the lack of social adaptation on the part of AS patients, interest in pornography as a means to explore ideas of sexuality and romance is expected. The exploration of this material on the internet or peer-to-peer networks will expose AS patients to child pornography which may arouse their curiosity. At these times AS is directly involved in the individual's obliviousness to the social and legal taboos surrounding child pornography, and the inability to intuit that the visual depictions are the product of any kind of abusive relationships. This behavior is not predictive of future involvement with child pornography or offenses against children. There is nothing inherent in Autism Spectrum Disorders, such as Asperger's, to make individuals inclined to sexual deviance of any kind. Their apparently deviant behavior is perhaps best understood within the diagnosis of "counterfeit deviance," as defined in the DM-ID. ("Diagnostic Manual -- Intellectual Disability (DM-ID): A Textbook of Diagnosis of Mental Disorders in Persons with Intellectual Disability") Persons with AS are far less likely to be predators than victims, because of their naivete and ineptness in interpreting or deflecting the advances of others, and their inability to initiate social contact with others or effectively direct or manipulate any social encounter.

Asperger's Syndrome is a lifelong disability which on its own creates substantial hurdles for the patient. Criminal prosecution, conviction and the typical sanctions imposed in such cases are not necessary to protect the public in the case of an AS patient, but they are imponderably harsh, cruel and debilitating to persons with AS and their families on whom they are dependent. Generally, these individuals are not a threat to society: it's the other

way around. AS patients are frequently the target of abuses, such as bullying, often from poorly chosen "friends."

With this in mind, we suggest that prosecutors adopt the following principles when confronted with those who suffer from Asperger's Syndrome are found to be involved with child pornography.

Principles

1. Young persons with Asperger's Syndrome (AS), despite average or higher intelligence and academic performance, have the social and emotional skills of children well below their own chronological age, and well below the minimum age for criminal prosecution in federal and state courts. AS individuals are neurologically impaired in their ability to appreciate the social/moral/legal unacceptability of their conduct or to intuit why the conduct is unacceptable; these are capabilities which state legislators and Congress presumed to inhere in the general population to whom the criminal laws apply.
2. In an interrogation setting the AS individuals may appear deceptive because of deficits in communication skills, such as the inability to make normal eye contact. At the same time they may in fact be over compliant with suggestions made by police officers. AS impairs the ability of offenders to respond with expressions of remorse to which prosecutors and judges typically look for reassurance in considering alternate dispositions of criminal matters.
3. AS is not a condition related to any sexual paraphilia (e.g. pedophilia) and is not a precursor thereto. Usually little more than giving explicit instructions is needed to prevent recurrence of the behavior. As persons with AS age, they may become better adapted and may present different behaviors than in their youth.
4. Prosecutors should take AS into account in determining whether to target, prosecute or seek a conviction in an apparent case of possession of child pornography.
5. Persons with AS experience lifelong difficulties. Young persons with AS are not able to live independently and need to live with their families – their parents and siblings. Therefore the sex offender registration and residency restrictions arising from a child pornography conviction would have a cumulative and disastrous effect in these cases, and on more uninvolved persons, than in other cases involving neuro-typical adults.
6. Prosecutors should be encouraged to defer criminal prosecution in cases involving young first offenders with AS who have no history of directly offending against children, or having produced or distributed child pornography, no clinical indications of pedophilia (other than accessing child pornography), nor history of prior offenses involving child pornography.
7. Prosecutors should encourage therapeutic intervention in cases of suspected child pornography use by such individuals and utilize probationary periods and deferred prosecutions to monitor compliance before considering actual prosecutions in such cases.
8. The Department of Justice and state prosecutors should keep data on the incidence of criminal investigations involving persons with AS and the manner in which such cases are resolved.
9. Expert AS resources should be sought out in local communities to assist law enforcement officers and prosecutors in understanding AS and evaluating the appropriateness of such cases for prosecution.

Sponsors: Individuals and Organizations
Ami Klin, Phd.
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ASPEN Asperger Education Network
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Michael John Carley, Executive Director
GRASP, The Global and Regional Asperger Syndrome Partnership, Inc.
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MAAP Services for Autism and Asperger Syndrome
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Asperger Syndrome and High Functioning Autism Association (AHA) Inc.

Carley, M.J., Gerhardt, P., Jekel, D., Klin, A., et al. (2008)
Principles for Prosecutors Considering Child Pornography Charges against Persons with Asperger's Syndrome.

In their excellent study Schöttle, et al (2017) offer important insights regarding ASD and sexuality/sexual behavior. Research finds a high degree of interest in intimate relationships and a high frequency of sexual behaviors among individuals with ASD. It is apparent that the social impairments characteristic of these disorders do not negate sexuality and its accompanying desires or behaviors. Some of their observations include the following.

- Inappropriate sexual behaviors are often an area of concern for individuals managing ASD because the sexual drives that emerge in adolescence are not accompanied by the socialization and understanding of social norms governing acceptable sexual behaviors that a typical peer will gain.
- Current research indicates a high rate of sexual behavior among this population and highlights that the general social impairments typical of the autism spectrum do not necessarily mean that individuals with these disorders have no interest in developing some kind of intimate relations with others.
- Many with ASD express a strong desire to have a romantic relationship yet have difficulty in establishing what is considered to be a typical "*reciprocal and intimate relationship*."
- Many high functioning ASD individuals indicate a desire for social contact and sexual relations, but their social disabilities may prevent the development of appropriate relationships.
- Although adolescents with ASD may lack the social abilities and communication skills to develop appropriate friendships and intimate relationships, their typical physiological development may lead to a desire for sexual intimacy, even in the face of social rejection. The lack of knowledge of appropriate social norms can lead to conflicts between the fulfillment of their sexual needs and socially acceptable sexual behavior.
- Nearly a third of people with ASD require intervention in the area of sexual behaviors.

Schöttle, Danielle, et al. (December 2017). Dialogues in Clinical Neuroscience. 19(4): 381-393

Creaby-Attwood and Allely (2017) note the following regarding ASD, sex offending and the courts.

- ". . . when the jury is unaware of the facts surrounding a defendant's ASD it fails to offer the safeguards that should be afforded. Sexualised behaviour can be misconceived and misinterpreted in light of the legal requirements for conviction." (p.78)
- ". . . deficiency in social awareness and interpersonal skills, . . . may therefore increase the risk of an accused that has an ASD to behave in a sexual manner. This in turn could lead a jury to believe beyond reasonable doubt that he has fulfilled all of the requirements of a sexual charge. The jury considering here the honest and reasonable belief of the defendant at the time of the sexual activity; behaviour that if witnessed in someone neuro-typical may very well, [have] led to a different outcome." (p.78)
- "We conclude that sexual behaviour in a defendant with an ASD often does not sit with the criminal definitions within the relevant statute. There will undoubtedly be defendants with an ASD who will understand their sexual behaviour is wrong, recognising fantasy thoughts linked with criminogenic behaviour, who will be rightfully convicted. However, Creaby-Attwood and Ince (2016) found that "medical diagnosis is now sitting as an uncomfortable bed-fellow with criminal law and sentencing in such cases." (p.78)

A psycho-legal perspective on sexual offending in individuals with autism spectrum disorder.
A. Creaby-Attwood, C.S. Allely. (2017). International Journal of Law and Psychiatry, 55, 72-80.

Kenneth Mogill has been a leading attorney for individuals with autism who have been charged with child pornography crimes. He notes;

> *To those who are unfamiliar with ASD—including litigators who have previously represented clients with other, qualitatively different mental status issues—developing a sufficient understanding of ASD and how one's client fits on the spectrum requires educating oneself about complex, highly individualized, and, at times, counterintuitive neurological, emotional, and social circumstances.*
>
> *To communicate effectively with the client's treater and/or potential expert witnesses, educating oneself about ASD also requires developing a basic understanding of the profound differences, including differences in appropriate treatment methods and modalities and the risks to the client of being treated by a therapist utilizing the wrong modality, between neurologically based and non-neurologically based conditions.*
>
> *Even though the client may be highly intelligent in terms of cognitive functioning, communicating with the client requires considering the ASD-related limits of the client's capacity to understand the ways of the world around him or her.*
>
> *Respecting and addressing the client's fears presents unusual challenges, including not just the client's different ways of understanding the world in general and the legal system but also the client's ASD-related tendencies to obsess about details and to be extremely uncomfortable with shades of gray.*
>
> *The client's fears and lesser ability to handle stress may profoundly affect overall case strategy, as these limitations may preclude counsel from proceeding to trial even where a viable defense exists.*
>
> *Opposing counsel are often ignorant about ASD, unaware of its neurological basis, unfamiliar with the significant implications of its neurological basis (in contrast with conditions that are not neurologically based), and potentially uninterested in becoming educated about ASD and its implications for the case.*

> *To date, with some notable exceptions, the legal system in general, including the criminal law system, has failed to develop a meaningful understanding of what ASD is, or how it is related to issues of criminal responsibility and sentencing policy. Very few judges, prosecutors, or defense attorneys have received either the necessary training or developed the necessary experience to address cases involving individuals with ASD appropriately.*
>
> Kenneth M. Mogill (2017). *Caught in the Web of the Criminal Justice System* (p. 110-111).

Mark Mahoney, noted criminal defense attorney who has experience in defending ASD individuals charged with criminal offenses, observes:

> From birth, a combination of neurological differences in the brain of one with autism conspire to blind the individual to learning from social interactions about the feelings and intentions of others, and the social mores that become second nature to typically developed individuals. As Ami Klin and his teams of researchers have shown, repeatedly, the individual with Asperger's simply does not see those countless cues in expression, intonation, and "body language" that give meaning to social interactions and understanding to communications.
>
> The difficulty in processing social encounters not only correlates with extreme isolation, but also with a severe deficit in the social learning ability needed to understand what is acceptable in public and private behavior. When, in their isolation, young men with ASD go looking on the internet to learn about sex and romance, they, like their peers, will look at pornography. But, when they come across child pornography, no "red flag" goes up, no filters are in place to tell them that, though depicting sex also, these are inappropriate to view—whether because of the origins of the material, or our collective sense of what is "normal" when it comes to sexual interests.
>
> I want to make clear that the issue is not that these individuals do not know that their behavior is illegal—which they do not. Rather, it is that they do not know that looking at underage images is any more "wrong" than looking at any other kind of pornography, behaviour which they would typically find embarrassing to discuss with their parents or others, but do not know is wrong in any greater sense.
>
> Tests of adaptive functioning (social communication) and sexual interest repeatedly confirm that these are individuals who are not deviant, but simply unaware of the social opprobrium attached to the sexualization of children, and who are also unable to intuit the abusive and cruel natter of the circumstances under which these images are created. They present what is best described as "counterfeit deviance"—they engage in behavior we consider deviant, without the mental understanding or blameworthiness we assume on the part of people engaging in the behavior.
>
> Equally important, those experienced in dealing with persons with autism will describe how their rigidity and "rule bound" nature make them generally assiduous in following the "rules," once they learn them. Research is now showing greater compliance with conditions of supervision by persons with ASD.
>
> Mark Mahoney (2017). *Caught in the Web of the Criminal Justice System* (p. 18-19).

1) Overview of Autism Spectrum Disorder

Autism Spectrum Disorder is a developmental disorder of varying severity that is characterized by difficulty in social interactions and communication and by restricted or repetitive patterns of thought and behavior. There are strong parallels between someone who has intellectual disability (mental retardation) and someone diagnosed with ASD. Those living with intellectual disability have degrees of difficulty with intellect, social functioning and self-care. Those on the higher end of autism don't have problems with intellect, but their social functioning and selfcare can be challenging.

Deeper Dive:

Ken Mogill, a defense attorney, notes:

> . . . Asperger's Syndrome is not a mental illness: It is a developmental disability…[that] begins at birth, although causality most likely occurred congenitally… Each stage [of development] is a foundation for the next stage. If a particular stage of development is not completed successfully or if something has an effect on the stage such that there is an arrest in the progression of the stage, future stages will be distorted, as well… The difference between mental illness and developmental disabilities is based on the difference in how the symptoms develop. Individuals with mental illness do not have a specific impairment from birth which affects their development. Their symptoms become manifest at later points in their life when certain biological triggers set off neurochemical processes that result in the symptoms that we associate with their mental illness… In individuals with Autism/Asperger's Syndrome, their development is affected from birth and it permeates all later stages of development, with a primary effect on their capability to communicate effectively secondary to an inability to process pragmatics.
>
> Kenneth M. Mogill (2017). *Caught in the Web of the Criminal Justice System* (pp. 121-123).

Erin Comartin, Ph.D. is a professor of social work with extensive experience regarding convictions and incarceration of individuals with ASD and sex offense. Caution, you might find the following quote a bit confusing. ***Asperger's syndrome*** and ***high-functioning autism*** is applied to someone who is high functioning in their independent living skills. ***Autism spectrum disorder*** represents those with the condition that are more severely affected and limited in their ability to live independently. Dr. Comartin's observations include (with added highlights).

> ***Asperger's syndrome (AS)*** is a developmental diagnosis related to an individual's brain functioning (Khouzam et al., 2004). The diagnosis, once separate but linked with autism in the Diagnostic and Statistical Manual of Mental Disorders (DSM), has now been combined on a continuum of related features, known as the ***autism spectrum disorder (ASD)*** (Happe, 2011). The hallmark characteristic of both disorders is the high level of social impairment for the individual (Khouzam et al., 2004). It has been emphasized that ASD is not a diagnosis of social pathology. Individuals diagnosed with a spectrum disorder do not have features of callousness or maliciousness found in antisocial disorders or personality disorders, but there is a true developmental delay impairing their ability to understand and interpret social cues, as well as understanding socially acceptable behaviors and social norms. Two additional diagnostic features shared by ASD and AS are repetitive behaviors and intense and restricted interests. There are also two features generally not found in individuals diagnosed with AS, but commonly found in individuals diagnosed with ASD: delays in language development and lower cognitive capabilities (Mesibov and Shea, 2001).
>
> Social impairments in individuals with AS are particularly important to consider when

thinking about the way they interpret potentially criminal behavior, and in the way they deal with the consequences of sex offender management policies. Thus, a description of these features of the diagnosis are important. AS causes a delay in the individual's ability to understand others' needs, perspectives, and feelings. This is commonly noted as a lack of empathy on the part of someone with AS (Roth and Gillis, 2015). Generally, when noting that an individual lacks empathy, society commonly construes this as antisocial behavior, in that it is malicious in nature. For individuals with AS it is a function of their diagnosis, not antisocial. Clinical criteria suggest individuals with AS do not see, and cannot accurately interpret, social cues. They are not skilled in reading others' facial expressions, body language, or reactions (Mahoney, 2009). They also fail to appreciate socially acceptable behavior and social norms. For example, they do not understand that a lack of response from a message sent to a love interest means they do not want to continue a relationship. Finally, individuals with ASD are delayed in their social and emotional development, causing them to act and appear younger than their age. Their intense interests and repetitive behaviors cause them to be perceived by their peers as outcasts.

A defining difference between individuals with AS not commonly found for others diagnosed with ASD is their desire for social interaction. Both have deficits in this area; however, individuals with AS desire friendships and romantic relationships, whereas individuals with ASD generally do not desire social interaction (Mahoney, 2009). Since individuals with AS want and desire social interaction, but are isolated and shunned, they commonly experience depression because they do not have the skills to acquire such relationships (Whitehouse et al., 2009). A final AS characteristic is the lack of expressive use of language and the inability to carry out a conversation that is reciprocal in nature (Mahoney, 2009). Although their language skills are not delayed, the way they use language to communicate is concrete and explicit. Due to their repetitive and intensely focused interests, they are likely to dominate a conversation by discussing only the things they are interested in while leaving no time for what others wish to talk about. The social isolation they feel, combined with the social interaction they desire, leads many individuals with AS to turn to the computer for social relationships.

Erin Comartin (2017). *Caught in the Web of the Criminal Justice System* (pp. 292-293)

Gary Mesibov is a psychologist and professor. Melissa Sreckovic is a professor of special education. Both are experts in ASD. They state.

Autism spectrum disorder is a lifelong, neurodevelopmental disorder characterized by challenges with social communication and interaction, and the presence of narrow or restricted behaviors, concepts, interests, and activities (American Psychiatric Association [APA], 2013). The cognitive, social, and communication impairments associated with ASD greatly affect an individual's ability to function independently and the overall quality of life. Although all individuals with ASD demonstrate some level of difficulty within each of these areas, the degree to which their problem-solving and learning, independence, and relationships are affected varies from person to person.

Autism is a neurological disorder, meaning that the brain of an individual with ASD organizes, processes, and uses information differently to that of an individual without ASD. Many individuals with ASD have problems with central cohesion, which means they focus on specific details and lose sight of "big picture" concepts. They often have difficulty applying skills and information to novel situations or using previously learned information to problem-solve; these are examples of an ability called fluid reasoning. Working memory, or the ability to hold and manipulate multiple pieces of information in conscious

thought at one time, also is often impaired. Certain components of executive functions (EF) such as directing and sustaining attention, planning, organizing, and inhibiting behavioral responses are also challenges for many individuals with ASD. Fluid reasoning, working memory, and EF abilities rely on communication between several regions of the brain.

Recent neuroimaging studies provide evidence that there is a disruption in brain connectivity—the communication—between different regions of the brain in individuals with ASD. Just et al. (2004) proposed the underconnectivity theory of autism and argue that the behavioral characteristics of ASD are caused by a disruption in communication between the frontal and posterior brain regions. For example, individuals with ASD have difficulty with theory of mind (ToM), which is the ability to understand the perspectives and intentions of others. During one neuroimaging study, when participants with ASD completed a task requiring them to make inferences about the intentions of animated geometric figures, the functional connectivity between frontal and posterior ToM areas was lower compared with individuals without ASD (Kana et al., 2009). Limited communication between brain regions may be explained by abnormalities in white matter in individuals with ASD (Schipul, Keller, and Just, 2011).

Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System* (pp. 75).

John Douard is a professor of cognitive psychology and Pamela Schultz is a professor of communication studies.

Baron-Cohen (1995, 2011) has isolated a complex network of neural processes that, when functioning within a normal range, enable us to know what it is like to be another person, to experience another's pain, to respond to another's joys and sufferings, and to see the world from the other person's point of view. Those subjective experiences are also an essential capacity for learning to control our human environment, which is made up of potentially unpredictable persons like ourselves. These mind-reading skills are independent of general intelligence levels. We can control our human environments because we can imagine what it is like to be other people and can predict their behavior with some degree of facility (Baron-Cohen, 1995, p.4). People with AS, however, do not seem to have such facility and we often cannot predict their behavior (Baron-Cohen, 1995, pp.59–84). Attribution of mental states "is our natural way of understanding the social environment" (Baron-Cohen, 1995, p.4).

There is an obvious irony here: people with AS seem to require behavioral routines to reduce stress, which should make their behavior more predictable than those who can respond to circumstances with greater spontaneity. But part of our conception of personhood with a full range of experiential capacities is precisely that our behavior, and especially our use of language, is intentional and responsive to the variety of circumstances in which we find ourselves.

That is not to say that people with AS do not have experiences, but that neurotypical people cannot experience the world as do people who process information in atypical ways. People with AS are like Nagel's bat; their senses and perceptions are moving to a rhythm that is difficult, if not impossible, for us to imagine because it is so different from our own. Baron-Cohen has distinguished people who lack the cognitive and affective capacities for empathy, but can develop other skills that enable the development of a moral conscience, from those who lack even those alternative routes to morally responsible conduct. He calls the latter "zero-negative" because they lack a moral conscience. He calls the former "zero-positive" because they need to construct rule-governed patterns of conduct to protect

themselves from intense levels of stress and anxiety, and those rules often include moral rules (Baron-Cohen, 2011, pp.111–141). These repetitive or routine-based behaviors that people with autism exhibit should show that control is as important to them as it is for the rest of us, and hence prove that they are not so very different in the end. Yet until fairly recently, their lack of ToM and their routine, repetitive behaviors, in addition to myriad other manifestations of autism, have led us to view people with AS as abnormal, alien, and, in some circumstances, even frightening.

John Douard and Pamela Schultz (2017). *Caught in the Web of the Criminal Justice System* (p. 353).

2) Autism Spectrum Disorder and Sexual Development

Individuals living with ASD typically experience sexual development and drives similar to peers without ASD. But social disability can often hinder their ability to develop relationships with others to express their sexuality in a healthy manner.

Deeper Dive:

Sullivan and Caterino (2008) have written on sexuality and sex education of individuals with autism spectrum disorders.

> Individuals with autism spectrum disorders generally undergo normal physical development and emergence of secondary sex characteristics at puberty, but the emotional changes and increasing sexual urges that accompany adolescence may be delayed or prolonged. A substantial proportion of individuals with autism, 10-30%, experience increased behavioral problems during adolescence, especially those with mental retardation (Eaves & Ho, 1996). Inappropriate sexual behaviors are often an area of concern because the sexual drives that emerge in adolescence are not accompanied by the socialization and understanding of social norms governing acceptable sexual behaviors that a typical peer will gain. Because individuals with ASD are not generally involved in peer groups, they are excluded from the valuable learning opportunities that shape people's sexual behaviors. Understanding the issues surrounding the sexuality of persons with autism and how to teach healthy, socially-appropriate socio-sexual behavior becomes increasingly important as they have more opportunities for inclusion in educational and community settings. Identification rates of autism are increasing and most children with autism attend public schools regardless of their level of functioning (Eaves & Ho, 1996).
>
> Previous public perception of the sexuality of individuals with autism has been found to be largely negative and according to current data, largely inaccurate. In the past, such individuals were regarded as unaware of their sexuality, as uninterested in intimacy, and as using relationships only to satisfy their own needs. Early research suggested that persons with autism had no drive for intercourse (DeMyer, 1979) and that few had sexual problems (Dewey & Everard, 1974). However, current research indicates a high rate of sexual behavior among this population and highlights that the general social impairments typical of the autism spectrum do not necessarily mean that individuals with these disorders have no interest in developing some kind of intimate relations with others (Haracopos, 1995; Haracopos & Pedersen, 1992; Hellemans, Colson, Verbraeken, Vemeiren, & Deboutte, 2007; Kontstantareas & Lunsky, 1997; Ray et al., 2004; Ruble & Dalrymple, 1993; Stokes & Kaur, 2005; Van Bourgondien, Reichle, & Palmer, 1997). In reality, adults with autism do not appear to experience any less sexual interest than do adults with developmental disabilities (Kontstantareas & Lunsky, 1997; Ousley & Mesibov, 1991).
>
> Most individuals with ASD, approximately 75%, display some kind of sexual behavior and most masturbate (Haracopos & Pedersen, 1992; Hellemans et al., 2007; Van Bourgondien et al, 1997). Many seek out physical contact with others (Hellemans et al., 2007). In a study of 81 Danish adults with autism living in group homes, 74% demonstrated sexual behavior including masturbation and sexual behavior with others (Haracopos & Pedersen, 1992). Masturbation was more common in males than females, while females showed more sexual behaviors towards others. In this study, 10% of the subjects expressed a strong desire to have a romantic relationship, yet, none had established what the authors considered a typical "reciprocal and intimate relationship." The study also found that 35% of the residents expressed a sexual interest in both sexes and 9% showed an interest in same

sex individuals. Van Bourgondien and colleagues (1997) surveyed the parents of 89 individuals with both autism and some degree of mental retardation and found that 34% engaged in physical behavior with another individual such as handholding, hugging, kissing, touching, and attempted intercourse. This behavior was three times more likely in nonverbal individuals. This study also found that those persons who had not received sex education were more likely to masturbate while those who had were more likely to engage in person-oriented behaviors. Interestingly, Ousley and Mesibov (1991) indicated that men with autism were more likely to report sexual frustration than women with autism.

Research by Stokes and Kaur (2005) found that many high functioning autistic (HFA) individuals indicated a desire for social contact and sexual relations, but that their social disabilities may prevent the development of appropriate relationships. This study found that compared to their typical peers, adolescents with HFA displayed poorer social behaviors, had fewer privacy related behaviors, and had less knowledge of privacy issues and sex education. In addition, their parents reported more concerns about their children's sexual behavior.

The average fifteen-year-old with HFA displayed the sexual behavior characteristic of typical ten-year-olds. However, more recent research has found that high-functioning individuals show normal, age-appropriate behaviors even though appropriate social skills were not present (Hellemans et al., 2007).

Parents of children with autism typically express concerns about their children's developing sexual behavior. For example, in Ruble and Dalyrymple's (1993) survey of 100 parents of children with ASD, 75% of the parents feared that their children's common behaviors may be misinterpreted by others as sexually deviant. Inappropriate fixations and obsessions have also become a concern based on case reports of stalking, frottage, fondling, paraphilias, compulsive masturbation, and sexual assault, although such reports are quite rare (Ray et al., 2004; Realmuto & Ruble, 1999; Williams et al., 1996).

There is also a great deal of concern regarding the high risk of sexual victimization for this population. As many as 16 to 25% of persons with autism have been sexually abused (Koller, 2000; Mandell, Walrath, Manteuffel, Sgro, & Pinto-Martin, 2005). Their intrinsic social and communication impairments, as well as their lack of exposure to appropriate peer interactions, may leave these youth at risk for misinterpretation of social cues and sexual behaviors of predators. In addition, victims of sexual abuse were more likely to display serious consequences such as engaging in sexual acting-out, self-injurious or suicidal behavior, and running away and they were more likely to be hospitalized in a psychiatric institution (Mandell et al., 2005).

Although adolescents with ASD may lack the social abilities and communication skills to develop appropriate friendships and intimate relationships, their typical physiological development may lead to a desire for sexual intimacy, even in the face of social rejection. The lack of knowledge of appropriate social norms can lead to conflicts between the fulfillment of their sexual needs and socially acceptable sexual behavior. It is the high frequency of inappropriate public behaviors that has raised concern for many parents and service providers.

Ruble and Dalrymple (1993) report that approximately 65% of individuals with autism touch themselves in public, 23% masturbate in public, and 28% remove their clothing in

public. Others studies have indicated that as many as 52% of individuals with autism masturbate in public and 90% display sexual behaviors that are directed towards strangers or other inappropriate individuals such as caregivers or service providers (Haracopos & Pedersen, 1992). Some researchers have posited that this behavior may be due to impairment in social awareness and social judgment or to the predisposition toward self-stimulatory behavior, while others have suggested that it may be due to the lack of socially appropriate outlets (Realmuto & Ruble, 1999).

Such displays may jeopardize the community integration of individuals with ASD and placements in least restrictive environments. Hellemans et al. (2007) reported that nearly a third of their sample required intervention in the area of sexual behaviors and emphasized the importance of sex education.

In summary, research indicates a high degree of interest in intimate relationships and a high frequency of sexual behaviors among individuals with ASD (Haracopos & Pedersen, 1992; Hellemans et al., 2007; Van Bourgondien et al, 1997). It is apparent that the social impairments characteristic of these disorders does not negate sexuality and its accompanying desires or behaviors. There is a great need to understand the sexuality of these individuals and how better to serve them in areas related to this domain as this area is largely overlooked in research and practice. Much of the present literature is limited by small samples and a focus on institutionalized populations. Moreover, the participants generally had presented with a wide range of cognitive abilities, making it difficult to distinguish between the impact of ASD and mental retardation (Hellemans et al., 2007). Future research is needed that examines more diverse samples, including adolescents with various levels of cognitive functioning and communication skills who are attending public or specialized schools. There is also a need to understand what constitutes appropriate sexuality education for these individuals and their families so that their basic needs and rights are respected, and that maladaptive behaviors can be prevented and corrected.

Sullivan, Amanda and Caterino, Linda (2008). *Addressing the sexuality and sex education of individuals with autism spectrum disorders.* Education and Treatment of Child, Vol. 31, No. 3.

Mesibov and Sreckovic discuss ASD difficulties in socialization, relationships and limited sexual knowledge.

Individuals with ASD are significantly delayed socially compared with their same-aged peers, have few friendships, and have limited sexual knowledge. These challenges, . . . often result in their searching for information about sexuality on the internet.

Social Delay

Individuals with ASD have significant deficits in social communication and interaction (APA, 2013). Their social-communicative skills may improve throughout adolescence and into adulthood; however, as they get older, increasing demands are placed upon them and their rate of improvement is not sufficient to accommodate for the new demands. Social and emotional limitations can greatly impact one's sexuality in the form of understanding the perspectives of others, forming relationships, expressing sexuality appropriately, and engaging in appropriate sexual behaviors. Even for individuals with ASD with average to above-average IQs, their social intellect is far behind their chronological and mental age. In fact, researchers found in a sample of children and adolescents with ASD with average to above-average IQ that their mean chronological age was 12.4 years, while their mean interpersonal social age was 3.2 years (Klin et al., 2007). These results indicate that while

these children and adolescents have intact cognitive ability, they have significant social deficits. The data also indicated that, as these individuals age, the gap between the communicative and social abilities of individuals with ASD and of their peers without ASD increases. Although this does not mean that individuals with ASD are losing social skills over time, it does mean that the gap between individuals with ASD and their same-age peers without ASD widens as they move into adolescence and into adulthood (Klin et al., 2007).

Difficulties with Relationships

Recent research indicates that individuals with ASD have reported fewer friendships and greater feelings of loneliness than their peers without disabilities, and have received more rejection nominations by their peers (Locke et al., 2010).

Limited Sexual Knowledge

Throughout adolescence individuals learn about sexuality through interactions with peers, observing others, through the media (Koller, 2000), by reading books and magazines, and through school-based sexual education programs. Because individuals with ASD often have limited interactions with their peers, their primary sources of sexual knowledge typically include observing others, exploring on the internet, and school-based sexual education curriculums. This often results in inaccurate or incomplete sexual knowledge. Indeed, researchers have found that individuals with ASD demonstrate limited sexual knowledge compared with their counterparts without ASD (Mehzabin and Stokes, 2011). Individuals with ASD have unique learning needs; they are literal thinkers and therefore require very direct and explicit instruction on what is and is not appropriate social and sexual behavior. Although it is not typical for adolescents and young adults with ASD to have abnormal sexual desires, they may tend to express or pursue normal interests in a manner that might be considered outside social convention for someone of their chronological age. Their blunt language and gestures may make them appear to be hyper-sexual, when they are just unaware of the social conventions (Mahoney, 2009). When this occurs, very specific instruction about appropriate behavior in specific situations is effective because, as a group, these individuals can be very rule-bound when they have the benefit of clear explanations and the chance to practice and rehearse appropriate behaviors.

Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System* (pp. 81-84).

Temple Grandin has been a pioneer in autism awareness. She describes the problem adults with autism must confront as their bodies mature and sexual desire becomes as paramount for them as it is for people who function within the normal range of capabilities:

> Because of autism's skewed neurology, those with Autism Spectrum Disorder take in the world around them physical object by physical object—floor, ceiling, table, chair—with no sense of the whole picture, and no understanding that along with the chairs and tables there's a non-physical reality. As a result, they literally cannot see the forest for the trees, nor understand what we mean when we use the expression. This double lack inhibits their ability to grasp the idea behind a social exchange or to understand that the exchange is fluid and cannot be controlled precisely. Given these limitations, ASDs function best by memorizing each separate moment, much as you would memorize the spelling of a word. And they're good at this, very good… Though now equipped with a full-grown body and full-grown sexual drive, many ASD males are stuck emotionally at a prepubescent age. They look like grown men, but inside they're only 10 years old. (Cutler, 2013)
>
> John Douard and Pamela Schultz (2017). *Caught in the Web of the Criminal Justice System*, p. 353

3) ASD and Computers

Bottom Line:

Because of strong intellect, social disability and obsessive focus, people with high functioning autism are often attracted to computers for social interactions and obsessive behaviors.

Deeper Dive:

Who is accessing and distributing child pornography, and how are they doing so? In contemporary society, child pornography is most frequently accessed via the internet (Berlin and Sawyer, 2012). The internet offers free easy access to child pornography (access that is often far too easy for vulnerable populations, such as those with mild intellectual disability or autism). Because such access is so often free, contrary to claims that are sometimes made, it does not ordinarily "fuel the profit motive" to produce child pornography.

The internet affords those who might access child pornography an illusion of anonymity, with the sense that others are not going to be aware of their actions or their identities. That sense can be disinhibiting of sexual impulses. In addition, for many, the act of accessing child pornography via the internet may begin to feel more like a game than an activity with potential real-life consequences. Under such circumstances, it can be very easy for such individuals to rationalize that, because certain images are already on the internet, "nobody is going to be harmed" if they simply continue viewing them while alone in the privacy of their bedrooms.

Today, many people access child pornography via file-sharing networks (United States Government Accountability Office, 2003). Those systems can allow images to flow into and out of individual computers that have become linked to such networks. If a given individual has shared images by allowing them to flow out of his computer into another computer on such a network, he can be charged criminally with the "distribution" of child pornography. Thus, most individuals arrested for accessing child pornography via a file-sharing network can be charged with receiving, possessing, and distributing it. Fred S. Berlin (2017). *Caught in the Web of the Criminal Justice System*, pp. 269-270.

Mesibov and Melissa Sreckovic observe:

> Computers are irresistible to individuals with ASD, because they provide an avenue to communicate and socialize with other people, which can be extremely challenging for them in person. Individuals with ASD have difficulty understanding the communications of others, which can impact their ability to comprehend and communicate effectively. Receptive verbal communication is challenging for them for several reasons. First, the speed of communication presents problems. People with ASD are often slow processors of language, so they need others to speak very slowly, clearly, and directly to them if they are to understand what is being said to them, especially if it is complex. Second, their visual skills are much stronger than their auditory skills, so the verbal emphasis on spoken language does not allow them to use their visual strengths. Frequently in secondary schools or colleges when they are allowed special accommodations for their differences, they are given extra time to take exams and visual outlines to follow during lectures so they can understand what is happening more easily. In addition, they also are quite literal and have difficulty with general phrases, idioms, or language that is not clear, direct, and specific. Interacting with more than a single person also can be challenging because the changes from one speaker to another are often hard for them to process and follow. School reports frequently mention problems with slow language-processing speed and difficulties with language comprehension. When using computers, however, individuals with ASD can process information at their own speed and take in information visually one piece at a time.

> As more and more people with ASD are being educated in mainstream settings alongside their peers without disabilities, their interest in other people and desire for closer friendships and relationships has increased. Although their social skills are improving, the improvement is not sufficient for them to successfully achieve the kind of social interactions they desire, especially with members of the desired sex. As a result, they withdraw more and more into themselves. Over the past decade, the computer has become an important refuge for this group in general. As clumsy and inept as they seem to be in social relationships, the computer is something they can figure out and use because of the concrete, specific, and step-by-step linear thinking that it rewards. In other words, people with ASD think and reason in ways very similar to how computers think and reason. The internet has provided a means for people with ASD to engage in social interaction through email, discussion groups, and web pages. It provides a way of engaging with others without the confusion and subtlety of the nonverbal social messages that this group finds so difficult to understand in face-to-face interactions. The internet is excellent for these individuals, because they are intellectually intact and have good computer skills, but they are incredible naïve about how to act in social situations. The internet is often used by people with ASD as a tool for learning basic social skills and to gain information about sexuality through observing others engaging in social interactions and sex.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 79-80.

Mesibov and Sreckovic continue:

> Intense Absorption in Circumscribed Topics.
>
> An intense absorption in circumscribed topics is a characteristic of ASD involving restricted, repetitive, and stereotypical patterns of behavior, interests, and activities. These can include restricted patterns of interest that are abnormal in intensity or focus. With adolescents and adults with ASD, the most common of these behaviors is the restricted and intense absorption in narrow topics. . . Unfortunately, some of the objects individuals with ASD often become obsessed with are now made into pornographic images and videos, and made freely available on the internet. For example, many individuals with ASD develop an intense interest with Thomas the Tank Engine from an early age and many adolescents and adults with ASD are intensely interested in animae. Both Thomas the Tank Engine and anime pornography are available on the internet. Therefore, this may be one avenue through which they are exposed to child pornography (e.g. via pop-ups).
>
> For people with ASD, the internet in conjunction with sexuality can result in what Mark Mahoney calls a "lethal combination" (Mahoney, 2009). These individuals often have considerable technical skills about how things like computers work and a tremendous naivety about the larger picture, such as whether they are sharing or transferring the files with others. Their naivety also extends to our culture's attitudes and rules about sexuality. Child pornography is one of those topics that many adults with ASD have more recently become involved with. Some individuals with ASD may accumulate large amounts of pornographic material and keep what they collect as part of their ritualistic nature. This does not mean that they are more likely than the general population to approach young children or engage in sexual exploitation of them—in fact, the data are clear that they are much less likely to engage in these behaviors than typical adults and, in fact, very rarely do so (Mahoney, 2009; Tantam, 2003). Once they access child pornography (whether they access it trying to learn about sexuality, meeting their sexual needs, or by clicking on a pop up), the individual with ASD likely accumulates large amounts of pornography without focusing on broader issues like where and how they got those files, who else has access to

them, and what the implications might be for the children who are posing.

Incomplete Understanding of Computers

Although, as a group, adults with ASD have good technical skills for using computers, their technical skills with computers are not always accompanied by a thorough understanding of all aspects related to how these machines work. Rather, as previously discussed, these individuals have very narrow interests and often become consumed with one piece of a larger puzzle and therefore do not understand how the whole puzzle works—just like a compulsive interest in maps does not always lead to an ability to find different streets or places, or a strong interest in kitchen appliances is not necessarily accompanied by knowing how to cook a meal. Individuals with ASD collect files and pass them on to others without realizing that is what they are doing because they often are narrowly focused on the complicated computer activities that they are initiating and the large amount of data they are collecting, and not on the larger issue that the files they are accumulating might be passed on to other people, through an automatically downloaded Trojan horse, as was the case with Nick Dubin.

Further, given that individuals with ASD often follow rigid routines, they are likely to continue to find images and download them in the same format each time they explore on the internet. So the user with ASD may not even have intended to look for child pornography in the first place, but if that is what showed up on the screen from that point forward, s/he will follow the same routine. Moreover, because of their naivety, when pop-up boxes appear on the computer screen asking the user to "click here," they are likely to click the box. As a group, these individuals are often very trusting and naive and it would not occur to them that clicking a link that asks them to click on it would lead to something illegal. In fact, given their literal and trusting nature, many individuals with ASD would probably ask, "Why would someone say to click on the link if it is illegal?" Throughout this process, it is very unlikely that the individual with ASD understands that downloading child pornography is a crime for several reasons, which are described below.

Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 85-86.

Douard and Pamela Schultz note:

Like other autistic spectrum disorders, AS is a neuro-developmental disability characterized by deficits in several parallel neural processing systems expressed in a pattern of atypical behavior. It usually begins very early in life when the brain is still forming and has a high degree of plasticity (Baron-Cohen, 2011, pp.116–120). AS describes those people on the spectrum who are high-functioning and often quite verbal, who may pursue higher education, careers, and marriage, and who live semi- or fully independent lives. Most importantly for our purposes, however, people with AS have difficulties in cognitive and affective empathy, or the ability to successfully attribute cognitive and emotional states to others. Shortly we will examine that capacity in more detail. At this point, we emphasize that people with AS find it difficult, or even impossible, to engage in mundane social interactions and communication, and to adjust to change. Thus, people with AS may engage in narrow, repetitive behaviors, and disturbances in their routines may result in public emotional meltdowns and cognitive discontinuities that are socially disruptive and even frightening, both to themselves and to those around them. Scholars generally agree that deficits in "social-emotional reciprocity characteristics can explain to some extent aggressive conduct, including criminal activities" (Sevlever, Roth, and Gillis, 2013, p.192). Prevalence of such conduct in criminal populations, and especially sexual offenses, is not well known at this point, but what statistics we have suggest that

people with AS are less likely to commit crimes than people who are neurotypical (Mahoney, 2009, p.29). It is important to stress that the sex-offending behavior we are considering here - illegal downloading and viewing of images of children - does not involve aggression. But because people with ASD have limited intimate relationships, they have few sexual outlets (Sevlever et al., 2013, p.194). As we will see, because their general intelligence is not affected, and they are, if anything, bound by rules that structure their experiences, individuals with AS may be hyper-moral. They may also, however, run afoul of the network of rules—including criminal laws—that have evolved to regulate the conduct of those of us who are neurotypical (Baron-Cohen, 1995). For example, the tendency of people with AS to engage in repetitive focused behavior may lead to focusing on downloading pornographic images as an expression of sexuality (Higgs and Carter, 2015, p.115).

Because they may have an emotional age that is younger than their physical development, some, though not all, adults with AS are far more comfortable interacting with prepubescent or pubescent children, and this can include sexual exploration. Relative to their neural wiring, this is normal. Moreover, the computer has become essential to the education, communicative capacities, and entertainment of adults with autism. As computer scientists and philosophers have shown, computers are extensions of our cognitive capacities, and this also applies to individuals with AS (Clark, 2008). We should not be surprised, then, when adults with AS are fascinated by and prone to downloading computer images of children engaged in sexual behavior. Because of their particular skill set, they often are exceptionally proficient computer operators, and the virtual world of the web is a predictable and comfortable setting for experimenting with images they can control.

Pornographic images are nearly unavoidable for people whose primary social interactions are computer-mediated virtual interactions. As Mahoney points out, however, the distinction between ordinary pornography, which is not illegal to view or download, and child pornography is far less clear for somebody with AS than it is for neurotypical people (Mahoney, 2009, p.39). That viewing sexualized images of children may be harmful to the children depicted may also not be apparent to someone with AS, because, after all, they are literally just pictures. Moreover, we live in a culture that sexualizes children so thoroughly that some neurotypical men may well find images of very young-looking pubescent females at least mildly erotic. Some men with AS may find it difficult to delineate legally permissible images from illegal images.

However, there are no exceptions to child pornography laws for adults with AS, so they are treated by the courts, by the media, and by politicians as sex offenders. In short, lumped with neurotypical sex offenders, they are targets of the moral panic over sex offending that results in complex, costly, and utterly futile sex offender laws (Douard and Schultz, 2013). Rather than receiving the education/treatment to cope with their physical maturity responsibly, they are punished.

. . . no reasonable arguments exist for applying the punishment regimes to which we subject sex offenders, whether neurotypical or not. Most importantly, perhaps, is the stigma of being labeled sex offenders that follows adults with autism throughout their lives, a stigma that amplifies the stigma of the autism spectrum label itself. The source of the latter stigma has not, in our view, been adequately analyzed in terms of the distinguishing characteristic of personhood: that in our everyday lives we have points of view, and point of view is a

necessary condition of empathy.

John Douard and Pamela Schultz (2017). *Caught in the Web of the Criminal Justice System*, p. 353

Mesibov and Sreckovic describe:

> Behaviors and concepts related to sexuality are sometimes confusing and difficult to interpret for those observing adolescents and adults with autism spectrum disorder (ASD). While individuals with ASD usually develop biologically and physically close to the same speed as adolescents without ASD, they are typically delayed by at least five years in their sexual and social-emotional maturity. Their significant delay in sexual and social-emotional maturity coupled with very limited social and sexual experiences and friendships drives these individuals to use the computer as a vehicle to learn about sexuality in the privacy of their own homes. Lack of information and sexual education programs also increases the risk of using pornography as a reference. Unfortunately, child pornography presents the "perfect storm" for individuals with ASD (Mahoney, 2009); specific characteristics inherent in ASD make computers especially attractive and engaging to them and vulnerable to invitations to access child pornography without understanding that their actions are potentially illegal and harmful to young children. With their lack of social skills and extreme social naivety, individuals with ASD are easy targets to be manipulated and, once engaged in the criminal justice system, struggle immensely to advocate for themselves and navigate the criminal justice system.
>
> Gary Mesibov and Melissa Sreckovic Caught in the Web of the Criminal Justice System (pp. 30-31)

> As with all individuals, brain differences present areas of strength and areas of challenge for individuals with ASD. Areas of strength may include strong visual processing skills, rote memory abilities, and the ability to concentrate on narrow topics of interest and become an "expert." Particular areas of challenge make individuals with ASD vulnerable to accessing child pornography and explain why most individuals with ASD do not understand that downloading child pornography is illegal. These areas of challenge are described below and explain: (a) why individuals with ASD are attracted to computers; (b) why they seek alternative methods to explore sexuality; (c) how they get caught up in child pornography once they are on their computers; (d) why they do not understand the criminal responsibility of accessing child pornography; and (e) why they are rarely dangerous to children. The implications for understanding how these characteristics impact an individual with ASD's actions to view and download child pornography are also discussed.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, (p. 79).

Sugrue notes:

> For many adolescents and adults on the spectrum, the internet becomes the ideal solution because it has already become their preferred conduit to the outside world (Attwood, 2007). Threatened by interaction with others, they find online activity a comfortable way to engage faceless individuals for gaming purposes or discussing shared quirky interests. By means of their trusted computer they are also able to explore their sexual interests. The internet becomes their primary sex educator, albeit a misleading and incompetent educator. They encounter pornography that excites them and provides them with satisfaction, without risking the ridicule and rejection that can occur in real life. The compulsivity of their ASD may cause them to become obsessed with the material, prompting them to spend more and more time online searching for explicit erotica. Inevitably, their compulsivity will lead them to extreme sexual content including, in many cases, child pornography. Their characteristic naivety and lack of social maturity prompts them to disregard any warning that certain pornography is wrong or inappropriate. Instead, in classic black-and-white

thinking, they easily conclude that if it is allowed on the internet, it must be OK, or at least must not be so bad. And given their characteristic lack of empathy and inability to discern what other people are thinking or feeling, they have little or no awareness of what reality lurks behind the pictures and videos – that real children are experiencing terrible abuse.

Dennis P. Sugrue (2017). *Caught in the Web of the Criminal Justice System*, (p. 137).

PART II: Applications to Your Case

In this section we'll explore how to apply research finding regarding Autism Spectrum Disorder in your case. This includes case preparation, plea negotiations, pretrial motions, findings/trial, and sentencing.

1) APPLICATION: Case Preparation

The single most important step in your case begins with *you*. When you first sit down with a client who has been charged with CP or a non-contact 120 (exhibitionism, voyeurism, stealing panties, rubbing up against strangers (frotteurism), etc., pay attention to your perceptions.

Deeper Dive:

Individuals with ASD will feel neurologically "different". They present varying degrees with many of the following characteristics:

- problems with eye contact; facial expressions and body posture may seem odd or out of context
- being oblivious to the emotional context of a discussion or situation
- communication deficits - speech may be stilted, non-spontaneous, or at times idiosyncratic
- tendency to adhere rigidly to rules and to be concrete and moralistic in their understanding of right and wrong
- mind-blindness, often referred to as "theory of mind" ASD individuals have a difficult time appreciating what others might be thinking or feeling
- lack of empathy, largely the result of their mind-blindness; it is difficult to feel empathy for another's misery if a person has little ability to discern their misery
- difficulty responding emotionally in an interpersonal relationship
- social isolation due to repeated rejection and ridicule as a result of their idiosyncrasies
- difficulty with impulse control
- inability to catch the subtleties of sarcasm or humor and a tendency to take a figure of speech literally
- difficulty being flexible in their routines and rituals; finding change very difficult
- extreme social and emotional immaturity and naivety

Childhood history of . . .

- delays in motor development (e.g. clumsiness) and repetitive behaviors such as arm flapping or whole body movements
- sensory dysfunction such as being hypersensitive to tactile stimulation and easily distracted by bright lights and loud sounds
- problems with central coherence - that is, they become hyper-focused on details and have difficulty stepping back to see the "big picture"; this often manifests as black-and-white thinking. • problems with fluid reasoning - that is, they find it difficult applying principles or lessons previously learned to solve new problems.
- often a childhood history of being bullied
- restricted interests, behaviors, activities, and concepts
- tendency to be over-focused or preoccupied with a single topic
- compulsive, repetitive behaviors and self-stimulation
- comorbid conditions including ADHD, anxiety, depression, and obsessive-compulsive disorder (OCD).

Be sure to ask your client if they were ever diagnosed with autism, ADHD or obsessive-compulsive disorder. Consider talking with your client's mother about your client's childhood and

development. But you should know that persons with high functioning autism can often go undetected for the condition.

A. Getting a Forensic Expert

I recently assisted defense in a non-contact 120 case where the defendant was clearly high-functioning autistic. Government had retained the services of an experienced, well-respected forensic psychologist. I was disappointed to learn that he knew little about autism as it relates to sex offense, appropriate evaluation tools, or future risk. The point is – not just any forensic psychologist will fit the bill. You need to find someone who knows the ins-and-outs of autism and sex offense. Take the time to interview/email several experts to see who really knows these issues.

These cases often require expert testimony regarding the nature of an autism spectrum disorder (ASD) and its bearing on certain legal issues such as diminished or lack of criminal responsibility, competency, determination of sentence under existing guidelines, ineffective assistance of counsel, Miranda compliance, and risk assessment."

Lawrence A. Dubin and Emily Horowitz (2017). *Caught in the Web of the Criminal Justice System*, (p. 25).

B. Evaluating for Autism

Early in your case you will want to arrange for a psychological evaluation to identify current autism in your client. Options to consider:

Local Evaluation: You can do this with military resources. But if you want to keep the evaluation hidden from the prosecutor, cyou might want to have it done through a civilian evaluator. Explore locally for psychologists or neuropsychologists who have this specialty. Consider having your client pay out-of-pocket so that the assessment remains secure as attorney work product.

Request an RCM 706. The problems are the sanity board may have little experience assessing for autism or understand how it relates to non-contact 120s. The short form will be disclosed to government, which might include a non-diagnosis for autism because evaluators didn't screen for it.

Tele-forensic Evaluation: Consider having your forensic expert conduct a "*tele-forensic*" evaluation for autism a couple months before trial. To cover the cost, ask for 15 hours of pretrial assistance rather than 10. All the interview and testing can be conducted remotely. You get the results well in advance and the findings remain confidential. Go to my website to see how to prevent the results of the tele-evaluation from being discovered until you are ready to disclose them (https://arizonaforensics.com/tele-forensic/). Here's the bottom line on this idea:

In 2019 Maj. Stein and Dr. Younggren published a book for the American Psychological Association regarding forensic psychology services in military courts. Here's their recommendation on the dual-role dilemma.

> *"Consider the following example: A forensic psychologist was asked to consult with defense counsel in a criminal matter. The psychologist reviewed the case files and offered what the attorney considered to be helpful theories in defending her client. The lawyer then asked the psychologist to evaluate her client for mitigation purposes; the psychologist agreed to do so and concluded that the defendant was a psychopath. In the civilian world, the consulting psychologist would have been wise to refuse the additional assignment. This is because, if he or she were testifying about scientific and noncase specific matters, he or she might be required to disclose the results of the evaluation and, in doing so, could significantly damage*

the defense's case. However, under the MRE (JSC, 2019) such disclosures are not required, and the testimony of the expert about the negative mitigation evaluation would remain privileged. Therefore, the consulting psychologist would be free to fill both these roles without fear of jeopardizing the accused's case. However, the psychologist would have to be extremely careful to not inadvertently open the door to this evaluation during testimony because doing so could lead to its results being disclosed. Therefore, the forensic psychologist and the attorney would have to carefully craft direct testimony in order to avoid this possibility."

Christopher Stein and Jeffery Younggren (2019). *Forensic Psychology in Military Courts*. American Psychological Association. Chapter 5.

This introduces a significant option for defense JAGs to consider. A risk assessment can be an important tool in plea negotiations and mitigation in sentencing and does not open the door to being discovered during the trial phase.

And there is an additional development. The COVID pandemic brought about the American Psychological Association's encouragement of forensic psychologists to conduct tele-assessments across secure video conferencing. The ability to do tele-forensic evaluations was in place before. But the APA greatly expanded their use due to the quarantine.

These developments open exciting potential for military courts. For example, an ADC at Kunsan could have her client evaluated weeks before the trial date. The interview is conducted while the psychologist is state side. The ADC can then use the completed report for pretrial negotiations (or not). Let's assume the ADC decides not to disclose the report. The forensic expert can still come out to consult with her team, provide expert testimony in the trial phase, and testify about mitigation in sentencing. The ADC simply needs to be careful during her direct so the expert isn't forced to disclose the results of the evaluation. It's attorney work product that did not help form the basis for expert testimony.

C. Testing used in Autism evaluations

There are effective assessment tests that have been developed for adult autism evaluations.

Deeper Dive:

Here are the most common tests.

Autism Diagnostic Interview, Revised (ADI-R)

The ADI-R is a comprehensive interview tool that provides a thorough assessment of children and adults who are suspected of having autism or other autism spectrum disorders.

Autism-Spectrum Quotient Questionnaire (AQ) and the Empathy Quotient (EQ)

Psychologist Simon Baron-Cohen and his colleagues at Cambridge's Autism Research Centre created the Autism-Spectrum Quotient and the Empathy Quotient to measure the extent of autistic traits in adults.

Monteiro Interview Guidelines for Diagnosing the Autism Spectrum, Second Edition (MIGDAS-2)

The MIGDAS-2 provides a sensory-based process for gathering and organizing the qualitative information needed to diagnose autism in children, adolescents, and adults. The process includes guidelines for gathering information from parents/caregivers and teachers, and for conducting a sensory-based interview with

the individual being evaluated. The end result is a comprehensive behavioral profile that describes the individual's distinct way of relating to the world, supplementing assessment scores and informing diagnosis and treatment planning.

Social Communication Questionnaire (SCQ)

Previously known as the Autism Screening Questionnaire (ASQ), the SCQ is a brief instrument that helps to evaluate the communication skills and social functioning of an individual who may have autism or other autism spectrum disorders.

Social Responsiveness Scale, Second Edition (SRS-2)

The SRS-2 identifies social impairment associated with autism spectrum disorders (ASDs) and quantifies its severity. It's sensitive enough to detect even subtle symptoms, yet specific enough to differentiate clinical groups, both within the autism spectrum and between ASD and other disorders. It clearly distinguishes the social impairment characteristic of ASD from that seen in ADHD, anxiety, and other diagnoses.

D. Cautions Regarding Other Psychological Tests

None of the common psychological screening tools like the MMPI-2, the Personality Assessment Inventory, NEO, etc. have been normed on people with ASD. Because of this, the client with autism will come across as looking more pathological than they truly are. This is a common mistake that inexperienced evaluators make. Be sure your expert doesn't utilize these tests with your client.

<u>Deeper Dive</u>:

MMPI-2

Ozonoff, Garcia, Clark, and Lainhart (2005) examined the profiles of high- functioning adults with ASD on the Minnesota Multiphasic Personality Inventory-2nd Edition (MMPI-2) and found that when compared to a matched sample of college student controls, the ASD group demonstrated large effect size differences in the positive direction on scales L (Lie), 2 (Depression) and 0 (Social Introversion) and a medium effect size difference on scale 8 (Schizophrenia). A medium effect size difference was also observed on scale 9 (Hypomania), with the control sample producing higher mean scores than the ASD sample."

Ozonoff, S., Garcia, N., Clark, E., & Lainhart, J. E. (2005). *MMPI-2 Personality Profiles of High-Functioning Adults with Autism Spectrum Disorders*. Assessment, 12(1), 86–95.

PAI

"Despite widespread and steadily growing use of the PAI in clinical practice settings (Piotrowski 2017), there appear to be no published studies to date examining use of the PAI among adults with ASD."

Piotrowski, Chris. (2017). The status of the Personality Assessment Inventory (PAI) in training and practice: Evidence from the emerging literature. Journal of Projective Psychology & Mental Health. 24. 15-20.

"The PAI was not developed as a measure to detect ASD symptomatology, and as such, the PAI should not be used as a diagnostic tool for ASD."

Harrison, K.B., McCredie, M.N., Reddy, M.K. et al. (2020). *Assessing Autism Spectrum Disorder in Intellectually Able Adults with the Personality Assessment Inventory: Normative Data and a Novel Supplemental Indicator.* J Autism Dev Disord 50, 3935–3943.

E. Evaluating for Risk of Future Re-offense

Traditional psychosexual evaluations utilize risk actuarials like the STABLE-2007, STATIC-2002R, ACUTE-2007, or RRASOR to calculate general risk for reoffence of a convicted sex offender. But these instruments should not be used with someone on the autism spectrum. They are inappropriate on two dimensions: 1) they have not been normed on non-contact child pornography offenders, and 2) they have not been normed on autistic offenders.

Michael Seto and Angela Eke have recently created the *Child Pornography Offender Risk Tool – V2* (CPORT-V2). This is a structured risk checklist designed to predict sexual recidivism in adult male sexual offenders with a conviction for child pornography offenses. All the subjects were convicted by courts in Canada of at least one count of possession of child pornography (over 90%), accessing (21%), distribution (37%), or production (23%). A fifth (21%) had a contact sex offense against a child. The authors of the CPORT-V2 recommend using the instrument for ranking an individual's risk as compared to other non-contact child pornography offenders. Although actuarial tables are being developed, for the time being the authors recommend interpreting general rank for risk without referencing recidivism probabilities.

Deeper-Dive:

I have a 133-page handout for a CLE I have taught for the State Bar of Arizona titled "*Online Sex Offense: What Every Attorney Should Know*" (https://arizonaforensics.com/online-sex-offense-what-every-attorney-should-know/). This will provide you an in-depth review of the issues related to online sex offending and risk.

2) APPLICATION: Plea Negotiations

A. Diversion

Generally, diversion is an alternative to prosecution offered to certain criminal offenders as an opportunity to have charges against them dismissed. In the federal criminal system, diversion is defined in the United States Attorneys' Criminal Resource Manual ("USAM") at Title 9, Section 22.000. Diversion is an optional program, initiated by a United States Attorney, and voluntarily agreed upon by the criminal offender.[1] In exchange for entry into the program, the criminal offender (the "divertee") must agree to waive his rights to a speedy trial and presentment of his case within the statute of limitations.[2] As an initial matter, the divertee must have the advice of counsel before entering any such agreement.

Typically, diversion occurs at the pretrial stage; however, it can occur at any point prior to trial.[4] Offenders are diverted from traditional criminal justice processing and supervised by the U.S. Probation Service.[5] Upon successful completion of the program, participants either will not be charged, or, if they have been charged, will have the charges against them dismissed; those who do not complete the program successfully are returned for prosecution.

A pretrial diversion agreement requires an offender to acknowledge responsibility for his behavior, without necessarily admitting guilt.[7] After entering into the agreement, supervision is tailored to meet the needs of the specific divertee.[8] Some divertees' supervision may include employment and counseling, whereas other supervision can include education, job training, or psychiatric care.[9] In all cases, supervision is not to exceed 18 months, but can be reduced.[10]

In order to take advantage of a diversion program, certification requirements must be met, and the United States Attorney must comply with pretrial diversion guidelines.[11] As stated in Section 9-22.100 (Eligibility Criteria):

> The U.S. Attorney, in his/her discretion, may divert any individual against whom a prosecution case exists and who is not:
>
> > Accused of an offense which, under existing Department guidelines, should be diverted to the State for prosecution;
> > A person with two or more prior felony convictions;
> > A public official or former public official accused of an offense arising out of an alleged violation of a public trust; or
> > Accused of an offense related to national security or foreign affairs.

Since its implementation at the federal level in the Pretrial Services Act of 1982, pretrial diversion has been declining in use.[12] In 1999, 2716 of the 80,154 activated cases in the federal criminal system used a pretrial diversion program.[13] Conversely, nine years later, in 2008, 1426 of the 98,244 activated cases used a pretrial diversion program.[14] More tellingly, one-quarter of the 2008 pretrial diversion cases arose in only three districts (the District of New Jersey, the Eastern District of Virginia, and the Eastern District of Missouri).[15]

Originally, pretrial diversion was a program implemented to help juvenile offenders. It was later adopted in the federal judiciary with the passage of the Pretrial Services Act of 1982.[16] Pretrial diversion "*was meant to be an alternative to prosecution for low-level criminal offenders who had identifiable rehabilitative needs.*"[17] Essentially, the program seeks to prevent criminal offenders from reoffending.18 Section 9-22.010 of the USAM states:

> The major objectives of pretrial diversion are: to prevent future criminal activity among certain offenders by diverting them from traditional processing into community

supervision and services; to save prosecutorial and judicial resources for concentration on major cases; and to provide, where appropriate, a vehicle for restitution to communities and victims of crimes.

B. Diversion in Child Pornography Cases

Federal pretrial diversion is an available option in cases where the divertee is accused of a sexual offense. However, the use of pretrial diversion in these cases is disfavored. USAM § 9-75.410 states that *"[p]re-trial diversion for crimes involving child pornography, child sexual abuse, the sexual exploitation of children and obscenity is generally not favored…however, it may be an appropriate and just disposition in certain cases.*" Notwithstanding § 9-75.410, the ultimate decision whether or not to use pretrial diversion is in the hands of United States Attorneys.

There are not many specific reported instances where a pretrial diversion program has been used, in lieu of prosecution, in cases involving the federal child pornography laws. One reason why this may be the case is that diversion agreements are not matters of public record. In one child pornography case in which pretrial diversion was used, an Ohio criminal defense attorney entered into a pretrial diversion agreement after an investigation ensued regarding the attorney's use of pornographic materials in connection with his representation of accused pornographers.[19] The attorney represented multiple persons charged with violations of federal child pornography laws and statutes.[20] In representing his clients, the attorney "downloaded and manipulated images from the internet of real and identifiable minors and created a series of visual depictions of [those] minors engaged in sexually explicit conduct."[21] In essence, the attorney was compiling the material as court exhibits in cases where he was representing an accused.[22] Rather than prosecuting the attorney, the prosecution allowed him to enter into a pretrial diversion agreement "*which states that his conduct violated 18 U.S.C. § 2252A(a)(5)(B), and wherein he agreed to refrain from engaging in similar conduct for eighteen months.*"[23]

It is important to note that a decision of a United States Attorney not to offer pretrial diversion to an accused is not reviewable by a district court.[24] This makes sense given that the decision to offer diversion involves prosecutorial discretion whether to pursue formal charges.

It is strongly suggested that diversion be considered in some cases as the best option for a defendant on the autism spectrum who is charged with possession of child pornography. The suggestion would be pertinent to an ASD individual who has no prior criminal record and poses a very low or no risk of causing harm to a child. The suggestion is based on the detailed information provided in subsequent chapters that such an ASD person committed the unlawful act without any or at least diminished criminal responsibility related to the neurological deficits of autism.

Footnotes

1. *Id.*; see also USAM § 9-712.
2. *Id.* at § (B)(1).
3. *Id.* at § (B)(2).
4. USAM § 9-22.010; see also USAM § 9-712(A).
5. USAM § 9-22.010.
6. *Id.*
7. USAM § 9-712(F).
8. *Id.* at § (E).
9. *Id.*
10. *Id.* at § (F).
11. See USAM § 9-8.190 (citing USAM § 9-22.000 *et seq*. (Pretrial Diversion)).
12. See Joseph M. Zlatic *et al*., *Pretrial Diversion: The Overlooked Pretrial Services Evidence Based Practice*, 74 Federal Probation 1 (June 2010).

13. *Id*.
14. *Id*.
15. *Id*.
16. See *Id*.
17. *Id*.
18. See USAM § 9-22.010.
19. See *Boland v. Holder*, No. 1:09 CV 1614, 2010 WL 3860996 (N.D. Ohio Sept. 30, 2010).
20. *Id*. at *1.
21. *Id*. (citing Pretrial Diversion Agreement).
22. *Id*. at *1.
23. *Id*. at *2 (citing Pretrial Diversion Agreement).
24. See *United States v. Richardson*, 856 F.2d 655 (4th Cir. 1988).

Lawrence A. Dubin, J.D. and Emily Horowitz, Ph.D. (June 21, 2017).
Caught in the Web of the Criminal Justice System, pp. 249-253.

3) APPLICATION: Pretrial Motions

Your client's autistic challenges should be considered in every step of the legal process. In this section we discuss:

- Did they possess criminal intent?
- Did they have the ability to consent to the police interview?
- Are they competent to assist you?
- What are special questions for voir dire of the members?
- How should the jury be educated about ASD during the findings phase?

Deeper-dive:

The Americans with Disabilities Act and Rehabilitation Act should be front-and-center in the development of the theory for your case.

Mahoney notes:

> We have a national policy to protect and accommodate those with developmental disabilities, reflected in the Americans with Disabilities Act, and the correlative Rehabilitation Act. This sets a national policy that applies to those in law enforcement and must circumscribe their exercise of discretion. In "Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act." USDOJ, Civil Rights Division, Technical Assistance Publication, January 11, 2017, p.2:
>
> > Nondiscrimination requirements, such as providing reasonable modifications to policies, practices, and procedures and taking appropriate steps to communicate effectively with people with disabilities, also support the goals of ensuring public safety, promoting public welfare, and avoiding unnecessary criminal justice involvement for people with disabilities. (Emphasis added).
>
> This is express acknowledgment of the problem of "counterfeit deviance," and in the "unnecessary criminal justice involvement for people with disabilities" arising from their involvement in behaviour which is only apparently deviant, but lacks the culpable mental state or blameworthiness which would normally attend such actions by persons who are typically developed.
>
> This guidance expressly notes the importance of "assessing individuals for diversion programs" on the basis of DD [Developmental Disability]. Id. It later gives as an example of compliance with the ADA the setting of "eligibility criteria for diversion programs such as community services, specialty courts, or probation programs" Id. and "[r]equir[ing] court staff to explore reasonable modifications to allow qualified individuals with these disabilities to participate in diversion and probation programs and specialty courts." Id. at 3. This falls under the category of "reasonable modifications in policies, practices, or procedures when necessary to avoid disability discrimination."
>
> Mark Mahoney (2017). *Caught in the Web of the Criminal Justice System*, (p. 23).

A. The Question of Mens Rea

As is the case with those with intellectual disabilities (mental retardation), individuals with ASD can be compromised in their ability to fully understand the legal and moral ramifications of child pornography. The caution for the defense attorney is whether the client made any efforts to hide their child pornography material, which suggests awareness of the wrongfulness of their acts.

Deeper-dive:

Mesibov and Sreckovic observe:

> Individuals with ASD have difficulty understanding the criminal responsibility of child pornography for many reasons. First is their intent to search for and download child pornography. These adolescents and adults may search for child pornography as a learning tool to understand more about sexuality in the comfort and privacy of their own home. Once they access the pornography, they may become obsessed with accumulating large amounts of it, because of the compulsivity that accompanies most of their routines. Therefore, an adult with ASD with an average to extremely above-average IQ may be intensely focused on one narrow topic, downloading as many files as they can, without even thinking about the broader picture of what they are doing and how it impacts the children in the images. Second is the way their brain processes information. As previously described, individuals with ASD often have disruptions in communication between different regions of the brain. Understanding the criminal responsibility of child pornography requires a person to understand that the children in the images did not give consent and do not want to participate, the people taking the videos/pictures are harming the children, and by viewing the children in the videos/pictures the viewer is harming the children. This requires a person to be able to understand the intentions of others and how other people are feeling (also known as ToM). As previously mentioned, neuroimaging studies have indicated that the communication between frontal and posterior ToM regions of the brain is lower in individuals with ASD compared with individuals without ASD (e.g. Kana et al., 2009), which would clearly impact their ability to intuitively understand that viewing and downloading child pornography is illegal. Finally, individuals with ASD view the world very literally and it would not cross their minds that something so freely available on the internet would be illegal. In their naive and trusting minds, if it is wrong, then it should not be available. The social immaturity of these individuals, coupled with deficits in ToM, make it difficult for them to understand that their actions are wrong.
>
> The social immaturity of adolescents and adults with high-functioning ASD, despite their average intelligence and biological development for their age, often makes them interested in knowing about younger girls/boys because they are of about the same age emotionally and socially as these children. Moreover, for the individual with ASD, the demarcation between observing an adult and observing a child is often unclear. Clinical observations confirm that individuals with ASD are poor judges of character and age. Many individuals with ASD are unclear about the moral and legal line between the two as well.

Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 86-87.

Mesibov and Sreckovic continue:

> Again, this information would need to be presented explicitly, concretely, and visually because individuals with ASD are such concrete learners. It would also need to be presented repeatedly, as these individuals have difficulty transferring new information to other situations. For example, understanding that a principal is an adult and a student is a child would not necessarily translate to an individual with ASD that a 30-year-old is an adult and a 12-year-old is a child.
>
> What is often presented explicitly in the sexual education curriculum for adolescents and adults with ASD is masturbation. In fact, many curriculums provide visuals and explicit directions on how to masturbate. Keep in mind this may be one of the only modes for these individuals to achieve sexual gratification. They are taught that it is acceptable to masturbate in the privacy of their own home and bedroom. Rules about the distinction between public and private are repeatedly taught in these curriculums. This is relevant as

individuals with ASD have been known to masturbate in public. However, they typically are not being explicitly taught what they cannot do in private. Because individuals with ASD are rule-governed and need explicit directions, if they are not explicitly taught behaviors that are inappropriate to engage in while masturbating in private (e.g. viewing child pornography), they likely do not recognize they are engaging in illegal behavior. Rather, because they are in the privacy of their own home or bedroom, they think all behaviors related to masturbation are acceptable.

Theory of Mind

Individuals with ASD have limited ability to empathize, often referred to as their problem with ToM, which makes it hard for them to intuit or understand how their viewing an image on the internet can be promoting the victimization of the child on the screen. The person who doesn't understand the intentions and emotions of others has considerable difficulty in perceiving when a child is being victimized, even though they might have the technical skill to find and collect the child's images on the internet. In addition, because their maturity level and moral understanding is the equivalent of a young child's, they do not fully appreciate the morally reprehensible aspects of what they are viewing and the illegality of downloading these images. Although pedophiles or antisocial personalities usually understand the repercussions of their criminal actions when observing illegal child pornography on the internet, unless explicitly and repeatedly told, coached, and rehearsed, an individual with ASD would not understand that the mere viewing of child pornography or even the mere act of clicking on a link can be a serious criminal act.

In prosecuting child pornography cases, a critical premise is that the person viewing such images understands that the children might not have given informed consent for participating in the pictures and are being exploited and perhaps psychologically and physically abused. [1]Whereas individuals without ASD would likely be attuned to the possibilities of exploitation and the potential for harm, adults with ASD frequently lack the empathetic understanding and sensitivity to the perspectives of others to make these deductions and connections. When asked why they sometimes watched children involved in child pornography, a common answer of teens and adults with ASD is because they could relate better to younger girls/boys because their social-emotional age is at about that level (which in fact it is). Not only is their social and emotional age well below their chronological age, but many individuals with ASD view themselves as younger than their chronological age, which is the case with Nick Dubin, as described in Chapter 10. Typical adults observing child pornography usually understand that an observer is morally and legally culpable for promoting that victimization. Living in a narrower and very literal world, however, a person with ASD is usually unable to make these connections and deductions, and it would be very hard for them to fathom all of the negative consequences for the child in question.

Further, while individuals without ASD can likely recognize that the children in videos or pictures look upset, distressed, or anxious, individuals with ASD have extreme difficulties reading meaning in eye gaze, facial expressions, body language, gestures, and prosody. . .

[1] Attorney Daryl Johnson offered important feedback in formulating this paper. He notes that prosecuting the possession of child pornography requires knowledge. Specifically, knowledge that the image is possessed. Children can't consent and even in the case of 16 & 17 year old "children" (who can consent to a sex act), whether they did or not does not change impact whether the image is child pornography. It might be helpful for mitigation but it doesn't help with findings.

> Despite these challenges, individuals with ASD can learn that child pornography is illegal if they have been explicitly taught; however, the availability of illegal materials like those on the internet are very recent developments, so few programs or families have had time to adjust and make this specific teaching a part of school curriculums or home learning activities.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 89-90.

> Because of their disability, individuals with Asperger Syndrome would be likely to miss the connection between consuming child pornography and supporting the exploitation of children. Because of their difficulty reading emotion and understanding non-verbal communication, the person with AS would have difficulty recognizing or would entirely miss the emotions of fear, anxiety and discomfort on the faces of children in the pictures… Non-verbal communication that most people recognize and respond to intuitively is unseen by those with autism spectrum disorders. (2008a)
>
> Lawrence A. Dubin (2017). *Caught in the Web of the Criminal Justice System*, p. 62.

B. Ability to Consent to the Police Interview

Police interviews of individuals with ASD have strong parallels to their interviews of those with intellectual disabilities (mental retardation). Research shows those with ASD can experience strong anxiety when talking with others, are quick to comply with directives, and are naïve about being manipulated by others (i.e. providing a written confession at the direction of the detective).

Deeper-dive:

> Beginning with the pre-arrest, the criminal justice system presents an array of problems for individuals with ASD. First, the way the FBI enters the residence of an individual with ASD creates great havoc and confusion for the individual with ASD. As Nick Dubin describes in Chapter 10, the intensity of the situation and overstimulation of noises and behaviors can be overwhelming to the individual with ASD. People with ASD, who have difficulty quickly processing information and responding to requests and questions, will have extreme challenges defending themselves and will often volunteer answers to leading statements that the FBI asks, often without giving Miranda warnings.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 92.

Here are four important studies on this issue. If you want the full articles, contact me and I'll get them out to you.

> **High functioning autism spectrum disorders: an investigation of psychological vulnerabilities during interrogative interview**
>
> Alice S. North , Ailsa J. Russell & Gisli H. Gudjonsson
>
> Pages 323-334 | Received 01 Nov 2006, Accepted 01 Feb 2007, Published online: 29 Jul 2008
>
> **Abstract**
>
> > Forensic psychologists and psychiatrists are commonly asked to ascertain the reliability of statements made by suspects to the police during questioning and to assess an individual's vulnerability to providing information which is inaccurate, unreliable, and misleading during police interview. Autism spectrum disorders (ASD) are characterised by qualitative impairments in social communication and interaction, and a restricted or repetitive pattern of behaviours, interests, and activities. It is not clear whether people with ASD are more vulnerable at interview, or more prone to respond negatively to interrogative pressure, when compared with the general population. In the present study, 26 individuals with high functioning

ASD, and 27 gender- and IQ-matched controls, were compared on measures of interrogative suggestibility and compliance as well as on measures of anxiety, depression, the extent to which they feared negative evaluation by others, and whether they had a suspicious outlook. There were no significant between-group differences on the measures of suggestibility, but the group with ASD were rated as significantly more compliant than the controls in terms of both parental and self-report, and also had higher scores on measures of depression, anxiety, fear of negative social evaluation and paranoia. Bi-modal distribution of suggestibility scores within the ASD group indicates that individual characteristics should be taken into account when considering an assessment. Individuals with ASD may be more eager to please or to avoid conflict and confrontation than controls, and may be more prone to respond compliantly to requests and demands.

An evaluation of Miranda rights and interrogation in autism spectrum disorders
Lindsay M. Salseda, Dennis R. Dixon, Tracy Fass, Deborah Miora, Robert A. Leark,
Research in Autism Spectrum Disorders, Volume 5, Issue 1, 2011, Pages 79-85
Abstract

The primary deficits present in autism spectrum disorders (ASD) may lead to increased susceptibility to involvement in the criminal justice system. The same deficits may also cause individuals with ASD to be more vulnerable to interrogation techniques and other aspects of the legal system. Due to the increased level of vulnerability as well as impairments in social cognition, individuals with ASD may have difficulty understanding their legal rights, more specifically their Miranda rights. This review explores Miranda comprehension in general and how the specific deficits found in ASD may impact Miranda comprehension.

Brief report: Suggestibility, compliance and psychological traits in high-functioning adults with autism spectrum disorder.
Maras, Katie L., Bowler, Dermot M.
Research in Autism Spectrum Disorders, Vol 6(3), Jul-Sep, 2012. pp. 1168-1175.
Abstract:

Individuals with autism spectrum disorder (ASD) may be over-represented within the criminal justice system; it is therefore important to understand how they fare under police questioning. The present study examined interrogative suggestibility and compliance in individuals with ASD, and whether this is associated with certain psychological traits. Adults with ASD and their typical counterparts completed the Gudjonsson Suggestibility Scales (GSS), Gudjonsson Compliance Scale (GCS), and measures of state-trait anxiety, self-esteem, fear of negative evaluation by others and paranoia. In contrast to previous research (North, Russell, & Gudjonsson, 2008), there was no difference between the ASD and comparison groups on the measure of compliance, and groups also did not differ on any of the GSS measures, despite the ASD group reporting significantly higher paranoia. Findings indicate that individuals with ASD may be no more likely to succumb to interrogative pressures than their typical counterparts.

Compliance in autism: Self-report in action
Chandler, Robert ; Russell, Ailsa ; Maras, Katie.
Autism. 2018.
Abstract

Previous research indicates that autistic individuals are more likely to be bullied, and that they experience heightened anxiety and diminished self-esteem. These factors are known to predict heightened compliance, which is the tendency to agree with or carry out the requests and demands of others. This has a range of potentially serious consequences, particularly for an autistic person. This study utilised self-report (the Gudjonsson Compliance Scale) and behavioural measures of compliance (the door-in-the-face task) with 26 autistic and 26 typically developing adults. Participants also completed measures of early life bullying experiences, anxiety and self-esteem. Autistic participants were more compliant on both self-report and experimental tasks, and they reported more bullying experiences, higher anxiety and reduced self-esteem. Looking at both groups, bullying, anxiety and self-esteem were all correlated with self-reported compliance on the Gudjonsson Compliance Scale, yet only self-esteem was a unique predictor. None of these predictor variables related to behavioural compliance on the door in the face; nor did Gudjonsson Compliance Scale scores predict door-in-the-face performance, which may be better explained by situational and motivational factors. Findings have important implications for a range of real-life settings including requests made in the context of research, schools, the criminal justice system and the workplace.

C. Competency: Theirs and Yours

This is a fundamental question to consider. Chances are you do not have an expertise in working with those with ASD. Do you need to find special counsel or an advisor to assist you?

Deeper-dive:

Individuals with ASD also may have difficulty understanding broad legal concepts (Mayes and Koegel, 2003). Indeed, Ericson and Perlman (2001) reported significant differences in knowledge of legal terms between adults with mild developmental disabilities (DD) and adults without delays. More specifically, 28 out of 34 legal terms were conceptually understood by at least 85% or more of the participants without delays and only eight legal terms were conceptually understood by at least 75% of the participants with DD. Additionally, individuals with ASD may have difficulty comprehending auditory information if visual supports are not provided to aid in understanding, which often they are not, and during times of stress and heightened anxiety it is more difficult for individuals with ASD to comprehend what is being said (Sperry et al., 2014).

. . . Finally, the academic ability and vast language and vocabulary skills of offenders with high-functioning ASD may make them appear independent and capable (Taylor et al., 2009). This may make them appear more capable than they actually are, especially in relation to communication and social deficits. The prosecutors, judge, and jury may misinterpret their academic intelligence and believe that if the individual demonstrates such academic capabilities, then s/he must have understood the consequences of the offense (Taylor et al., 2009).

Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 93-94.

D. Special Questions for Voir Dire

Your questions of potential members should include whether they have known someone with ASD and what they might have learned from that relationship.

E. Educating the Members about ASD

During the course of the trial, your client may display odd behaviors or facial expressions, laugh

at inappropriate moments, avoid eye contact with the jury, or fail to show appropriate reactions during witness testimony. It is imperative that members receive instruction from the judge or from your expert on typical behaviors that can be displayed by someone with ASD.

Deeper-dive:

> Throughout the entire criminal justice process, the unique behaviors displayed by individuals with ASD may give the wrong impression to lawyers, prosecutors, judges, juries, and interrogators. For example, in the courtroom, individuals with ASD may speak in a monotone voice, laugh at inappropriate times, display negative affect, and misread subtle cues from professionals, such as a judge making a facial expression to signal for people to quiet down (Taylor et al., 2009). This demeanor may be understood by the judge and jury as someone being disrespectful, rude, and maybe even guilty. Because of this, they may receive harsher sentences: the affective control theory suggests that offenders who are positively perceived by people in charge of sentencing are given a less harsh sentence than those who are negatively perceived (Tsoudis, 2000).
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 94.

4) APPLICATION: Findings/Trial

Bottom-line:

All of the previous sections in this paper can be incorporated into your theory of the case, cross of witnesses (law enforcement), and presentation of your defense.

5) APPLICATION: Sentencing Based on Lower Risk

Bottom-line:

Individuals who have been convicted of non-contact child pornography offenses, including those with ASD, are low risk for future re-offense online and even lower risk for future contact offenses.

Deeper-dive:

Scientific research shows the viewing of child pornography (non-contact) is not a strong predictor of future sexual violence (recidivism). Child pornography offenders are much larger in number than solicitation and contact offenders. On average, they are also less antisocial than contact sex offenders.

Research findings for Recidivism Rates for CP / Non-contact Offenders

- 3.4% committed new CP viewing, 2% committed future physical contact (Seto, 2011)
- 1.6% committed new CP viewing, 3% committed physical contact (N=638, Faust, 2015)
- 7% committed new CP viewing, 3% committed physical contact (N=135, Seto & Eke, 2015)
- **2.3% committed new CP viewing, 3.6% committed physical contact (N=610, Saris, 2013, from the US Sentencing Commission report)**
- 2.9% committed new CP viewing, .5% committed "cross-over"/physical contact (N=125, MiKADO Study; Schuhmann, 2015)
- Any type of recidivism was uncommon in the Wakeling et al. study, at 8% after one year and 11% after two years. Three quarters of the sexual recidivism identified by Wakeling et al. (2011) was Internet related. This was especially true for Internet "specialists" that is, those individuals who have no history of any other type of offending and thus tended to have low scores on the risk managers compared with the rest of the sample.
- Neither the Risk Matrix 2000 nor the OGRS3 (United Kingdom measures) significantly predicted recidivism among Internet-only offenders, due to the low base-rate of recidivism observed for this subgroup (There were few new offenses to predict and thus less statistical

power to detect any real association). This is consistent with the findings reported by Seto et al. (2011) and Eke et al. (2011).

- Note that these recidivism rates are in contrast to contact sex offenders average recidivism rate of 13%.

The Association for the Treatment of Sexual Abusers cautions:

> *"Several overlapping, follow-up studies of child pornography offenders suggest these individuals present less risk for future hands-on offenses, on average, than undifferentiated samples of contact sex offenders… Child pornography offenders also presented a relatively low risk to commit another child pornography offense. . . Studies that have compared Internet-facilitated sex offenders to contact sex offenders have found consistent differences. These studies suggest Internet-facilitated sex offenders are less antisocial and are; therefore, less of a risk to commit a new offense or a probation violation than contact sex offenders. These studies also suggest Internet-facilitated sex offenders are similar to or score lower than contact sex offenders on measures of clinical needs including offense-supportive attitudes and beliefs, intimacy deficits, and emotional problems. At the same time, child pornography offenders are more likely to show pedophilic sexual arousal on penile plethysmograph assessment than are contact sex offenders.*
>
> *Although researchers have suggested several typologies of Internet-facilitated offenders, we currently know very little about the treatment and supervision needs of Internet-related sex offenders. These typologies include individuals who are sexually interested in children, those who are more sexually indiscriminate, those who are curious, and those who opportunistically engage in Internet-facilitated offending (e.g., an adult male who uses the Internet to gain sexual access to adolescents). Effective intervention will need to be tailored to the type of offender and the risk they present. For example, an individual who viewed child pornography out of curiosity and is a low risk to offend in the future might require little (or no) treatment and minimal supervision while a pedophilic individual who opportunistically used the Internet to gain access to victims and who is a higher risk to offend in the future would require more intensive treatment and supervision. Regulation of access to the Internet would be expected to be a central consideration in treatment or supervision. Methodologically sound evaluation research is needed to develop effective treatment programs for Internet-facilitated sex offenders."*
>
> *ATSA Policy Statement on Internet-Facilitated Sex Offending*, September 7, 2010
> http://www.atsa.com/internet-facilitated-sexual-offending

These results were consistent with the idea that online offenders are low risk, as a group, and suggests that online offenders are more likely to commit future online offenses than to commit contact sexual offenses. Dr. Michael Seto notes:

The low base rate of sexual recidivism among online-only offenders suggests that there is little variance in risk in this subgroup to predict. The most accurate risk statement is to assume that an online-only offender with no prior criminal history of any kind is not going to sexually reoffend. Because existing risk measures are already applicable to online offenders who have also committed contact-sexual offenses, the follow-up research to date has suggested that an online–offender-only risk measure is unlikely to be successful. (Seto, 2013, p. 211)

> *There may appear to be a paradox in the risk in recidivism results … Among identified sex offenders, pedophilia is a robust and important risk factor, having one of the strongest associations with new sexual offenses in meta-analysis conducted by Karl Hanson and his*

colleagues (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). Yet online child pornography offenders, many of whom are likely to be pedophiles, have a relatively low recidivism rate, at least in the studies we were able to examine in Seto et al. (2011).

This seeming paradox is resolved when we remember that the motivation-facilitation model requires both motivation (such as pedophilia or hebephilia) as well as facilitation factors (such as antisocial personality traits) for contact sexual offenses to occur (Seto, 2008). Many online child pornography offenders may indeed be motivated to have sex with children, but many do not have the necessary facilitation factors for this to occur, given their relatively low scores on psychopathy, antisocial attitudes and beliefs, and criminal history.

... child pornography offending can be viewed as a risk factor for sexual offending against children in the general population but as a 'protective' factor in the sexual offender population. This does not mean that child pornography use has a cathartic effect, only that it is a marker of lower risk of future offending within a sample of individuals identified for committing sexual crimes." (Seto, 2013, p. 213-214)

6) APPLICATION: Appropriate Treatment

Individuals with ASD who have been convicted of non-contact child pornography offenses need specialized sex offender treatment. They will not get this while incarcerated. Your sentencing argument can include the need for shorter confinement in order to get your client into an appropriate treatment program.

Deeper-dive:

Gary Mesibov and Melissa Sreckovic caution:

> Prison Can Be Disastrous for Someone with ASD. Prison is a well-accepted part of our jurisprudence system and a well-accepted form of punishment; however, it is often very hard on people with ASD because it can be especially cruel and dangerous for them. There are no special prisons or sections of prisons for people with ASD in the United States, and a diagnosis of ASD does not make one eligible for housing in a psychiatric facility. If arrested for child pornography, those with ASD are also ineligible for placement in a camp or minimum-security prison. Their problems in prison settings are many; their direct manner, unusual behaviors, and characteristics are interpreted by others as invitations to exploit, bully, and control. The same characteristics that make this population extremely vulnerable to being bullied in school will likely make them vulnerable to being victims in prison settings; however, the prison climate is much harsher than the school climate. These characteristics include communication challenges (Cappadocia, Weiss, and Pepler, 2012), severe social skills deficits (Sterzing et al., 2012), gullibility (Sofronoff, Dark, and Stone, 2011), internalizing mental health problems and depression (Cappadocia et al., 2012; Zablotsky et al., 2013), limited social support from peers (Humphrey and Symes, 2010), and few friendships (Cappadocia et al., 2012; Hebron and Humphrey, 2013). Correctional workers often view them as rude and incorrigible, when they are actually just oblivious to social cues. Moreover, individuals with ASD are likely to be victims in prisons. Their failure to detect manipulation by others, combined with their high degree of social anxiety and inability to defend themselves effectively or to control to any extent social interactions, leads these individuals to be especially vulnerable. In prisons, where domination and regulation among prisoners plays an important role in inmate survival, a socially fragile individual such as one with ASD is an easy target for physical and sexual abuse.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 94-95.

Mesibov and Sreckovic continue:

> A treatment team from Yale University has summarized five points for a comprehensive treatment program for a child pornography offender with ASD as follows: they need to be instructed very concretely, literally, and firmly that this behavior is unacceptable; they need instruction on the concept of underage females and males; they need instruction on how to distinguish between pornography that is everywhere and child pornography; they need instruction on explicit sanctions for viewing child pornography; and most of all they need instruction on how not to violate the rule that has been taught (Klin, n.d.). Further preventive action could include putting blocks on computers and computer monitoring by the individual's parents and a therapist to ensure appropriate usage while a program of this kind is being implemented. Treatment provided in this manner should be sufficient to prevent individuals with ASD from accessing child pornography in the future. With that said, it is unnecessary to label individuals with ASD as sex offenders, because it has severe implications for those with ASD who are not a threat to children and who, with appropriate instruction, can be taught not to access child pornography.
>
> Gary Mesibov and Melissa Sreckovic (2017). *Caught in the Web of the Criminal Justice System*, pp. 100-101.

Higgs and Carter note:

> Given that group-based interventions require participants to carry out introspection, sharing personal information and interacting in a group, all activities that an individual with ASD will invariably find challenging, efforts need to be made to develop interventions to work responsively, safely, appropriately and effectively with this client group to reduce risk of sexual recidivism.
>
> Higgs, Tamsin; Carter, Adam J. (May 2015).
> *Autism spectrum disorder and sexual offending: Responsivity in forensic interventions.*
> Aggression and Violent Behavior, Vol 22, pp. 112-119.

Dr. Fred Volkmar of Yale University.

> Most individuals with these conditions are victims rather than victimizers. The experience of bullying and social isolation is frequent. The sometimes rigid pursuit of collecting things often appears to mask or attempt to cope with chronic anxiety. . . Fortunately, individuals with these conditions can respond to clear limit setting and a neuropsychologically informed psychotherapy where explicit guidance is provided.
>
> Lawrence A. Dubin (2017). *Caught in the Web of the Criminal Justice System*, p. 53.

Dr. Klin (2008a) states:

> Individuals with Asperger Syndrome benefit from behavioral intervention that provides them with clear instruction, explicit rules, and an understanding of the reasons for those rules… This intervention can be done by an experienced mental health professional, and there are specific curricula for such interventions in the area of sexuality… The individual's conduct should be monitored for compliance and positive feedback should be provided in response to his understanding of the situation.
>
> Lawrence A. Dubin (2017). *Caught in the Web of the Criminal Justice System*, p. 62.

PART III: Conclusion and Appendices

ASD is a neurological condition that should be considered at every stage of the legal process – mens rea, ability to consent to the police interview, competency to assist counsel, pretrial motions, voir dire of the members, educating the jury during the findings phase, arguments in findings, mitigation in sentencing, and appropriate post-conviction therapeutic treatment. Be sure to review the appendices that follow for additional resources.

- APPENDIX A: DSM 5 Description of Autism Spectrum Disorder (299.00)
- APPENDIX B. History of Child Pornography Laws
- APPENDIX C: Research Abstracts on ASD and Sexuality
- APPENDIX D: Autism and False Confessions

This document is designed as a dynamic resource that evolves with time. Pay attention to the date on the first page to insure you have the latest version. If you have doubts, go to my website – www.ArizonaForensics.com - or send me an email and I'll get you the latest one. Also, please contact me with successes or failures that can be incorporated into the next version. Your feedback is critical to better equip future defense and government attorneys who are grappling with the issues intertwined with ASD and online offenses. Also, please make it a point to forward this document to other attorneys you work with.

Go forth, do good,

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APPENDIX A: DSM 5 Description of Autism Spectrum Disorder (299.00)

Diagnostic Criteria

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive, see text):

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

Specify current severity:

Severity is based on social communication impairments and restricted repetitive patterns of behavior (see Table 2).

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g, strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest).
4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior (see Table 2).

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

Note: Individuals with a well-established DSM-IV diagnosis of autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of autism spectrum disorder. Individuals who have marked deficits in social communication, but whose symptoms do not otherwise meet criteria for autism spectrum disorder, should be evaluated for social (pragmatic) communication disorder.

Specify if:

- With or without accompanying intellectual impairment
- With or without accompanying language impairment
- Associated with a known medical or genetic condition or environmental factor. (Coding note: Use additional code to identify the associated medical or genetic condition.)
- Associated with another neurodevelopmental, mental, or behavioral disorder. (Coding note: Use additional code[s] to identify the associated neurodevelopmental, mental, or behavioral disorder[s].)
- With catatonia (refer to the criteria for catatonia associated with another mental disorder, pp. 119-120, for definition) (Coding note: Use additional code 293.89 [F06.1] catatonia associated with autism spectrum disorder to indicate the presence of the comorbid catatonia.)

Table 2 Severity levels for Autism Spectrum Disorder

Level 1 Severity: "Requiring support"

Social communication: Without supports in place, deficits in social communication cause noticeable impairments. Difficulty initiating social interactions, and clear examples of atypical or unsuccessful response to social overtures of others. May appear to have decreased interest in social interactions. For example, a person who is able to speak in full sentences and engages in communication but whose to-and-fro conversation with others fails, and whose attempts to make friends are odd and typically unsuccessful.

Restricted, repetitive behaviors: Inflexibility of behavior causes significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organization and planning hamper independence.

Level 2 Severity: "Requiring substantial support"

Social communication: Marked deficits in verbal and nonverbal social communication skills; social impairments apparent even with supports in place; limited initiation of social interactions; and reduced or abnormal responses to social overtures from others. For example, a person who speaks simple sentences, whose interaction is limited to narrow special interests, and has markedly odd nonverbal communication.

Restricted, repetitive behaviors: Inflexibility of behavior, difficulty coping with change, or other restricted/repetitive behaviors appear frequently enough to be obvious to the casual

observer and interfere with functioning in a variety of contexts. Distress and/or difficulty changing focus or action.

Level 3 Severity: "Requiring very substantial support"

Social communication: Severe deficits in verbal and nonverbal social communication skills cause severe impairments in functioning, very limited initiation of social interactions, and minimal response to social overtures from others. For example, a person with few words of intelligible speech who rarely initiates interaction and, when he or she does, makes unusual approaches to meet needs only and responds to only very direct social approaches

Restricted, repetitive behaviors: Inflexibility of behavior, extreme difficulty coping with change, or other restricted/repetitive behaviors markedly interfere with functioning in all spheres. Great distress/difficulty changing focus or action.

APPENDIX B. History of Child Pornography Laws

An excellent resource for your review is *Caught in the Web of the Criminal Justice System: Autism, Developmental Disabilities, and Sex Offenses.* Edited by Lawrence A. Dubin, J.D. and Emily Horowitz, Ph.D. (June 21, 2017). The authors provide a helpful summary.

A. History and Procedure

The United States Code defines child pornography as

> *any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where - (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.*[25]

Child pornography guidelines have existed since 1987 and have been substantively amended nine times as of 2009.[26] These guidelines were promulgated by the United States Sentencing Commission (the "Commission"), which was created by Congress to "'*establish sentencing policies and practices for the Federal criminal justice system' that implement the Sentencing Reform Act of 1984 ("SRA"), including the purposes of sentencing enumerated at 18 U.S.C. § 3553 (a)(2).*"[27]

Through the years, Congress has expressed its will to increase guideline sentences for child pornography offenders.[28] Before the sentencing guidelines were in place, Congress passed the Protection of Children Against Sexual Exploitation Act of 1977 ("1977 Act").[29] The 1977 Act "*prohibited the use of children to produce child pornography and established a ten-year statutory maximum for first-time trafficking offenders and a 15-year statutory maximum and a two-year mandatory minimum for subsequent offenders*."[30] In 1984 and 1986, Congress passed harsher laws for producing, distributing, or displaying child pornography.[31] Congress believed that harsher sentencing for these offenses would curtail the growing problem of child abuse.[32]

The Commission promulgated its first set of guidelines in 1987 and there were no guidelines for the simple possession of child pornography, which, at the time, was not a federal crime.[33] Consequently, the Commission examined the existing sentencing practices and promulgated guidelines on a level basis, with a base offense level of 13, and a high level of 20.[34] Specific offenses, such as downloading an image of a child less than 12 years of age, were an automatic increase in two levels.[35] An automatic five-level increase was implemented for the distribution of child pornography.[36]

Through the years, the Commission continued to make various changes. In 1990, the Commission compiled a report on the status of child pornography prosecutions in the federal criminal system.[37] That report looked to Congress's legislative history and reasoned that Congress found that:

> *(1) both commercial and non-commercial distribution and receipt of child pornography contribute to the molestation and abuse of children; (2) child pornography had become a highly organized, multi-million dollar industry that operates on a nationwide scale, but federal law enforcement efforts should not be limited to large scale distributors of child pornography; (3) child pornography causes substantial harm to both the child victim and to society as a whole since abused children tend to grow up "in an adult life of drugs and prostitution [and] become child molesters themselves, thus continuing the vicious cycle."*[38]

Evidently, Congress was very concerned about child abuse and molestation, and felt that those

who viewed child pornography supported these actions. From 1990 until today, the Commission has continued to promulgate new regulations and make changes to existing ones.[39]

Different legislation came in different years. In 1990, 1991, 1996, 2000, 2004, and 2009, many changes were made to the guidelines. Offenses regarding child pornography were added and some punishments were made more severe, increasing punishment for base offenses.[40] For example, in December 1995, Congress passed the Sex Crimes Against Children Prevention Act of 1995 ("SCACPA").[41] In SCACPA, Congress directed the Commission to *"[i]ncrease the base offense level for [child pornography offenses] by at least 2 levels…[and] to increase the base offense level by at least 2 levels…if a computer was used to transmit the notice or advertisement to the intended recipient or to transport or ship the visual depiction*."[42] Guideline 2G2.4 increased the base offense level of possession of child pornography and added a two-level enhancement if a computer was used.[43] The trend in each amendment has been adding crimes and making punishment for existing crimes more severe. In fact, over the past 14 years, the average federal sentences for child pornography rose by about 300%.[44] In 1994, the mean sentence for child pornography offenders was 36 months, whereas the mean in 2008 was 109 months.[45]

B. Harshness of Child Pornography Sentences

Congress has provided for serious punishment for child pornography offenses. Under the federal sentencing guidelines, child pornography offenses have a base-level sentencing range of 27 to 33 months in federal prison.[46] Indeed, this base-level sentencing range is for an offender who has no criminal history and no offender enhancements.[47] There are enhancements in the guidelines depending on whether the offender used a computer, the age of the child victim depicted, and number of images viewed. For example, *"[a] person with no criminal history, who uses the Internet to download a two-minute video depicting pornographic images of a ten-year-old child through a file-sharing network, would have a Guideline range of 87–108 months in prison."*[48]

Those who argue that increased sentences are appropriate misconstrue the distinction between possession of child pornography and child sexual abuse that involves physical contact.[49] Specifically, three main arguments arise from three blurred distinctions: (1) severe sentences are necessary because possession of child pornography is equivalent to or worse than actual child sexual abuse; (2) possessing and viewing child pornography increases the chances that an individual will commit child sexual abuse; and (3) "*because possession of child pornography is highly correlated with a history of contact offenses, punishing possessors of child pornography can serve as a proxy for sexual abuse.*"[50] However, these arguments have not been reasonably supported by empirical evidence.

C. Effectiveness of Child Pornography Sentences

Some studies have suggested that these harsh child pornography sentences do not seek their purpose: deterrence of child molestation.[51] In fact, *"[t]he relatively low detection rate of child exploitation offenses…contributes to the insufficiency of the current sentencing regime."*[52] Moreover, some argue that incarceration will not deter criminal pedophiles because they will always tend to act on their strong sexual fantasies.[53] Instead of attempting to address the root of the problem—reducing the pedophile's sexual attraction toward children—child pornography laws arbitrarily punish.[54] Indeed, *"random elements of the offense, such as whether or not a computer was used in the offense, may dramatically affect the sentencing range. Use of a computer typically increases an offender's sentencing range by about twenty-five percent."*[55] In addition, sentences are also increased depending on the number of images the offender possessed—the more images possessed, the harsher the sentence.[56] This arbitrary line wrongfully suggests that the more images possessed, the more dangerous the offender.[57]

The argument that child pornography is just as bad as or worse than child sexual abuse is misguided. In fact, the Supreme Court has held *"that the First Amendment interest of child pornography possessors can be overcome only because private possession of child pornography may create a market for the creation of such images."*[58] Essentially, any harm that arises out of viewing child pornography is only derivative of the underlying child sexual abuse. Furthermore, there is no empirical evidence that shows that severely punishing possession of child pornography prevents child sexual abuse.[59]

Punishing possession of child pornography in the same manner as contact offenses incorrectly applies traditional proportionality considerations in sentencing. Possessing child pornography is not the same thing as sexually abusing a child, and sentencing in these two different types of cases should not be the same. In many instances, those who possess child pornography may end up serving a longer sentence than those who actually commit the sexual abuse.

Additionally, because the sentencing guidelines are not mandatory, sentences vary depending on whether the judge departs from the guidelines in a particular case. Indeed, *"[c]hild pornography sentences have thus functioned as the equivalent of a lightning strike; the congressionally mandated harsh sentences strike some defendants but miss many others."*[60] A judge in one case may apply mitigating factors, while, in another, the judge may ignore the mitigating factors.[61] This is contrary to the reason that the guidelines were implemented in the first place—as a way to achieve fairness and proportionality in sentencing defendants convicted of similar crimes.[62]

III. SEX OFFENDER REGISTRY HISTORY

Congress in 1994, through the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereinafter the "Wetterling Act"),[63] which was passed as part of the Omnibus Crime Bill of 1994, tasked the Attorney General with the duty of promulgating guidelines for states to track sex offenders.[64] States that did not promulgate such guidelines faced losing 10% of federal funds allocated under the Omnibus Crime Control and Safe Streets Act of 1968.[65] The guidelines were to require *"a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address with a designated State law enforcement agency"* for a period of ten years *"since the person was released from prison, placed on parole, supervised release, or probation."*[66] The same registration requirement applied to *"a person who is a sexually violent predator,"* defined as *"a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses."*[67]

The Wetterling Act was subsequently amended through the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (hereinafter the "Pam Lychner Act").[68] The Pam Lychner Act provided a new requirement that persons who commit particularly serious crimes and recidivists be subject to lifetime registration as sex offenders.[69] States were given three years to comply with the new requirements, and a possible extension of two years for states that could show a good-faith effort at compliance.[70]

Also passed by Congress in 1996 was Megan's Law,[71] which required law enforcement agencies to release information about registered sex offenders to the public.[72] It is up to individual states to determine what information should be made available and how it is to be disseminated.[73] However, states were compelled to *"release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration…shall not be released."*[74]

Between 1996 and the present date, the Wetterling Act has been amended several times. See the

Jacob Wetterling Improvements Act, Pub. L. No.105-119 (105th Cong.) (1997); Protection of Children from Sexual Predators Act, Pub. L. No.105-314 (105th Cong.) (1998); Campus Sex Crimes Prevention Act, Pub. L. No.106-386 (106th Cong.) (2000); Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act, Pub. L. No.108-21 (108th Cong.) (2003); and Adam Walsh Child Protection and Safety Act. Publ L. No.109-248 (109th Cong.) (2006). Adam Walsh was the son of John Walsh, who hosted the television show *America's Most Wanted.* John Walsh was an advocate of this law named after his kidnapped son who was murdered by a man who had also killed a number of other people. The Adam Walsh law established a national system for the registration of sex offenders that was designed to provide the public with detailed information about the offenders.

The culmination of these laws in its current form is found at 42 United Stated Code, Section 16901 *et seq.* In the declaration of purpose of the statute, Congress listed 17 incidents in which persons—mostly children (including the specific children after whom the previous acts were named)—were sexually assaulted, most of whom were also murdered.[76]

Most recently, on May 20, 2014, the United States House of Representatives voted to pass International Megan's Law to Prevent Demand for Child Sex Trafficking (hereinafter "International Megan's Law").[77.] International Megan's Law would require foreign governments to be notified when a sex offender is traveling to their country.

The harsh laws that currently are adopted in states and by the federal government that prosecute sex offenders for possession of child pornography and require registration as a sex offender are strongly criticized in the recently published book *Caught: The Prison State and the Lockdown of American Politics,* by Marie Gottschalk (Princeton University Press, 2015); see Chapter 9, pp.196-214.

Footnotes

25. United States Sentencing Commission (2009) *The History of the Child Pornography Guidelines*, pp.1–2. Available at www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/sex-offenses/20091030_History_Child_Pornography_Guidelines.pdf (accessed January 26, 2017).
26. *Id*. at 1 (citing Sentencing Reform Act of 1984, Pub. L. No. 98-473, Chapter II, § 212(a), 98 Stat. 1837 (1984) ("SRA"); 18 U.S.C. § 3553(a)(2)).
27. *Id*. at 6.
28. Protection of Children Against Sexual Exploitation Act, Pub. L. No. 95-225, 92 Stat. 7 § 2 (1978) (codified at 18 U.S.C. §§ 2251–2253).
29. United States Sentencing Commission, *supra* note 43, at 9 (citing Protection of Children Against Sexual Exploitation Act, supra note 46).
30. Child Abuse Victims' Rights Act, Pub. L. No. 99-500, 100 Stat. 1783, Title I, § 101(b) (1986), amended by Pub. L. No. 99-591, 100 Stat. 3341-75, Title I, § 101(b) (1986).
31. *Id*. at § 702(2).
32. United States Sentencing Commission, *supra* note 43, at 10.
33. *Id*.
34. *Id*.
35. *Id*.
36. *Id*. at 13.
37. *Id*. (citing USSC, Revised Report of the Working Group on Child Pornography and Obscenity Offenses and Hate Crime, 7–14 (1990)).
38. See generally United States Sentencing Commission, supra note 43.
39. See *Id*. at 16–26.
40. *Id*. at 26 (citing Sex Crimes Against Children Prevention Act of 1995, Pub. L. No. 104-71, 109 Stat. 774 (Dec. 23, 1995) (hereinafter "SCACPA")).
41. *Id*. (quoting SCACPA §§ 2, 3).
42. *Id*. at 27 (citing USSG App. C, amendment 537 (Nov. 1, 1996)).
43. Kristin Carlson (2010) "Strong medicine: Toward effective sentencing of child pornography offenders."

Michigan Law Review First Impressions 109, 27. Available at http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1023&context=mlr_fi (accessed January 26, 2017).

44. *Id*.
45. U.S. Sentencing Guidelines Manual § 2G2.2 (2008).
46. *Id*.
47. Loren Rigsby (2010) "A call for judicial scrutiny: How increased judicial discretion has led to disparity and unpredictability in federal sentencings for child pornography." *Seattle University Law Review* 33, 4, 1319 n.2.
48. Hessnick, *supra* note, at 864 (citing Mark Hanse (2009) "A reluctant rebellion." *ABA Journal*, June 2009, at 57).
49. *Id*. at 864.
50. See id. at 29.
51. *Id*.
52. *Id*.
53. *Id*.
54. *Id*.
55. *Id*.
56. *Id*. at 29–30.
57. Hessnick, *supra* note, at 867 (internal citations omitted).
58. *Id*. at 873–880.
59. Rigsby, *supra* note 65, at 1319–1320.
60. Compare *United States v. Rausch*, 570 F. Supp. 2d 1295, 1308 (D. Colo. 2008) (finding that although the guideline sentencing range was 97–120 months in federal prison, the defendant's poor physical health was a mitigating factor, and the defendant was only sentenced to one day in prison with credit for time served) with *United States v. Toothman*, 543 F.3d 967 (8th Cir. 2008) (upholding the district court's sentence of 97 months in prison even though the defendant had severe health problems).
61. Rigsby, *supra* note 65, at 1321.
62. This act is named after Jacob Wetterling. Jacob was a passenger in his mother's vehicle when their "ride home was interrupted by an armed man wearing a nylon mask who ordered the boy's companions to flee." See www.pameganslaw.state.pa.us/History.aspx?dt= (accessed January 26, 2017). He has not been seen since. Id.
63. H.R. 3355, 103rd Cong. (1994) (enacted).
64. *Id*.
65. *Id*.
66. *Id*.
67. Pub. L. No.104-236, S. 1675, 104th Cong. (1996) (enacted). This act gets its name from Pam Lychner, a former flight attendant who was brutally assaulted by a twice-convicted felon waiting for her at a vacant house. See www.pameganslaw.state.pa.us/History.aspx?dt= (accessed January 26, 2017). The attack was stopped when her husband arrived at the scene.
68. *Id*.
69. *Id*.
70. This law is named after Megan Kanka, a seven-year-old girl from New Jersey. Megan was invited by her neighbor to see his puppy. The neighbor was a twice-convicted pedophile. He raped and murdered Megan and dumped her body in a nearby park. See www.pameganslaw.state.pa.us/History.aspx?dt= (accessed January 26, 2017).
71. See Pub. L. No.104-145, 104th Cong. (1996) (enacted).
72. *Id*.
73. *Id*.
74. A summary of these acts can be found at http://ojp.gov/smart/legislation.htm (accessed January 26, 2017).
75. *Id*.
76. H.R. 4573, 113th Congress (2014).

APPENDIX C: Research Abstracts on ASD and Sexuality

MMPI-2 Personality Profiles of High-Functioning Adults with Autism Spectrum Disorders
Sally Ozonoff, Nicanor Garcia, Elaine Clark, ...
Assessment, Vol 12(1), Mar, 2005. pp. 86-95.

Abstract

The Minnesota Multiphasic Personality Inventory-Second Edition was administered to 20 adults with autism spectrum disorders (ASD) who fell in the average to above average range of intelligence and 24 age-, intelligence-, and gender-matched college students. Large group differences, with the ASD group scoring higher, were found on the L validity scale, Clinical Scales 2 (D) and 0 (Si), Content scale Social Discomfort (SOD), Supplementary scale Repression (R), and Personality Psychopathology Five (PSY-5) scale INTR (Introversion). The proportion of ASD adults scoring in the clinical range on these scales was between 25% and 35%. High scores on these scales are consistent with the clinical picture of Asperger syndrome and high-functioning autism in adulthood. Future directions and implications for identifying adults in need of a specialized autism assessment are discussed.

Developmental theory and developmental deficits: the treatment of sex offenders with Asperger's Syndrome.
Bolton, Winifred.
Sex, mind, and emotion: Innovation in Psychological Theory and Practice. Hiller, Janice, (Ed); Wood, Heather, (Ed); Bolton, Winfred, (Ed); pp. 41-61; London, England: Karnac Books; 2006.

Abstract:

In this chapter, I describe my observations and experiences in individual and group therapy with a small group of six young men that led me to theorize that the core deficit in Asperger's Syndrome is a failure in non-verbal communication, specifically the interpretation of facial expression, and that this deficit gives rise developmentally to the abnormalities in social interaction, cognition, speech, and use of language, which are the defining features of the syndrome. I argue that an appreciation of the central importance of non-verbal communication to the development of symbolic thinking, the capacity to reflect on the content of one's own mind, to 'read' others' minds and thereby to connect with them, capacities that are absent in Asperger's, significantly extends our understanding of normal social and emotional development. I also wish to suggest that our understanding of Asperger's syndrome has been strongly affected by the fact that both theory and diagnosis have developed on the basis of observations of children. This has led to a failure to account for some features, specifically poor emotion regulation, because in the normal individual the capacity to regulate emotion is acquired in the course of development. Its absence, therefore, may not be apparent until adulthood. I would argue that poor emotion regulation is a core feature of Asperger's syndrome, and is clearly apparent in the adult. I believe that this difficulty is also evidenced in poor management of sexual arousal, which, together with the currently recognized difficulties in social interaction, make problems of sexuality and sexual relationship inevitable. A truly developmental theory then is required to understand sex offending in adult men with Asperger's syndrome.

Addressing the sexuality and sex education of individuals with autism spectrum disorders.
Sullivan, A., Caterino, L.
Education & Treatment of Children, Vol 31(3), Aug, 2008. pp. 381-394.

Abstract:

This paper addresses the need for **sexuality** education for individuals with **autism** spectrum disorders. It provides a brief overview of **autism** and Asperger's Syndrome as well as a summary of the existing literature regarding the **sexuality** of this population. The existing research suggests that there is a high frequency of sexual behaviors among individuals with these disorders. A number of these behaviors may become problematic for caregivers and service providers because they violate societal norms regarding appropriate interpersonal behavior and may jeopardize the inclusion of this group in educational and community settings. The existing sex education programs for individuals with ASD are reviewed, highlighting the major components of programs tailored to this population.

From pp. 381-382

> *"However, more recent literature indicates that most adolescents and adults with these disorders engage in sexual behaviors and many desire intimate relations with others (Haracopos & Pedersen, 1992; Kontstantareas & Lunsky, 1997; Ray, Marks & Bray-Garretson, 2004; Ruble & Dalrymple, 1993; Stokes & Kaur, 2005; Van Bourgondien, Reichle, & Palmer, 1997). Unfortunately, parents continue to report substantial concern regarding negative public perceptions of such behaviors and the subsequent treatment of their children (Realmuto & Ruble, 1999; Ruble & Dalrymple, 1993) and case studies have drawn attention to deviant sexual behaviors (e.g., public masturbation, fetishism, compulsive sexual behaviors, etc.) among this population (Ray et al., 2004; Realmuto & Ruble, 1999; Williams, Allard & Sears, 1996). Additionally, as the population of individuals with varying degrees of autism continues to grow, this will likely become even more of an issue in the near future."*

Autism spectrum disorder symptoms in juvenile suspects of sex offenses.
't Hart-Kerkhoffs, Lisette A., et. al.
The Journal of Clinical Psychiatry, Vol 70(2), Feb, 2009. pp. 266-272.
Abstract:

Objective: To investigate autism spectrum disorder (ASD) symptoms in juvenile suspects of sex offenses. Method: A group of 175 juvenile suspected sex offenders (all males, mean ± SD age = 14.9 ± 1.4 years) was compared with a matched healthy control group (N = 500, mean ± SD age = 14.0 ± 1.4 years) and a group of children with DSM-IV-diagnosed ASD (N =114, mean ± SD age = 14.2 ± 1.9 years) with respect to autistic symptoms as measured by means of a standardized questionnaire, the Children's Social Behavior Questionnaire. Furthermore, specific subgroups of sexual offenders, i.e., child molesters, solo peer offenders, and group offenders, were compared with regard to levels of ASD symptoms. The study was conducted from May 2003 to December 2006. Results: Significantly higher levels of ASD symptoms were found in juvenile sex offenders than in healthy controls, while levels were lower than in the ASD group ($F = 148.259$, $p < .05$). Solo peer offenders and child molesters scored higher on several subscales as well as on core autistic symptoms than group offenders ($F = 5.127$, $p<.05$). Conclusions: Levels of ASD symptoms are higher in juvenile suspects of sex offenses as compared to the healthy population, which argues for considering specific diagnostic assessment in this population, especially in solo offenders and child molesters.

Sexual behavior in male adolescents and young adults with autism spectrum disorder and borderline/mild mental retardation.
Hellemans, H., Roeyers, H., Lepale, W., Dewaele, T., and Deboutte, D.

Sexuality and Disability, Vol 28(2), June, 2010. pp. 93-104.

Abstract:

Group home caregivers of 20 institutionalized, male adolescents and young adults with Autistic Disorder (AD) and Borderline/Mild Mental Retardation (MR) and of 19 institutionalized, male adolescents and young adults with Borderline/Mild MR, without AD were interviewed with the Interview Sexuality Autism-Revised (ISA-R). Overall the individuals with AD were not significantly less sexually active than the individuals with MR. Masturbation was common in both groups. Individuals with MR had significantly more experience with relationships. No difference was found in the presence of inappropriate behavior. No difference was found in sexual orientation. Some deviant sexual behaviors (stereotyped sexual interests; sensory fascinations with a sexual connotation; paraphilia) were present in the group with AD, but not in the group with MR. A difference seemed to exist in the nature of sexual problems in the individuals with AD and MR, problems in individuals with AD being more related to an obsessive quality of the sexual behavior.

Self-assessed sexuality in young adults with High-Functioning Autism

Prianka Mehzabin, Mark A. Stokes

Research in Autism Spectrum Disorders, Vol 5, Issue 1, January-March 2011, pp. 614-621

Abstract

The literature has revealed that autistic persons of all ages show an interest in sexuality and relationships, but the poor social and communication skills found among those with autism hinders the experience of this. Unfortunately, most research to date in this domain has relied exclusively upon parental or caregiver reports. Thus there remains a need for research to be undertaken in this area based on direct reports from autistic individuals. We hypothesised that compared to Typically Developing (TD) persons, persons with High-Functioning Autism (HFA) would reveal lesser levels of sexual experience, lower levels of sexual and social behaviour, and less understanding of privacy on various subscales of the Sexualised Behaviour Scale. The results of this present study supported the hypothesis on all scales except Privacy and Sexualised Behaviour. Overall, compared to TD individuals, HFA individuals engaged in fewer social behaviours, had less sex education and fewer sexual experiences, had more pronounced concerns for the future, and showed similar levels of privacy knowledge and public sexualised behaviour. These findings suggest a need for specialised sex education programs for autistic populations; further, since social behaviour was significantly lower for autistic individuals and future concerns were higher, this suggests that sex education programs need to incorporate education about social rules to enhance social communication and understanding.

Sexual abuse and offending in autism spectrum disorders.

Sevlever, Melina, Roth, Matthew E., Gillis, Jennifer M.

Sexuality and Disability, Vol 31(2), June 2013. pp. 189-200.

Abstract:

Individuals with autism spectrum disorders (ASD) may be disproportionately at risk of experiencing sexual abuse and victimization. Moreover, limited research suggests some individuals with ASD may be more likely to engage in sexual offending behavior. The present review addresses both sexual abuse and offending within the ASD population. The literature review was conducted utilizing PsycINFO and the Education Resources Information Center. Characteristics of the ASD population and how they relate to both victimization and offending are assessed. Additionally, a brief review of sexual education

for this population is presented. (PsycINFO Database Record (c) 2016 APA, all rights reserved)

Violence and sexual offending behavior in people with autism spectrum disorder who have undergone a psychiatric forensic examination.
Søndenaa, Erik. St., et al.
Psychological Reports, (August 2014). 115(1): 32-43.
Abstract:

The increased awareness of Autism Spectrum Disorders (ASD) over the last few decades as well as the potential association between ASD and off ending behaviors has spurred a need for increased research in this area. In order to explore any possible relationship between ASD and violent or sexual crime the present study examines all forensic examination reports over a 10-yr. period in Norway where the charged persons were diagnosed with ASD and charged with either a violent (N = 21) or a sexual (N = 12) offense. Differences between these two groups regarding previous contact with child welfare and confessions to the offense were found. There was also a tendency toward more severe mental health problems and less intellectual problems among the violent offenders than the sexual offenders.

Autism spectrum disorder and sexual offending: Responsivity in forensic interventions.
Higgs, Tamsin, Carter, Adam J.. \
Aggression and Violent Behavior, Vol 22, May 2015. pp. 112-119.
Abstract:

Research concerned with autism spectrum disorder (ASD) and criminality has grown in recent years. While having ASD does not increase risk of sexual offending behavior, an association has been recognized between ASD and sexually abusive behaviors. Despite this association, inadequacies in much of the criminal justice system to respond to the needs of this client group have been raised. A proportion of those people within the criminal justice system convicted of sexual offenses will have ASD. Given that group based interventions require participants to carry out introspection, sharing personal information and interacting in a group, all activities that an individual with ASD will invariably find challenging, efforts need to be made to develop interventions to work responsively, safely, appropriately and effectively with this client group to reduce risk of sexual recidivism. This review sets out to consider research on ASD and sexual offending in order to make practical recommendations on working responsively to raise the possibility of therapeutic interventions being effective when engaging with this client group. The status of research on ASD both generally, as far as the scope of this review allows, and in relation to offending is discussed and practical guidance is offered.

Sexual Offending and Autism Spectrum Disorders
Allely, C. S., & Creaby-Attwood, A.
Journal of Intellectual Disabilities and Offending Behaviour
Publication date: 14 March 2016
Abstract

Purpose – Studies have found innate vulnerabilities which potentially may increase the risk of an individual with autism spectrum disorders (ASD) finding themselves involved with the criminal justice system as a result of being charged with a sexual offence. The purpose of the present review is to evaluate the literature which has explored sexual offending in individuals with ASD. Design/methodology/approach – A systematic PRISMA review

(PRISMA, Preferred Reporting Items for Systematic Reviews and Meta-Analyses) was conducted using internet-based bibliographic databases (PsycINFO, MEDLINE, Psychology and Behavioral Sciences Collection and PsycARTICLES) in order to access studies which investigated to any degree the association between ASD and sexual offending. Findings – Only a small number of case reports (N = 7) on sexual offending in individuals with ASD and a small number of prevalence studies (N = 7) were identified. Research Implications – Research is urgently required to identify the specific requirements and needs of sexual offenders with ASD in order to inform an appropriate treatment strategy for successful outcomes. Originality/value – Relatively few studies and reviews have investigated the area of ASD and sexual offending specifically.

Aspects of sexuality in adolescents and adults diagnosed with autism spectrum disorders in childhood.

Authors:

Fernandes, Lucrecia Cabral, et al.

Journal of Autism and Developmental Disorders, Vol 46(9), Sep, 2016. pp. 3155-3165.

Abstract:

The literature concerning sexuality in autism spectrum disorders (ASDs) is limited regarding inappropriate sexual behaviours and paraphilias and its relation to age, verbal ability, symptom severity, intellectual ability, or adaptive functioning. A cohort of 184 adolescents and young adults (ages 15–39 years) with ASD diagnosed in childhood, including both low and high functioning individuals, was examined. The large majority were found to have a sexual interest and showed interest towards the opposite sex. Inappropriate sexual behaviours and paraphilias were reported for about a fourth of the individuals. No relationships were found between inappropriate sexual behaviours and any of the background variables listed above. However, associations were found between paraphilias and ASD symptom severity, intellectual ability, and adaptive functioning.

Autism, sexual offending, and the criminal justice system

Melanie Clark Mogavero

Journal of Intellectual Disabilities and Offending Behaviour (2016), Vol. 7 Iss 3 pp. 116 – 126

Abstract:

Purpose – There has been growing concern among stakeholders about individuals with autism spectrum disorders (ASD) and sex offending as research supports an indirect association. The purpose of this paper is threefold: first, bring more awareness of the sexuality and deviant/criminal sexual behavior among those with ASD to stakeholders in the criminal justice system (CJS); second, demonstrate that much of the deviant or sexual offending behavior exhibited among those with ASD is often a manifestation of their ASD symptoms and not malice; and third, demonstrate the necessity to address specific needs of individuals with ASD who enter the CJS due to criminal sexual behavior.

Design/methodology/approach – This paper provides an overview of the ASD symptomology, including the diagnostic changes, a review of the literature on ASD and sexuality, which includes deviant sexual behavior and sexual offending.

Findings – The author linked examples of deviant or sexual behavior in the research literature to the ASD symptomology and described how the symptomology explains such behavior.

Originality/value – Sexual offending among those with ASD has received little research outside the mental health field. This review is of particular importance to those in the CJS

unfamiliar with ASD, as they should handle them differently with regard to formal interviewing, measures of competency, capacity, and sentencing.

A psycho-legal perspective on sexual offending in individuals with autism spectrum disorder.

Creaby-Attwood, A., Allely, C. S.

International Journal of Law and Psychiatry, Vol 55, Nov-Dec, 2017. pp. 72-80.

Abstract:

It is important to consider whether there are innate vulnerabilities that increase the risk of an individual with an autistic spectrum disorder (ASD), predominantly those defendants with a diagnosis of Asperger's Syndrome, being charged and convicted of a sexual offence. The significance of such can be readily seen in recent English case law, with judgments on appeal finding convictions unsafe where there have been a number of failings in the Judge's summing up. In this article, we will consider the gravity of Judges omitting to highlight a defendant's diagnosis of autism spectrum disorder and the necessity of detailed explanations to jury members regarding the condition and its effect upon thoughts and behaviour. Consideration will be specifically given to the necessity to prove sexual motivation in such offences and the judicial direction required in relation to whether the appellant's actions had been sexually motivated. Recognition of the social impairments inherent in ASDs are vital to this work and we shall consider whether the difficulty with the capacity to develop appropriate, consenting sexual relationships as a result of impaired social cognition may be one of the factors which increases the risk of sexual offending in individuals with ASD (Higgs & Carter, 2015).

Assessing autism spectrum disorder in intellectually able adults with the personality assessment inventory: Normative data and a novel supplemental indicator.

Authors:

Harrison, Kimberly B., et al.

Journal of Autism and Developmental Disorders, Mar 13, 2020.

Abstract:

Differential diagnosis of autism spectrum disorder (ASD) among intellectually-able adults often presents a clinical challenge, particularly when individuals present in crisis without diagnostic history. The Personality Assessment Inventory (PAI) is a multiscale personality and psychopathology instrument utilized across clinical settings, but to date there are no published normative data for use of the PAI with adults with ASD. This study provides normative PAI data for adults diagnosed with ASD, with effect size comparisons to the PAI clinical standardization sample and an inpatient sample. Additionally, a discriminant function was developed and cross-validated for identification of ASD-like symptomatology in a clinical population, which demonstrates promise as a screening tool to aid in the identification of individuals in need of specialized ASD assessment.

APPENDIX D: Autism and False Confessions

High functioning autism spectrum disorders: an investigation of psychological vulnerabilities during interrogative interview

Alice S. North , Ailsa J. Russell & Gisli H. Gudjonsson

Pages 323-334 | Received 01 Nov 2006, Accepted 01 Feb 2007, Published online: 29 Jul 2008

Abstract

Forensic psychologists and psychiatrists are commonly asked to ascertain the reliability of statements made by suspects to the police during questioning and to assess an individual's vulnerability to providing information which is inaccurate, unreliable, and misleading during police interview. Autism spectrum disorders (ASD) are characterised by qualitative impairments in social communication and interaction, and a restricted or repetitive pattern of behaviours, interests, and activities. It is not clear whether people with ASD are more vulnerable at interview, or more prone to respond negatively to interrogative pressure, when compared with the general population. In the present study, 26 individuals with high functioning ASD, and 27 gender- and IQ-matched controls, were compared on measures of interrogative suggestibility and compliance as well as on measures of anxiety, depression, the extent to which they feared negative evaluation by others, and whether they had a suspicious outlook. There were no significant between-group differences on the measures of suggestibility, but the group with ASD were rated as significantly more compliant than the controls in terms of both parental and self-report, and also had higher scores on measures of depression, anxiety, fear of negative social evaluation and paranoia. Bi-modal distribution of suggestibility scores within the ASD group indicates that individual characteristics should be taken into account when considering an assessment. Individuals with ASD may be more eager to please or to avoid conflict and confrontation than controls, and may be more prone to respond compliantly to requests and demands.

An evaluation of Miranda rights and interrogation in autism spectrum disorders

Lindsay M. Salseda, Dennis R. Dixon, Tracy Fass, Deborah Miora, Robert A. Leark,

Research in Autism Spectrum Disorders, Volume 5, Issue 1, 2011, Pages 79-85

Abstract

The primary deficits present in autism spectrum disorders (ASD) may lead to increased susceptibility to involvement in the criminal justice system. The same deficits may also cause individuals with ASD to be more vulnerable to interrogation techniques and other aspects of the legal system. Due to the increased level of vulnerability as well as impairments in social cognition, individuals with ASD may have difficulty understanding their legal rights, more specifically their Miranda rights. This review explores Miranda comprehension in general and how the specific deficits found in ASD may impact Miranda comprehension.

Brief report: Suggestibility, compliance and psychological traits in high-functioning adults with autism spectrum disorder.

Maras, Katie L., Bowler, Dermot M.

Research in Autism Spectrum Disorders, Vol 6(3), Jul-Sep, 2012. pp. 1168-1175.

Abstract:

Individuals with autism spectrum disorder (ASD) may be over-represented within the criminal justice system; it is therefore important to understand how they fare under police questioning. The present study examined interrogative suggestibility and compliance in

individuals with ASD, and whether this is associated with certain psychological traits. Adults with ASD and their typical counterparts completed the Gudjonsson Suggestibility Scales (GSS), Gudjonsson Compliance Scale (GCS), and measures of state-trait anxiety, self-esteem, fear of negative evaluation by others and paranoia. In contrast to previous research (North, Russell, & Gudjonsson, 2008), there was no difference between the ASD and comparison groups on the measure of compliance, and groups also did not differ on any of the GSS measures, despite the ASD group reporting significantly higher paranoia. Findings indicate that individuals with ASD may be no more likely to succumb to interrogative pressures than their typical counterparts.

A systematic review of people with autism spectrum disorder and the criminal justice system.
King, Claire, Murphy, Glynis H.
Journal of Autism and Developmental Disorders, Vol 44(11), Nov, 2014. pp. 2717-2733.
Abstract:

This paper provides a systemic review of the available literature on people with autism spectrum disorder (ASD) in the criminal justice system (CJS). The review considers two main types of study: those that examined the prevalence of people with ASD in the CJS and those that examined the prevalence of offending in populations with ASD. In addition, types of offences in people with ASD, co-morbid psychiatric diagnoses, and characteristics of people with ASD who commit offences (including predisposing factors) are considered. A combination of search terms was used in a variety of databases in order to find all of the available literature on this topic, and research studies were included based on specified inclusion and exclusion criteria. It was found that whilst there is an emerging literature base on this topic, there are a wide variety of methodologies used, making direct comparison difficult. Nevertheless it can be concluded so far that people with ASD do not seem to be disproportionately over-represented in the CJS, though they commit a range of crimes and seem to have a number of predisposing features. There is poor evidence of the presence of comorbid psychiatric diagnoses (except in mental health settings) amongst offenders with ASD, and little evidence of the oft-asserted over-representation of certain kinds of crimes. It is recommended that further research of good quality is required in this area, rather than studies that examine populations that are not representative of all those with ASD.

Autism spectrum disorder and sexual offending: Responsivity in forensic interventions.
Higgs, Tamsin; Carter, Adam J.
Aggression and Violent Behavior, Vol 22, May, 2015 pp. 112-119.
Abstract:

Research concerned with autism spectrum disorder (ASD) and criminality has grown in recent years. While having ASD does not increase risk of sexual offending behavior, an association has been recognized between ASD and sexually abusive behaviors. Despite this association, inadequacies in much of the criminal justice system to respond to the needs of this client group have been raised. A proportion of those people within the criminal justice system convicted of sexual offenses will have ASD. Given that group based interventions require participants to carry out introspection, sharing personal information and interacting in a group, all activities that an individual with ASD will invariably find challenging, efforts need to be made to develop interventions to work responsively, safely, appropriately and effectively with this client group to reduce risk of sexual recidivism. This review sets out to consider research on ASD and sexual offending in order to make practical

recommendations on working responsively to raise the possibility of therapeutic interventions being effective when engaging with this client group. The status of research on ASD both generally, as far as the scope of this review allows, and in relation to offending is discussed and practical guidance is offered.

Autism, sexual offending, and the criminal justice system

Melanie Clark Mogavero

Journal of Intellectual Disabilities and Offending Behaviour, Sept 2016, vol.7, no.32016, pp.116-126.

Abstract

Purpose – There has been growing concern among stakeholders about individuals with autism spectrum disorders (ASD) and sex offending as research supports an indirect association. The purpose of this paper is threefold: first, bring more awareness of the sexuality and deviant/criminal sexual behavior among those with ASD to stakeholders in the criminal justice system (CJS); second, demonstrate that much of the deviant or sexual offending behavior exhibited among those with ASD is often a manifestation of their ASD symptoms and not malice; and third, demonstrate the necessity to address specific needs of individuals with ASD who enter the CJS due to criminal sexual behavior.

Design/methodology/approach – This paper provides an overview of the ASD symptomology, including the diagnostic changes, a review of the literature on ASD and sexuality, which includes deviant sexual behavior and sexual offending.
Findings – The author linked examples of deviant or sexual behavior in the research literature to the ASD symptomology and described how the symptomology explains such behavior.

Originality/value – Sexual offending among those with ASD has received little research outside the mental health field. This review is of particular importance to those in the CJS unfamiliar with ASD, as they should handle them differently with regard to formal interviewing, measures of competency, capacity, and sentencing.

Compliance in autism: Self-report in action

Chandler, Robert ; Russell, Ailsa ; Maras, Katie.

Autism. 2018.

Abstract

Previous research indicates that autistic individuals are more likely to be bullied, and that they experience heightened anxiety and diminished self-esteem. These factors are known to predict heightened compliance, which is the tendency to agree with or carry out the requests and demands of others. This has a range of potentially serious consequences, particularly for an autistic person. This study utilised self-report (the Gudjonsson Compliance Scale) and behavioural measures of compliance (the door-in-the-face task) with 26 autistic and 26 typically developing adults. Participants also completed measures of early life bullying experiences, anxiety and self-esteem. Autistic participants were more compliant on both self-report and experimental tasks, and they reported more bullying experiences, higher anxiety and reduced self-esteem. Looking at both groups, bullying, anxiety and self-esteem were all correlated with self-reported compliance on the Gudjonsson Compliance Scale, yet only self-esteem was a unique predictor. None of these predictor variables related to behavioural compliance on the door in the face; nor did

Gudjonsson Compliance Scale scores predict door-in-the-face performance, which may be better explained by situational and motivational factors. Findings have important implications for a range of real-life settings including requests made in the context of research, schools, the criminal justice system and the workplace.

Autism spectrum disorder and criminal responsibility: historical perspectives, clinical challenges and broader considerations within the criminal justice system

O'Sullivan, O. (2018). Irish Journal of Psychological Medicine, 35(4), 333-339.

Abstract

There has been relatively limited research focus on autism in the context of the criminal justice system. The relationship between autism spectrum disorder (ASD) and criminal responsibility is complex. Furthermore, the features inherent to ASD can have a significant bearing on a wide array of other issues in this context including police interviewing, fitness to be tried, culpability and the appropriateness of custodial disposal. This review explores the background to our understanding of ASD, patterns of offending behaviour and the nature of the relationship between this and characteristic ASD deficits. The clinical and legal challenges posed by ASD defendants in terms of identification, assessment and on a broader service level as they negotiate the criminal justice system are highlighted to illustrate the varied difficulties they may encounter and to draw attention to this field as a worthy area of research and training for the medical, legal and law enforcement professions.

The Risk of Making False Confessions: The Role of Developmental Disorders, Conduct Disorder, Psychiatric Symptoms, and Compliance

Gisli Hannes Gudjonsson, Rafael A. Gonzalez, Susan Young

First Published March 21, 2019 Research Article Find in PubMed

Abstract

Objective: To investigate salient predictors of self-reported false confessions. The conditions included mild intellectual disability (ID), autism spectrum disorder (ASD), ADHD, conduct disorder (CD), psychiatric symptoms, and compliance. Method: The sample consisted of 386 male Scottish prisoners, who completed a diagnostic ADHD interview, psychometric tests, and a questionnaire about false confessions they had given to police over their lifetime. Results: There was a high rate of reported false confessions (33.4%); the reason for the majority (62.2%) being to "cover up for somebody else." CD, ADHD, psychological distress and psychiatric symptoms, and compliance were all significant predictors of false confession. When examining the influence of underlying domains of ADHD, it was found that hyperactivity/impulsivity drove the association with false confession after adjusting for coexisting CD. Conclusion: CD and ADHD were the two most powerful predictors of false confessions, with CD mediating some of the effects of ADHD.

Suggestibility and false memories in relation to intellectual disability and autism spectrum disorder: a meta-analytic review

W. Griego J. N. Datzman S. M. Estrada S. S. Middlebrook

Journal of Intellectual Disability Research, Sep 3, 2019.

Abstract

Background

A systematic literature review was conducted to evaluate previous research that examined intellectual disability (ID) or autism spectrum disorder (ASD) in relation to memory distortions (i.e. suggestibility and false memories). There were two goals for the current study; the first goal was to identify significant trends in past literature that fulfilled previously established selection criteria. The second goal was to establish reliability and effect sizes for suggestibility and false memory for samples with diagnoses of ID or ASD.

Methods and Procedures

Articles that were selected for inclusion in the current study were required to have a clinically diagnosed sample, as well as a non-clinical control group. Studies were also required to have a post-hoc power score higher than .30 to prevent the effects of underpowered studies and limit the potential for publication bias. Selected studies were also required to have provided pertinent information required to complete the analyses (e.g. means, standard deviations, p-values, or correlation coefficients). Any study that did not provide the required information was excluded.

Results and Conclusions

Two empirical Bayes omnibus analyses revealed a significant effect for participants diagnosed with ID ($z = 6.10$, $p < .001$), which supported the researchers' hypothesis. The results indicated increased susceptibility toward memory suggestibility and false memories when compared with the general population. However, the results of the analyses did not support the researchers' hypothesis regarding participants diagnosed with ASD. The analyses indicated that participants diagnosed with ASD displayed decreased suggestibility and were less likely to develop false memories ($z = -2.37$, $p = 0.018$).

About Dr. Paul Simpson

- Extensive experience assisting military courts-martial through consultation with legal teams (Government and Defense), assisting with voir dire of potential members, and expert testimony.
- Has been a course instructor for the Air Force JAG School's Advance Sexual Assault Litigation Course since 2016.
- Has provided CLE trainings for the State Bar of Arizona, Air Force, Marine, and Navy JAG regarding:
    - *Anatomy of a Psychosexual Evaluation: What Every Attorney Should Know*
    - *Child Sexual Abuse Allegations: What Every Attorney Should Know*
    - *Countering Counterintuitive Testimony*
    - *Daubert Standard and Psychological Evaluations: What Every Attorney Should Know*
    - *Memory in the Courtroom: What Every Attorney Should Know*
    - *Mental Health Evaluations in Homicides and Crimes of Violence: What Every Attorney Should Know*
    - *Online Sex Offense: What Every Attorney Should Know*
- Has been an instructor for the Arizona Supreme Court in training competency evaluators.
- A former case manager with Child Protective Services, Dr. Simpson has extensive experience working with victims and perpetrators of sex crimes, including over 1000 psychosexual evaluations of adults and juveniles. He is trained and/or certified in the Abel, Affinity 2.5, Look VTM, MEGA, Static 99R/2002R, Stable/Acute 2007, SVR-20, HCR-20, J-SOAP 2, ERASOR, and Limestone plethysmograph.
- A former Arizona officer for the Association for Treatment of Sexual Abusers (ATSA).
- Since 2003 has provided over 300 full-day trainings in all 50 states for professionals on assessing/treating sexual and Internet compulsions.
- Author of *Second Thoughts*, a book that was instrumental in helping expose the false claims and dangers of '*recovered memory therapy*.' Throughout the 1990's Dr. Simpson was a leading educator on *False Memory Syndrome* and trained thousands of counseling professionals on standards of practice. He also served as an expert consultant to the *Arizona Board of Psychologist Examiners.*
- Dr. Simpson has been a guest on *The Joan Rivers Show*, the *Leeza Gibbons Show*, *Parent Talk Radio*, *Focus on the Family*, *Frontline*, and *Fox News*. He has been a professional consultant to a number of national media, including *20/20*, *60 minutes*, *NBC News*, *Nightline*, *The Oprah Winfrey Show*, the *Chicago Tribune*, *Dateline*, *The Today Show*, *Focus on the Family*, and *Vanity Fair magazine*.

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