



2016 Neurodisabilities Forum  
How vulnerability intersects with justice in NZ



## NEURODISABILITY TENDENCIES CHECKLIST

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One in four New Zealanders is limited by a physical, sensory, learning, mental health or other impairment.<sup>1</sup> Neurodisabilities, which are often invisible at first glance, range from learning differences such as dyslexia and communication disorders through to attention deficit hyperactive disorder, autism, traumatic brain injury, epilepsy and foetal alcohol syndrome disorder. There are some marked commonalities in how individuals with neurodisabilities may present in the justice context. These create vulnerability and often give rise to misunderstandings in terms of what these characteristics and behaviours mean. In the justice system, where all procedures are essentially word-based, a person's inability to quickly process and comprehend information (written or verbal) leaves them open to manipulation and entrapment. Propensities to take statements literally, to become confused by information and sensory overload, to act impulsively and to speak before thinking make it difficult to navigate the complexities and nuances of the legal process.

Common to a range of neurodisabilities are different degrees of comprehension and (dis)comfort in social situations, along with behaviours that might be perceived as hostility, acting out or evidence of guilt. In reality, these are often coping mechanisms for the individual with neurodisabilities and have no pejorative meaning. For example, young people with neurodisabilities are highly prone to false or exaggerated confessions due to propensity to say 'yes' in order to bring an uncomfortable situation to an end. Lack of eye contact is another common characteristic of neurodisabilities. While this is indicative of anxiety or nervousness in the individual, it can be misinterpreted as guilt, disinterest or belligerence.

The below checklist<sup>2</sup> sets out some of the common characteristics of neurodisabilities, and how different the interpretation of these might be from the young person's reality. Importantly it outlines simple steps that can make a big difference in addressing misunderstandings across the points of intersection with the justice system – from first police contact to caregiver engagement, legal representation, the court process and so on.

Overall, keeping questions short and simple; addressing one issue at a time; and making sure a trusted support person is always present are simple changes that can make a big difference. In order to ensure an individual has full understanding and comprehension of the situation, it is also recommended that a court appointed Communication Assistant<sup>3</sup> be engaged where required.

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<sup>1</sup> 2013 Disability Survey, conducted by Statistics New Zealand following the 2013 Census.

<sup>2</sup> This checklist has been compiled by Dyslexia Foundation of New Zealand, in consultation with 2016 Neurodisabilities Forum stakeholders and Rose Blackett, Chair of the NZ Institute for Educational and Developmental Psychologists. 30 May 2016.

<sup>3</sup> This role involves being appointed by the Court to carry out a specialised assessment of the speech, language and communication skills of the person with a particular focus on how they are likely to manage the communication demands posed by a court context e.g. listening to, understanding and giving evidence, cross examination, instructing lawyers etc. Our assessment explores what enables them to communicate as easily as possible e.g. strategies that modify language, use of visual supports etc. Our report and recommendations are sent to the Court for consideration. We have sometimes then been appointed as an Officer of the Court to act in a neutral, impartial role to assist all to communicate with the person in court proceedings. See <https://talkingtroublenz.org/specialised-communication-assistance-in-justice-contexts/> for more detail.

<b>HOW NEURODISABILITIES MAY PRESENT 'TURN YOUR ND RADAR ON'</b>	<b>HOW THIS MIGHT BE INTERPRETED BY AUTHORITY</b>	<b>POSSIBLE PERSPECTIVE OF THE YOUNG PERSON</b>	<b>SIMPLE THINGS THAT CAN MAKE A BIG DIFFERENCE</b>
<b>Can't hold eye contact or is easily distracted.</b>	Guilt, belligerence, disinterest.	<p>Eye contact is very unpleasant and very confronting at a deep level. Eye contact creates anxiety, nervousness, and overwhelm.</p> <p>There are also cultural considerations in that while eye contact is considered important in Western culture; for many others – including Maori, Pasifika, Asian, Middle Eastern and Latin American cultures – significant eye contact can be seen as inappropriate, be subject to gender rules and in some cases be considered intensely disrespectful. More information on Maori protocols can be found at <a href="https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Best-health-outcomes-for-Maori.pdf">https://www.mcnz.org.nz/assets/News-and-Publications/Statements/Best-health-outcomes-for-Maori.pdf</a> (see p21).</p>	<p>Don't expect eye contact. Ensure an appropriate trusted support person who is familiar to the young person is present.</p>
<b>Answering 'yes' quickly &amp; frequently to questions.</b>	Guilt.	A typical well practised coping strategy to bring an uncomfortable situation to an end.	<p>Be alert for rapid, repetitive 'yes'. Lower your voice and try to sound non-confrontational. Frame questions as open-ended questions that cannot be answered with yes or no. Keep questions short. Avoid the use of double negatives – they are very confusing. Allow time for the individual to process what it is they are being asked. Ensure an appropriate trusted support person who is familiar to the young person is present.</p>

<p><b>Individual appears 'shut down'. May also display tics or put clothing or hands over eyes, ears, or nose.</b></p>	<p>Uncooperative and uninterested in proceedings, sullen, moody.</p>	<p>'Sensory overload'. Unable to cope with any more sensory input or visual, auditory, or olfactory stimuli, e.g. bright long run/fluorescent lights, loud noises, small spaces. A coping/survival strategy to block out light, noise, and smell.</p>	<p>Aim for a calm, ordered, and stable environment without strong smells (including perfume and body odour). If possible, move to quieter surroundings. Minimise outside noise and dim lights if possible. Give 'rest breaks' – this can mean the difference between a situation escalating to a 'fight' or 'flight' response from client. Offer food/drink.</p>
<p><b>Literacy and comprehension difficulties: Appears to be 'daydreaming' during conversations. Cannot follow explanations of complex issues such as 'you have a right to a lawyer and/or a nominated person'. Cannot follow instructions and gets lost after one or two instructional commands. Can't recall what he/she is supposed to do next. Doesn't appear to be listening when you explain the process they are about to go through. Withdrawn.</b></p>	<p>Obstructive. Not engaged in the process. May get 'lippy', swear, or become physically aggressive. Suspicious behaviour, belligerence, disinterest.</p>	<p>Feels embarrassed, inferior or inadequate. Will do anything to avoid admitting to literacy/comprehension difficulties. This is just 'school experience' happening again. Needs clarity so may ask same question over and over.</p>	<p>Break information into bite-size chunks. Scaffold and support each step/don't presume comprehension. Refer to key events chronologically (rather than moving backwards and forwards). Allow frequent breaks to restore concentration. Read out statements and other documentation to the interviewee as necessary. Use visuals if possible/available to structure conversation – can be used as a memory aid. A court-appointed Communication Assistant can assess and recommend strategies where comprehension difficulties preclude effective communication.</p>

<p><b>Communication difficulties:</b>  <b>Has trouble expressing ideas, can't find the right word, difficulty sharing what they know and supporting an argument or getting to the point.</b>  <b>Difficulty with correct sequence of events.</b>  <b>Doesn't understand hidden messages or connotative language or sarcasm, difficulty understanding proverbs and idioms.</b>  <b>Gives a statement which is 'unbelievable'; the story has holes in it, general evasiveness on details.</b></p>	<p>Guilt.  Shifting conversation to avoid telling the truth.  Acting stupid.</p>	<p>Confusion.  Overwhelm.  No idea what's going on.</p>	<p>Break information into bite-size chunks.  Use simple language.  Don't presume comprehension.  Allow plenty of time.  Refer to key events chronologically (rather than moving backwards and forwards).  Allow the person being questioned to jot down notes – or make a rough sketch if this is more helpful – and then refer back to check details.  A court-appointed Communication Assistant can assess and recommend strategies where communication difficulties preclude effective communication.</p>
<p><b>Little concept of consequences of actions:</b>  <b>Unable to link cause and effect or comprehend impacts of actions on others.</b>  <b>May appear nonchalant when you are speaking (e.g. particularly if you tell anecdotal stories of another youth's crime and resulting consequences).</b></p>	<p>Lack of remorse or empathy.  Suspicious behaviour.  Not taking the matter seriously.</p>	<p>Confusion.  No idea what you're talking about.  Confronted.</p>	<p>Extra time required for processing information and making connections between actions and consequence.  The time between the incident/situation and the consequence may mean the client does not link the consequence itself to the incident. It therefore is NOT likely to act as a deterrent for the client engaging in this behaviour/action/choice again in the future.</p>
<p><b>Inappropriate social conduct/impulsive emotive reactions:</b>  <b>Displays inappropriate emotional responses.</b>  <b>Poor control of emotions and behaviours, especially anger.</b></p>	<p>Guilt, rudeness, aggression  belligerence.</p>	<p>Scared and threatened.  Feeling anxious, trapped, attacked and/or isolated.</p>	<p>Give verbal/visual reminders about expected behavior.  Model positive communication skills in the way you interact with the individual.</p>

<p><b>Non-compliant, poor time keeping: Doesn't arrive on time, or arrives at wrong place, forgets important documents, ignores police summons etc. Struggles with following instructions and time management.</b></p>	<p>Lack of respect, deliberate non-cooperation. Doesn't care.</p>	<p>Poor short-term memory, concentration, spatial awareness. Struggles with anything requiring 'executive function'.</p>	<p>Refer to key events chronologically (rather than moving backwards and forwards). Allow the person being questioned to jot down notes – or make a rough sketch if this is more helpful – and then refer back to check details. Scaffold and support each step/don't presume comprehension.</p>
<p><b>Pulling clothing over head, banging head or kicking surfaces, hitting self.</b></p>	<p>Shame, rudeness, aggression.</p>	<p>Calming technique to escape visual and auditory stimuli. Coping / survival strategy. Self soothing – through firm or repetitive deep pressure contact on body. Sense of claustrophobia – too many people in a small space.</p>	<p>Offer a 'rest break' in a low stimulation environment.</p>
<p><b>Fidgeting or tapping, often with an object such as a pen, phone or clothing elements.</b></p>	<p>Disinterest, rudeness, suspicious behaviour.</p>	<p>Calming repetitive action that is a necessary tool to aid concentration and focus. If unable to do this, the individual will have to exert considerable energy trying NOT to fidget or tap, making them unable to focus or prone to shutting down.</p>	<p>Allow client to have the pen or similar object of their interest to assist with their need to actively process information.  (It is acknowledged that pens and similar can be used as a weapon, so this risk factor needs to be taken into account on a case-by-case basis.)</p>
<p><b>Jittery, sweaty, anxious, slurred or rapid speech, hyperactive, aggressive, jerky movements or seizures.</b></p>	<p>Disruptive and suspicious behaviour.</p>	<p>Alcohol and drug addiction OR medical condition for example diabetes, traumatic head injury or epilepsy.</p>	<p>Recognise that their addiction may be doing the talking. Health nurse or medical support person available to assess. Offer food/drink.</p>

<p><b>Absence seizures (where the individual appears to zone out): Non-responsive individual, may not answer to their name or may seem unable to focus eyes or hear.</b></p>	<p>Ignoring the situation. Uncooperative.</p>	<p>If undiagnosed, may not be aware what is happening. Afterwards may be tired but have no memory of the incident.</p>	<p>Recognised medical condition. Rapid breathing (hyperventilation) can trigger an absence seizure. Usually begin and end abruptly, sometimes lasting only a few seconds.</p> <p>Signs and symptoms of absence seizures include:</p> <ul style="list-style-type: none"><li>• Sudden stop in motion without falling</li><li>• Lip smacking</li><li>• Eyelid flutters</li><li>• Chewing motions</li><li>• Finger rubbing</li><li>• Small movements of both hands</li></ul> <p>Recognise individual will be tired afterwards, seek medical help.</p>
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