

Working with Individuals with Brain Injury

A Guide for Criminal Defense Attorneys

A person with a brain injury does not automatically stand out. Brain injury is called the “Silent Epidemic” because, after the scars heal and the person is interacting again, there are often no obvious signs of the disability.

Knowing how to identify and work with an individual who has sustained a brain injury can lead to a better understanding of their behavior and a more productive working relationship. This guide is intended to help criminal defense attorneys understand common characteristics of brain injury, provides strategies for engaging an individual to participate in an appropriate defense, and provides questions that screen for possible brain injury.

What is Brain injury?

A brain injury is an alteration in brain function acquired through traumatic or non-traumatic forces. A traumatic brain injury (TBI) is caused by an external force. A non-traumatic brain injury is the result of an internal source, such as a stroke.

Key Facts:

- Studies of the prevalence of brain injury among incarcerated adults found rates between 25 – 92%.
- Nearly 85,000 Virginians live with a long-term disability as a result of traumatic brain injury.
- Approximately 99,000 Virginians are disabled as a result of stroke and living in the community.
- CT scans are negative for 45% of brain injuries.

Symptoms: These can vary greatly and may include any combination of the following

- Physical: Seizures, Headaches, Fatigue, Weakness, and Paralysis
- Sensory: Impaired Coordination, Speech, Vision, and Balance
- Cognitive: Impaired Reasoning or Memory, Slow Thought Process, Difficulty Making Decisions, Reading, and Writing
- Social: Agitation, Impulsiveness, Emotional Instability, and Lack of Initiative

Causes:

- Falls
- Motor Vehicle Accidents
- Stroke/Aneurysm
- Brain Tumor
- Assault/Violence
- Shaken Baby Syndrome
- Drug overdoses
- Lack of Oxygen (Anoxia/Hypoxia)
- Infections
- Exposure to Toxic Substances

Common Characteristics

- Lack of insight and ability to self-monitor their behavior
- Difficulty appreciating the effects of their behavior on others or to make judgments as to the appropriateness of their behavior
- Trouble modulating their behavior or responses to situations
- Appearing uncaring, lazy, and unmotivated
- Irritating or explosive social behaviors
- Confusion about expectations
- Problems changing their behavior patterns in response to the consequences that may be effective in managing the behavior of others
- Disinhibition, impulsivity, perseveration
- Lower frustration tolerance and altered mood states, including depression
- Inaccurate interpretation of instructions
- Language and non-verbal communication deficits
- Planning and organization deficits
- Inability to generalize learning from one situation to another
- Memory problems
- Diminished cognitive flexibility (getting stuck on one way of responding)
- Egocentric, with the inability to see another's perspective
- Difficulty interpreting body language and social cues
- Poor listening
- Trouble finding the right word
- Difficulty judging personal space
- Getting stuck on an aspect of conversation
- Inability to recognize dangerous situations or distinguish between minor and serious problems

Strategies to Help Manage Brain Injury Deficits

| Deficit | Problems Arising | Management Strategies |
|---------------------------------|---|--|
| | The person may... | You can... |
| Speed of Information Processing | <ul style="list-style-type: none"> • take longer to answer questions • be unable to keep track of lengthy conversations | <ul style="list-style-type: none"> • give the person extra time • discuss only one thing at a time • verify that the person is keeping up with the conversation |
| Fatigue | <ul style="list-style-type: none"> • tire quickly (physically and mentally) • become irritable | <ul style="list-style-type: none"> • encourage the person to take breaks • schedule more demanding or essential tasks when the person is at their best (to the extent possible) |
| Mental Tracking | <ul style="list-style-type: none"> • lose track of what they are saying, thinking, or doing • get information confused | <ul style="list-style-type: none"> • keep activities short and uncomplicated • ask specific and direct questions • provide reminders of the next task |
| Memory | <ul style="list-style-type: none"> • forget important information • have difficulty recalling things they have discussed with you or others | <ul style="list-style-type: none"> • repeat information as necessary • encourage use of external memory aids (e.g., journals, to the extent possible) • give prompts to assist recall |
| Attention | <ul style="list-style-type: none"> • appear not to listen • miss details • have difficulty concentrating • be easily distracted | <ul style="list-style-type: none"> • shorten and/or write down instructions • reduce external distractions • bring the person's focus back to the current task |
| Communication | <ul style="list-style-type: none"> • have trouble understanding non-verbal communication/body language • take statements literally | <ul style="list-style-type: none"> • give verbal cues to communicate intent of conversation • use simple and direct language, avoiding talking in abstract terms or using sarcasm |
| Planning & Organizing | <ul style="list-style-type: none"> • have difficulty preparing for a task (such as testimony) • have problems organizing thoughts and explaining them to others | <ul style="list-style-type: none"> • encourage the person to take time to think before they speak • encourage the person to practice their testimony in advance, if needed • be patient when the person is answering a question |
| Reasoning | <ul style="list-style-type: none"> • have a simplistic understanding of emotions • show poor judgment and decision-making skills | <ul style="list-style-type: none"> • avoid using emotional undertones • be patient with decision-making that may appear illogical |
| Self-Monitoring | <ul style="list-style-type: none"> • show poor adherence to rules • not realize they have made errors • have a low tolerance for frustrating or stressful situations | <ul style="list-style-type: none"> • provide feedback about errors promptly and respectfully • gently redirect behavior or conversation to a different topic |

Screening Questions

If you know or suspect that a client has sustained a brain injury, use the following questions to determine if additional assistance is needed:

1. Have you ever sustained an injury to your head?
2. Have you ever been choked, suffocated, shaken, or strangled?
3. After the injury, did you lose consciousness or feel dazed or confused?
4. After the injury, did you have trouble concentrating, organizing, or remembering things?
5. Since the injury, have you experienced emotional changes such as irritability, sadness, anxiety, or lack of motivation?
6. Since the injury, have you experienced headaches, vision, and/or hearing problems or loss of balance?

The Brain Injury Association of Virginia provides personalized Information and Referral assistance to clients, their families, and technical assistance to professionals. For information on these services, contact the Brain Injury Association of Virginia

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Learn more on **biav.net**