The Intellectual and Developmental Disabilities Council of Tarrant County

Welcome

Protecting Vulnerable Adults with IDD Against Online Abuse: An Urgent Call for Legal Reform

Presented by Christina Marsack-Topolewski, PhD, LMSW, and Annemarie Kelly, JD, LLM
Eastern Michigan University

Thursday, March 4, 2021

@IDDCouncil

/IDDCouncil

Intellectual and Developmental Disabilities Council of Tarrant County

PURPOSE

To transform the region into an inclusive community where individuals with intellectual and developmental disabilities (IDD) thrive.

MISSION

To bring stakeholders together to create an environment for the development of an efficient and accessible system of support for people with intellectual and developmental disabilities.

Tuesday's Caregiver Education • Noon-1 pm

- **Mar. 16 – Severe Weather/Emergency Planning – Going Beyond the Checklist**
- **Mar. 23 – Human Trafficking: What You Need To Know**
- **Mar. 30 – Autism Awareness Week – a panel prospective**

Monthly IDD Council Meeting
First Thursday of Each Month, 8:30 a.m. – 10 a.m.

- **Apr. 1 – Autism Awareness Week – Legislative Updates and more**

Follow us on social media for upcoming topics, events and networking opportunities

/IDDCouncil @IDDCouncil

The Intellectual and Developmental Disabilities Council of Tarrant County

Tuesdays: March 2-April 27, 6-7 p.m.

FIRE
FLEXING INDEPENDENCE RETAINING EMPLOYMENT

A Free 9 Week Virtual Training Series

EACH TUESDAY 6-7 PM

REGISTER AT
WWW.IDDCOUNCIL.ORG/FIRE

Amerigroup
An Anthem Company

TEXAS WORKFORCE SOLUTIONS

IDD
The Intellectual and Developmental Disabilities Council of Tarrant County

Egg My House!

Fundraiser supporting The Intellectual & Developmental Disabilities Council of Tarrant County

Let us 'egg' your house with candy and toy filled plastic eggs or surprise your neighbors and friends with some Easter fun! Eggs will be placed in the yard the evening of your choice Friday or Saturday before Easter. Eggs can be hidden for an additional fee.

Orders due by March 29

PRICES:

25 Eggs for $30

50 Eggs for $50

100 Eggs for $75 *

* Each additional dozen available for $5

PLACE YOUR ORDERS AT:

www.iddcouncil.org/eggs

The Intellectual and Developmental Disabilities Council of Tarrant County

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Membership Driven

Premier Partners:

Centered in Care
Powered by Pride

mhmrtarrant
WE CHANGE LIVES

Fort Worth
INDEPENDENT SCHOOL DISTRICT

Organizational Partners, Sponsors and individual memberships

BlueSprig
CHANGING THE WORLD FOR CHILDREN WITH AUTISM™

CookChildren's
Medical Center

Families for Effective Autism Treatment
NORTH TEXAS

GOODWILL S.T.A.R.S.

FORT WORTH ISD
SPECIAL EDUCATION PTA

Intellectual and Developmental Disabilities Council of Tarrant County

Welcome New Members!

- Shelly Lemman
- Teresa Brashear
- Deborah Watson

Your name belongs here!

Membership Form

All IDD Council members have access to monthly meetings, job fairs, transition fairs, and access to information and resources via our monthly newsletter, social media, and IDD Council website.

Annual Benefits and Privileges to Members

$5000+ (All Benefits from $2500 level, plus ALL of the following):	$2500+ (All Benefits from $1000 level, plus choose 1):	$1000+ (All Benefits from $500 level, plus choose 2):
• Logo with link on website, ability to put our logo on their website with prior approval • Keynote speaker at Celebrating YOU Employer Recognition luncheon OR another premier event • Access to the benefits of the individual membership level for all families/employees affiliated with your organization • Guest feature (e.g., ad, article, profile) in an issue of the IDD Council newsletter	• Organization's name on IDD Council website • Tailored 1-hour training for your organization's staff or stakeholders (CEUs may be offered for an additional fee) • Present at a Caregiver Education session • Recognition in all IDD Council publications	• Monthly social media posts (1 image of your choice) • Speaker spot at a monthly membership meeting • Request of a custom topic for a Caregiver Education session; priority selection over non-member and non-custom requests • Recognition in select IDD Council publications

$500+ (All Benefits from $250 level, plus choose 2):	$250+ (All Benefits from $25 level, plus choose 2):	$25 Individual Member
• Banner with logo at all 4 Making Connections Disability Resource Fairs OR at April Cool's Day • Organizational info table at Sensory Santa • Permission to distribute information at events (e.g., in bags, or at the doorway)	• Organizational info table at one* of the following events: April Cool's Day, CapeAbilities Job Fair, a Caregiver Education session, OR a Making Connections event • Choose 1 topic for a monthly Caregiver Education session from a pre-set list of topics. Priority selection over non-member requests * May select two organizational table events as benefit option.	• Free training (non-CEU) • Collaboration and networking among agencies, caregivers, and other advocates • Recognition of membership on website and newsletter • Access to members-only portal with a resource directory and video/audio recordings of select presentations

...additional customized benefits available a-la-carte to meet your organization's needs!

CEUs may be offered for an additional fee at individual events.
Members at all levels will receive a discount on CEUs.

https://www.iddcouncil.org/join-us

Our Presenters:

Christina Marsack-Topolewski

&

Annemarie Kelly

Protecting Vulnerable Adults with IDD Against Online Abuse:

An Urgent Call for Legal Reform

Christina Marsack-Topolewski, PhD, LMSW
Annemarie Kelly, JD, LLM
Eastern Michigan University
March 4, 2021

Overview

1	How do legal gaps (loopholes) enable online predation?
2	What must be done to close these gaps?

Key Issues

Questions of:

1. **Constitutional protections for free speech**
2. **Personal autonomy/ self-expression**

Disconnects between current laws and scientific knowledge

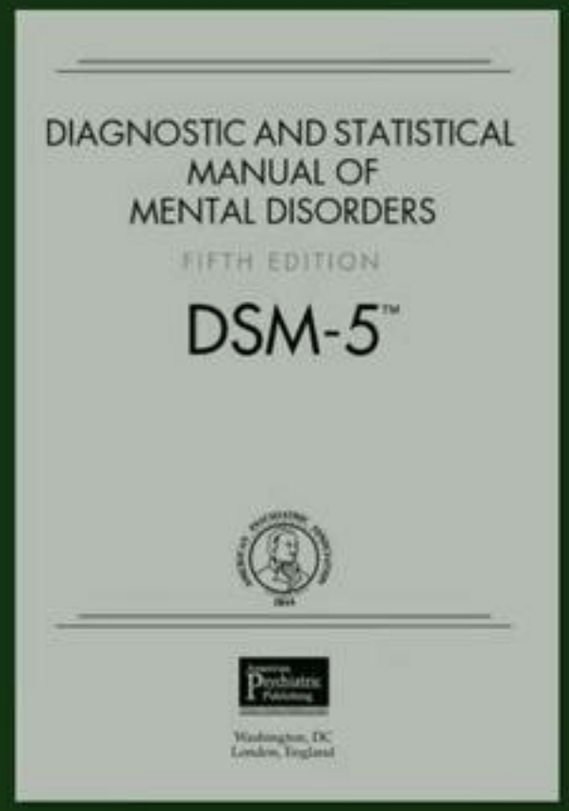
Online abuse =

- ✓ **Exploitation**
- ✓ **Predation**
- ✓ **Aggression**
- ✓ **Bullying**

General Rule:

Scientific advancement =

Legal modification/ advancement



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Slowly Closing Legal Gaps

Elder Abuse Law

Disability Law

Adult Sexual Expression Law

Harassment Law

Lascivious Act Law

Coercion Law

Child Abuse Law

Legal Capacity

Definition: A person's right to make legally-binding decisions and enter into legal agreements.

Factors: A judge will deem that an adult has a sound mind for purposes of legal capacity when they are able to communicate a fundamental understanding of: **(1)** key facts; **(2)** the decisions available; **(3)** the consequences of each possible decision; and **(4)** how the consequences of a decision affect themselves and others.

Focus:
Protecting Sexually Explicit Expression (Non-Obscene)

Online Activity: Continuum of Legality & Illegality

✓ **"Sexting"**

Consensual exchange of sexually explicit photos

✗ **"Revenge Pornography"**

Posting sexually explicit photos online without the subject's consent

Key Question: Do Vulnerable Adults with intellectual and developmental disabilities (IDD) need additional legal protections against online abuse?

Vulnerable Adults with IDD

1) Have the highest risk of being targeted for online exploitation, aggression, and bullying.

2) Once targeted, have the highest risk of susceptibility to abuse.

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Because of <u>severe</u> challenges with IDD require supervision or personal care

In adult foster care families, small group homes, or need protective services because of abuse and neglect concerns

Lack the personal and social skills required to live independently

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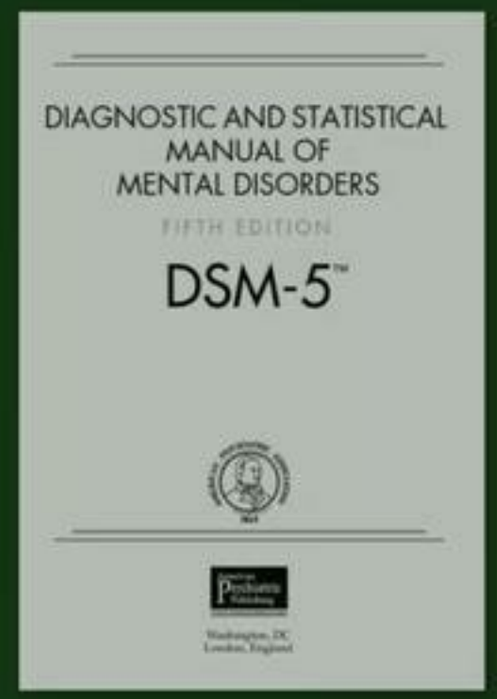
Vulnerable Adults with IDD

- **Severe intellectual function deficits = challenges with reasoning, problem solving, and judgment**
- **Chronological age ≠ cognitive age/mental age**



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Allie's Story

Photos provided by Allie and her parents.

Allie's Room

EASIER
STRONGER
HAPPIER

CHEETAHS

“I was scared of him. I thought he would leave me alone if I did it.”

-Allie

HOUSE BILL NO. 4159: A bill to amend "The Michigan penal code"

(1) A person shall not request, persuade, convince, threaten, command, force, or coerce a vulnerable adult into providing that person, or any other person, sexually explicit visual material of the vulnerable adult.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

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We suggest that advocates avoid this type of phrasing:

“Internet Victimization”

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Suggested language to describe this issue:

- ✓ Predation
- ✓ Abuse
- ✓ Bullying
- ✓ Exploitation of individuals with IDD
- ✓ Aggression
- ✓ Breach of consent (copyright violations with photographs)

- ✓ Predation
- ✓ Abuse
- ✓ Bullying
- ✓ Exploitation
- ✓ Aggression
- ✓ Breach of consent

&

Internet

Internet-based

Online

Virtual

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Why is there a legal gap between online predation laws different from in-person abuse laws?

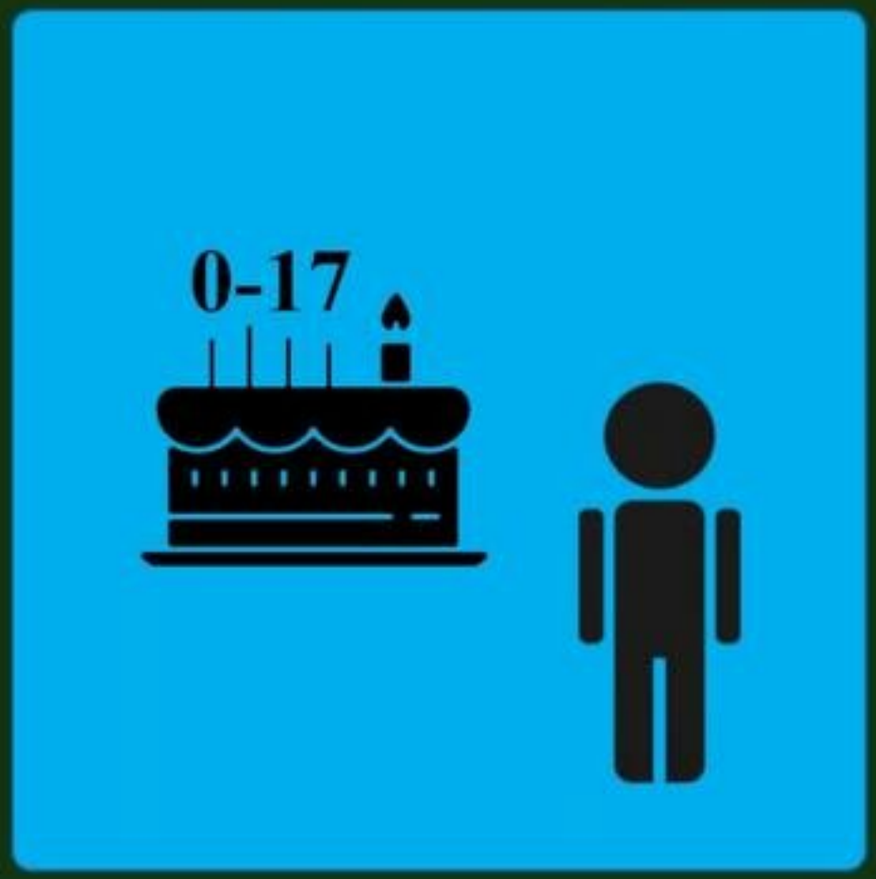
Why is there a legal gap between online predation laws different from in-person abuse laws?

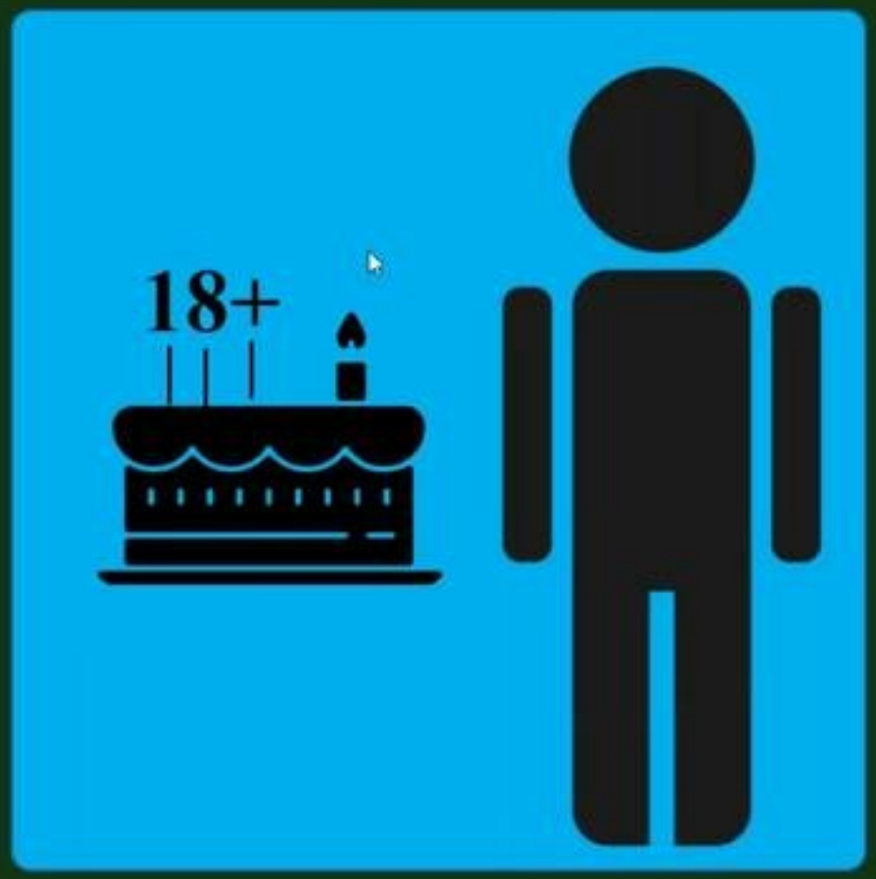
a) Inconsistent definitions/legal causes of action

b) Misconceptions about Vulnerable Adults with IDD and their rights to sexual self-expression

c) Perceptions that sexual coercion is an unfortunate part of “adulthood”

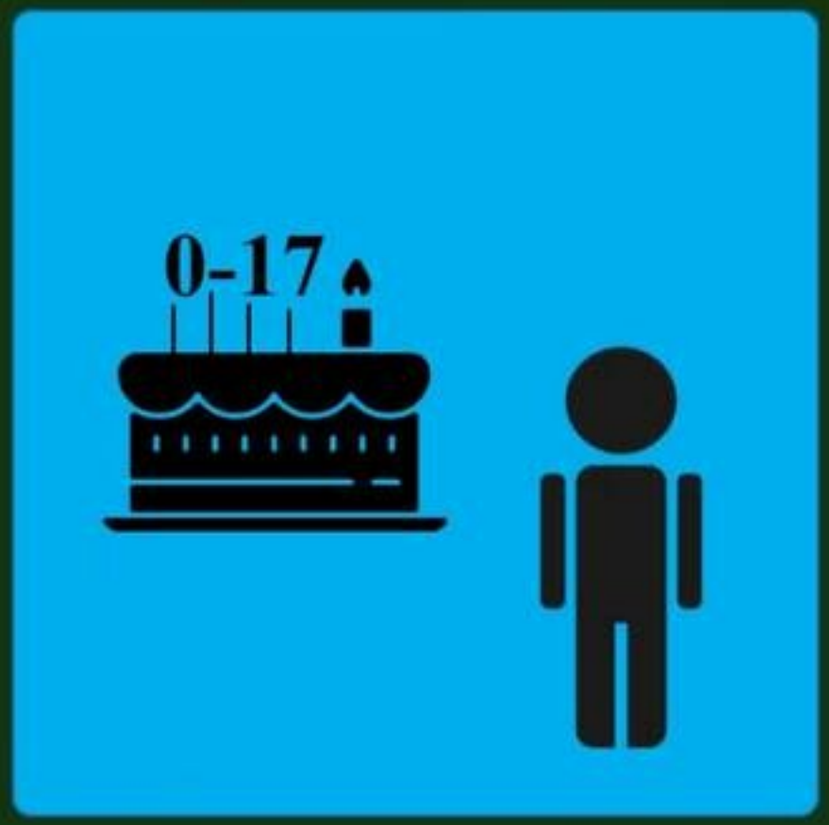
Internet Predation Laws: Largely Focused on Protecting Minors





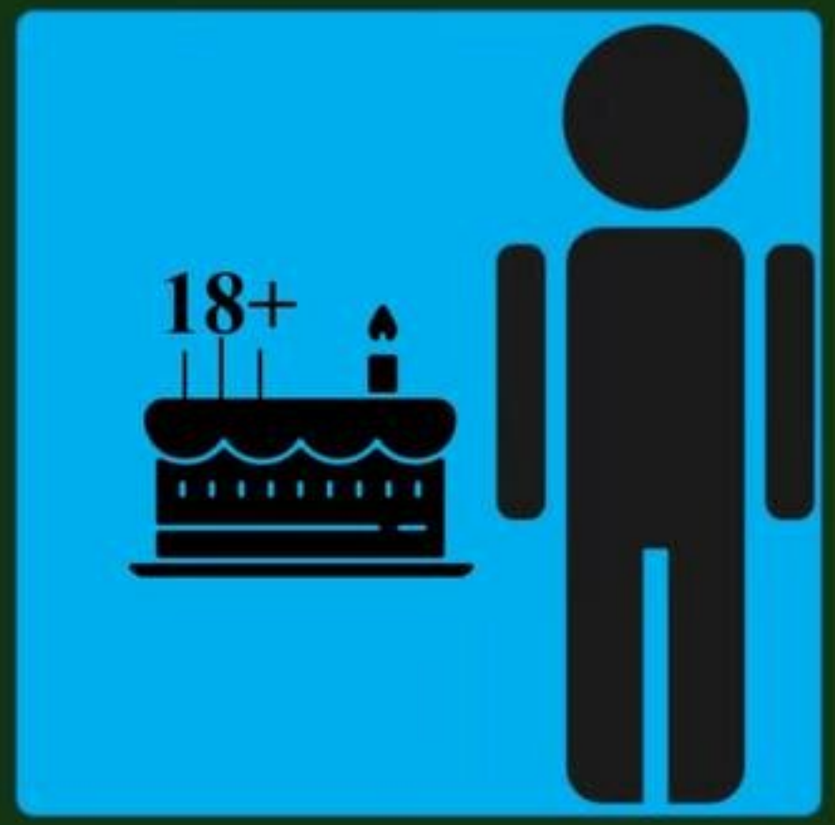
Online Predation Laws: Kids

- ✓ **Recognized as a vulnerable population in need of legal protections**
- ✓ **Federal law requires specific protections to guard children against online abuse [18 USC § 1 (1998)]**



Online Predation Laws: Adults

- ✓ **Concerned with protecting Constitutional rights to freedom of speech/expression.**
- ✓ **Fewer specific protections to guard adults against online abuse.**



Internet Predation Laws:
Consider Two *Distinct* Populations

CHILDREN

VULNERABLE ADULTS WITH IDD

Question during our legislative testimony:

"Is anyone going to talk about the elephant in the room?"

"Too much access to technology."

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How do people with IDD use the Internet and social media?

Also heard during our legislative testimony:

“Is this an education and training issue for parents or other caregivers?”

Conceptual + Social + Practical

- Reasoning/problem solving
- Processing speed
- Working memory
- Language (expressive & receptive)
- Literacy
- Generalizing
- Overall knowledge
- Learning

- Communication skills
- Social judgment
- Queues and nuances
- Following rules
- Making/keeping friendships

- Personal care (ADL / IADL)
- Responsibilities
- Organizing tasks
- Rely on others

American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, American Psychiatric Publishing, 33-34 (2013).

Other Considerations for Vulnerable Adults with IDD

- Conceptual
- Splinter Skills
- Expressive / Receptive Lang.
- Susceptible/ Naive
- Theory of Mind
- Social Communication / Interactions
- Developmental Incongruence

Vulnerable adults have a higher risk of being <u>targeted</u> for online exploitation, aggression, and bullying.

Increased risk of:

- manipulation
- difficulty saying “no”
- inability to recognize a dangerous situation

Evolving Constitutional Law

Miller v. California, 413 U.S. 15 (1973).	Obscenity is that which lacks "serious literary, artistic, political, or scientific value."
Lawrence v. Texas, 539 U.S. 558 (2003).	The law cannot prohibit adults who are of the same sex from engaging in private, consensual sexual activity.

Model off of Existing "Bright Line" Rules

Statutory Rape Laws	Generally, if an adult has sex with an individual under age 18, they are liable.
Nonconsensual Pornography Laws	Non-consensual distribution of sexually explicit images (illegal under cyber-sexual harassment and/or cyber-bullying acts in **41** states).

Applying Existing "Bright Line" Laws

Legal Changes Supported by This Research

- ✓ If an adult sexually harasses, bullies, coerces, and/or abuses a Vulnerable Adult with IDD online, the predatory party is liable for civil and criminal penalties.
- ✓ *See e.g.*, State of Michigan House Bill 4159 (2021).

Proposed Legal "Do's"

1	Protect sexual expression rights for Vulnerable Adults with IDD.
2	Hold legally accountable those who sexually abuse, harass, or bully Vulnerable Adults with IDD online.
3	Deter would-be predators.

Watch Out: Potential Legal Mistakes

1	Equating children's needs with those of Vulnerable Adults with IDD.
2	Limiting the scope of bullying as a "*youth* violence" issue.
3	Punishing potential victims by limiting their access to social media.

People with disabilities (as a sub-population & community)

=

Face *the* highest risk for experiencing violence

"Strategic Vision." (2019). US Centers for Disease Control and Prevention National Center for Injury Prevention and Control Division of Violence Prevention. https://www.cdc.gov/violenceprevention/publichealthissue/strategicvision.html

Vulnerable Adults with IDD are vulnerable to multiple forms of interpersonal violence

&

These risks are across the lifespan

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Mistaking bullying as solely a "*youth* violence" issue.

Intellectual and Developmental Disabilities Council of Tarrant County

Thank you!

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www.IDDCouncil.org

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