

Criminal Justice Position Statement

The Texas Council for Developmental Disabilities supports the position that people with intellectual, developmental, and/or mental/behavioral health disabilities who are victims, suspects, or witnesses of a crime have the right to impartial justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations. While people with intellectual disabilities comprise 2% to 3% of the total population, they make up 4% to 10% of people in prison, with even more in juvenile facilities and jails as well as a significant portion of State Supported Living Center admissions. People with intellectual disabilities are 4 to 10 times more likely to be victims of crime than those without disabilities.¹

A disability does not necessarily mean a person is incompetent to stand trial, however, it is the responsibility of counsel and the court to raise competency as an issue in appropriate cases and at any point in the proceedings when the defendant's competency is in question. Attorneys and judges often lack adequate knowledge of due process protections available for people with disabilities prior to, during, and after being found incompetent to stand trial. Additionally, with increased pressure to privatize services, there is a need to ensure that the individual's competency is assessed and access to needed mental/behavioral health treatment is not compromised at any point in the criminal justice process.

TCDD supports the position that timely, appropriate, and adequate care and treatment must be provided to individuals after they are determined incompetent to stand trial or not guilty by reason of insanity, with particular attention to the following:

- Providing comprehensive officer training in booking and intake procedures of individuals with intellectual, developmental, and/or mental/behavioral health disabilities.
- Intervening promptly and providing a valid and clinically appropriate disability screening prior to, during, and following arrest.
- Ensuring that competency restoration is provided in appropriate therapeutic settings that facilitate recovery.
- Reducing reliance on non-medically necessary outpatient treatment.
- Reducing the amount of time the criminal court retains jurisdiction over an alleged offender.

¹ Davis, Leigh A. People with Intellectual Disabilities in the Criminal Justice System: Victims & Suspects. 2009. Retrieved October 1, 2012 from <http://www.thearc.org/page.aspx?pid=2458>

- Requiring ongoing training of criminal justice professionals on Code of Criminal Procedure, Article 46B, with special emphasis on post-incompetency legal requirements.
- Providing reasonable accommodations at all stages of criminal proceedings to assist the individual to understand and participate in the proceedings and their defense.

The Council recognizes that early intervention, due process protections, and assistance and reasonable accommodations to participate in legal proceedings are necessary overlapping components of a system responsive to the needs of people with disabilities. These components must be available to victims, suspects, or witnesses at all stages of the individual's involvement in the criminal justice system.

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