

TCDD Position Statements – Proposed Revisions

Tab 17

Background:

The Council periodically reviews TCDD's Position Statements. Input was solicited this quarter from Council members on the following position statements:

- Aging with Developmental Disabilities
- Community Living
- Criminal Competency

Revisions suggested by Council members and/or staff are included in the draft materials. Comments in **RED** represent Council member input; comments in **BLUE** were suggested by TCDD staff. Two versions of the position statement on Criminal Competency are included for review: a version with proposed changes and version with the proposed changes accepted.

The table below reflects the most recent dates that position statements were reviewed (the statements in **bold** are currently under review). The Committee's review of these three Statements completes the review and update process for this cycle.

Position Statements Last Reviewed

Employment	July '12	Family Support	May '12	Children & Families	May '12
Transition	July '12	Service Coordination	May '12	Emergency Preparedness	May '12
Aging & DD	Nov '09	Guardianship	May '12	Right to Privacy	May '12
Education	July '12	Access to Health Care	July '12	Transportation	May '12
Criminal Competency	Feb '10	Community Living	Aug '10		

Public Policy Committee

Agenda Item 10.

Expected Action:

The Committee will review provide recommendations to the Council for revisions to those Position Statements reviewed.

Council

Agenda Item 13.

Expected Action:

The Council will consider revisions to TCDD Position Statements as recommended by the Public Policy Committee and determine final action.



Aging with Developmental Disabilities Position Statement

The number of older adults is rapidly increasing overall and becoming a larger percentage of the general population. Included in this aging population are people with disabilities. Estimates indicate that over 640,000 Americans age 60 and older had developmental disabilities in 2000. That number has been projected to double to over 1.2 million by 2030 as the baby boom generation ages.

While the aging process brings significant changes to all individuals and their families, these changes are often intensified by the presence of a developmental disability. Many people with developmental disabilities continue to rely on their families for natural supports throughout their adult life. This support is often provided by aging parents, spouses, and other family members, and the quality of the care often becomes compromised by the caregivers' own aging process. Individuals with disabilities and their families each face challenges and transitions caused by the aging process.

The Texas Council for Developmental Disabilities ~~believes~~ **supports the position** that older adults with disabilities should have:

- the same opportunities as other older citizens to live, work, enjoy leisure time and retire in the community of their choice with the services and supports they need;
- the same rights and dignity as other older people; and
- assistance in establishing a comprehensive retirement plan to encompass any or all of the following concerns:
 - access to health care
 - advanced directives relating to health care
 - counseling services
 - financial issues
 - guardianship/alternatives to guardianship
 - housing
 - legal issues
 - leisure time activities
 - long-term services and supports plan
 - retirement or employment options
 - self advocacy training
 - transportation

Therefore the Council believes that Texas has a responsibility to ensure that the state's service delivery systems develop the capacity to meet the projected needs of older Texans with disabilities. To meet these challenges, the Texas Council for Developmental Disabilities calls for:

- the current service delivery systems to increase their capacity to provide for a larger number of older Texans with disabilities who will ~~be needing~~ **need** assistance to maintain a high quality of life in the most integrated setting, including the ability to age well in their homes and communities; and
- coordinating and integrating to the maximum extent possible the delivery systems that traditionally provide services to the aging population and the delivery systems that traditionally provide services to people with developmental and other disabilities. In so doing, older individuals with developmental disabilities will be better served and more fully included in their communities.



Community Living Position Statement

The Texas Council for Developmental Disabilities **believes supports the position** that individuals with disabilities should have access to opportunities and the supports needed to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, communities, the state, and the nation.

Individuals with disabilities must have access to the full range of accommodations necessary to ensure that living in their natural community is possible. These accommodations may take various forms such as personal attendant services, medication monitoring, respite, durable medical equipment, employment services, transportation, and/or minor home modifications. Accommodations may be sustained for either longer or shorter duration or may be of greater or lesser intensity depending on the need of the individual.

Services to children should be provided in their natural family setting. When children cannot remain with their natural families, they must be cared for using principles, policies and processes akin to those of permanency planning and have access to family-based alternatives that ensure enduring and nurturing relationships.

Adults with disabilities shall exercise choice and control about where, how, and with whom they live. They must be provided with assistance that may be needed to make these choices and to sustain choices regarding community living. **Adults-All people with disabilities** should have access to the services and supports they need to live in the community. The state of Texas must allocate the requisite resources to support community living for people with disabilities. In addition, the state must rapidly expand the availability of individualized community options, transition all individuals in state institutions to community living, commit to a transition plan to close state supported living centers and transfer any cost savings to quality community programs. Communities must also be cultivated to ensure local systems foster accessibility within and across all facets of community life, so that maintaining community placement is a feasible outcome for individuals with disabilities.

Reviewed ~~August 6, 2010~~ **October 25, 2012**



Criminal Competency Position Statement

People with disabilities often experience more frequent contact with the criminal justice system than other individuals for a variety of reasons, including discrimination, lack of knowledge and training about disabilities, and inadequate community supports. People with developmental disabilities are more likely than the general population to be arrested, convicted, sentenced to prison, and victimized while there.ⁱ Once individuals with disabilities enter the system, inadequate representation in criminal proceedings furthers unfavorable outcomes.

People with developmental disabilities may have functional support needs in one or more spheres of mental functioning that involve perceptual, memory, and judgment modalities. Their ability to process and retain information and to relate cause and effect may be affected. Accommodating individuals with cognitive and mental health disabilities in the criminal justice system thus presents various hurdles.ⁱⁱ A particular problem is invalid and inconsistent assessments for: 1) competency to stand trial; and 2) criminal responsibility due to mental disease or defect (the insanity defense) as current assessment procedures do not fully address the needs of people with disabilities.

The Texas Council for Developmental Disabilities believes that the following fundamental principles apply to people with disabilities who undergo competency evaluations.

- People with cognitive and mental health disabilitiesⁱⁱⁱ have the right to equal protection and due process under the law.
- People with disabilities are entitled to certain protections, rights and benefits under Title II of the Americans with Disabilities Act, and these protections, rights and benefits extend to involvement in the criminal justice system.
- A diagnosis of mental retardation or mental illness does not necessarily mean that a person is incompetent to stand trial, but it is incumbent upon counsel and the court to raise competency as an issue in appropriate cases and at any point in the proceedings where the defendant's competency is in question.

The Council believes that criminal assessment procedures must fully address the needs of people with disabilities and include the following components:

- Early intervention that includes a valid and clinically appropriate disability screening prior to, during, and following arrest, and comprehensive officer training in booking and intake procedures of individuals with developmental disabilities.
- Ongoing training of criminal justice professionals that is based on research and best practices in assessment of individuals with disabilities. Curriculum should include training on recognizing the possible existence of a developmental or psychiatric disability, appropriate communication skills, and stereotypes and stigma about disabilities unrelated to criminal activity.

(Continued)

- ❑ A competency evaluation that is performed by skilled professionals who have specialized training and experience in forensic evaluation. This specialized training should include training in legal competency for adults and fitness to proceed for juveniles.
- ❑ Due process protections that include reliable, age-specific and culturally competent assessments of and standards for:
 - Determining the existence of cognitive and mental health disabilities -- example formats include the uniform mental health assessment and the diagnostic eligibility for mental retardation and related conditions formats; and
 - Determining legal competency for adults and fitness to proceed for juveniles -- example instruments include the CAST-MR (Competency Assessment for Standing Trial for Defendants with MR) and the MacCAT-CA (MacArthur Competence Assessment Tool – Criminal Adjudication).
- ❑ These assessments should take into account any relevant impact on the results because of the individual’s cultural background, primary language, communication style, physical or sensory impairments, motivation, attentiveness, or emotional factors.
- ❑ Reasonable accommodations must be provided at all stages of criminal proceedings to assist the individual in understanding and participating in the proceedings and their defense.

The Council recognizes that early intervention, assessment due process protections, and reasonable accommodations are overlapping components of a system that is responsive to the needs to people with disabilities and that these components must be available to alleged offenders at all stages of the individual’s involvement in the criminal justice system.

Reviewed February 12, 2010

***While the preferred terminology for “mental retardation” has changed to “intellectual and developmental disabilities,” mental retardation is still used in this position statement because of legal implications based on a specific diagnosis of “mental retardation.”*

ⁱ Up to 24 percent of this country’s adult prison populations are individuals with mental retardation. (Dagher-Margosian, J., Representing the Cognitively Disabled Client in a Criminal Case, Disabilities Project Newsletter, State Bar of Michigan, Volume 2, Issue 2, March 2006, Committee on Justice Initiatives and Equal Access Initiative Disabilities Project. Retrieved 9-24-09 at http://www.michbar.org/programs/Disabilities_news_6.html)

ⁱⁱ It is estimated that between 50-75 percent of youth in the juvenile justice system have diagnosable mental health disorders. (Texas Juvenile Probation Commission. “Mental Health and Juvenile Justice in Texas.” 2003. <http://www.tjpc.state.tx.us/publications/reports/RPTOTH200302.pdf>)

ⁱⁱⁱ 20-35% of all persons with intellectual disabilities have a co-occurring psychiatric disorder. (Effective Interagency Collaboration for People with Co-Occurring Mental Illness and Developmental Disabilities, Kathryn duPree, Deputy Commissioner, Connecticut Department of Mental Retardation Retrieved September 24, 2009 from <http://www.nasddds.org/pdf/EffectiveInteragencyCollaboration.pdf>)



Criminal ~~Competency~~ Justice Position Statement

Comment [bc1]: Criminal competency remains an issue, but the dd groups nationally that I researched for this review are focusing on issues of criminal justice interface as victims, suspects or witnesses.

People with intellectual, ~~developmental~~ and/or mental health disabilities who are victims, suspects or witnesses, like other residents of the United States, have the right to justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations as necessary. ~~People with disabilities often experience more frequent contact with the criminal justice system than other individuals for a variety of reasons, including discrimination, lack of knowledge and training about disabilities, and inadequate community supports.~~ While those with intellectual disabilities comprise 2% to 3% of the general population, they represent 4% to 10% of the prison population, with an even greater number of those in juvenile facilities and in jails, and are 4 to 10 times more likely to be victims of crime compared to those without disabilitiesⁱ.

~~People with developmental disabilities are more likely than the general population to be arrested, convicted, sentenced to prison, and victimized while there. ⁱⁱ Once individuals with disabilities enter the system, inadequate representation in criminal proceedings furthers unfavorable outcomes.~~

People with intellectual, developmental and/or mental health ~~developmental~~ disabilities may have functional support needs in one or more spheres of mental functioning that involve perceptual, memory, and judgment modalities. Their ability to process and retain information and to relate cause and effect may be affected. A diagnosis of an intellectual, ~~and developmental~~ and/or mental disability does not necessarily mean that a person is incompetent to stand trial, but it is incumbent upon counsel and the court to raise competency as an issue in appropriate cases and at any point in the proceedings where the defendant's competency is in question. Accommodating individuals with ~~cognitive intellectual, developmental and/or mental health disabilities in the criminal justice system thus presents various hurdles: ⁱⁱⁱ A particular problem is invalid and inconsistent assessments for: 1) competency to stand trial; and 2) criminal responsibility due to mental disease or defect (the insanity defense) as current assessment procedures do not fully address the needs of people with disabilities.~~ Attorneys, judges, law enforcement personnel, forensic evaluators, victim advocates and jurors may lack adequate and appropriate knowledge to determine competency to stand trial and criminal responsibility due to "mental disease or defect" or to provide equal protection and due process for people with intellectual, developmental and/or mental health disabilities.

Comment [DADS2]: You use different terms (developmental, cognitive, MR) interchangeably which is a little confusing who they ultimately mean.

Comment [rw3]: I'd recommend using intellectual rather than cognitive. Developmental broadens the group considerably, and actually only includes folks with intellectual disabilities that meet the DD def with 3 substantial functional limitations. Also, this Statement has focused on issues for people with intellectual disabilities since our understanding has been that the justice system more easily identifies folks with physical disabilities.

The Texas Council for Developmental Disabilities believes that the following fundamental principles apply to ~~people with disabilities who undergo competency evaluations.~~

- ~~☐ People with cognitive and mental health disabilities ^{iv} have the right to equal protection and due process under the law.~~
- ~~☐ People with disabilities are entitled to certain protections, rights and benefits under Title II of the Americans with Disabilities Act, and these protections, rights and benefits extend to involvement in the criminal justice system.~~
- ~~☐ A diagnosis of mental retardation or mental illness does not necessarily mean that a person is incompetent to stand trial, but it is incumbent upon counsel and the court to raise competency as an issue~~

Comment [DADS4]: DADS is actively replacing the use of MR with ID in accordance with HB 1481.

~~in appropriate cases and at any point in the proceedings where the defendant's competency is in question.~~

Comment [JR5]: HB 1481 specifically does not address the penal code.

The Council believes that criminal assessment procedures must fully address the needs of people with intellectual, developmental and/or mental health ~~disabilities~~ and include the following components:

- ❑ Early intervention that includes a valid and clinically appropriate disability screening prior to, during, and following arrest, and comprehensive officer training in booking and intake procedures of individuals with intellectual, developmental and/or mental health ~~developmental~~ disabilities.
- ❑ Ongoing training of criminal justice professionals that is based on research and best practices in assessment of individuals with intellectual, developmental and/or mental health disabilities. ~~Curriculum should include training on recognizing the possible existence of a developmental or psychiatric disability, appropriate communication skills, and stereotypes and stigma about disabilities unrelated to criminal activity.~~
- ❑ A competency evaluation that is performed by skilled professionals who have specialized training and experience in forensic evaluation using assessments that are valid and reliable, age-specific and culturally competent to assess legal competency for adults and fitness to proceed for juveniles.
- ❑ ~~Due process protections that include reliable, age-specific and culturally competent assessments of and standards for:~~
 - ⊖ ~~Determining the existence of cognitive and mental health disabilities — example formats include the uniform mental health assessment and the diagnostic eligibility for mental retardation and related conditions formats; and~~
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- ❑ Reasonable accommodations ~~must be provided~~ at all stages of criminal proceedings to assist the individual in understanding and participating in the proceedings and their defense.
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The Council recognizes that early intervention, ~~assessment~~ due process protections, assistance and reasonable accommodations to participate in legal proceedings are overlapping components of a system that is responsive to the needs to people with disabilities and that these components must be available to victims, suspects or witnesses ~~alleged-offenders~~ at all stages of the individual's involvement in the criminal justice system.

Reviewed ~~February 12, 2010~~ October 2012

~~***While the preferred terminology for "mental retardation" has changed to "intellectual and developmental disabilities," mental retardation is still used in this position statement because of legal implications based on a specific diagnosis of "mental retardation."***~~

Comment [DADS6]: This is not accurate -- MR is only replaced by "ID" and not IDD in accordance with AAIDD website.

ⁱDavis, 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>.

ⁱⁱUp to 24 percent of this country's adult prison populations are individuals with mental retardation. (Dagher Margosian, J. Representing the Cognitively Disabled Client in a Criminal Case, Disabilities Project Newsletter, State Bar of Michigan, Volume 2, Issue 2, March 2006, Committee on Justice Initiatives and Equal Access Initiative Disabilities Project, Retrieved 9-24-09 at http://www.michbar.org/programs/Disabilities_news_6.html)

ⁱⁱⁱ It is estimated that between 50-75 percent of youth in the juvenile justice system have diagnosable mental health disorders. (Texas Juvenile Probation Commission, "Mental Health and Juvenile Justice in Texas," 2003, <http://www.tjpc.state.tx.us/publications/reports/RPTOTH200302.pdf>)

^{iv} 20-35% of all persons with intellectual disabilities have a co-occurring psychiatric disorder. (Effective Interagency Collaboration for People with Co-Occurring Mental Illness and Developmental Disabilities, Kathryn duPree, Deputy Commissioner, Connecticut Department of Mental Retardation Retrieved September 24, 2009 from <http://www.nasddd.org/pdf/EffectiveInteragencyCollaboration.pdf>)

Criminal Justice Position Statement

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The Council supports the position that criminal assessment procedures must fully address the needs of people with intellectual, developmental and/or mental health disabilities and include the following components:

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Reviewed October 25, 2012

¹Davis, 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>