

**Background:**

The Public Policy Committee reviewed proposed revisions to the Council's Criminal Competency position statement during October meetings. At that time, the Committee asked staff to coordinate further review and input from attorneys who are knowledgeable about criminal competency procedures in Texas. A new draft with further revisions is enclosed for consideration by the Committee, and by the Council if recommended for adoption.

**Public Policy Committee****Agenda Item 7.****Expected Action:**

The Committee will review proposed revised Criminal Competency Position Statement and may recommend Council approval.

**Council Meeting****Agenda Item 10.****Expected Action:**

The Council will consider revisions recommended from the Public Policy Committee to the Criminal Competency Position Statement.



## 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.<sup>i</sup> 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.<sup>ii</sup> 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 disabilities<sup>iii</sup> 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.”*

<sup>i</sup> 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](http://www.michbar.org/programs/Disabilities_news_6.html))

<sup>ii</sup> 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>)

<sup>iii</sup> 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>)



(512) 437-5432 / 1-800-262-0334  
Fax (512) 437-5434  
6201 E. Oltorf, Suite 600, Austin, TX 78741-7509  
TCDD@tcdd.texas.gov / <http://www.tcdd.texas.gov>

## **Criminal Justice Position Statement**

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. 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 in juvenile facilities and jails, and are 4 to 10 times more likely to be victims of crime than those without disabilities<sup>1</sup>.

People with intellectual, developmental and/or mental health 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 disability does not necessarily mean 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. Attorneys and judges often lack adequate and appropriate knowledge of due process protections available for people with disabilities prior to, during, and after being found incompetent to stand trial. Additionally, with the increased pressure to privatize services, there is a need to ensure competency and mental health treatment is not compromised.

TCDD supports the position that timely, appropriate, and adequate care and treatment must be provided to individuals determined incompetent to stand trial, with particular attention to the following:

- 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 disabilities.
- Ensuring competency restoration is provided in appropriate therapeutic settings that facilitate recovery.
- Reduction on the reliance of non-medically necessary outpatient treatment conditions.
- Reduction in the amount of time the criminal court retains jurisdiction over an alleged offender.
- Ongoing training of criminal justice professionals on Code of Criminal Procedure Article 46B, with special emphasis on post incompetency legal requirements.
- Reasonable accommodations 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, 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 at all stages of the individual's involvement in the criminal justice system.

Reviewed February 8, 2013

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<sup>1</sup>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>