

Attachment 3



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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 disabilities¹.

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

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>