

Background:

The Public Policy Committee previously approved a schedule to review TCDD's Position Statements every four years. Staff solicited input this quarter regarding proposed revisions from Council members on the following position statements:

- Children & Families
- Access to Health Care
- Family Support

Revisions suggested by Council members, staff and/or public input are included in the draft materials. Additional public input beyond specific wording changes is also included.

At the August 2009 and November 2009 Council meetings, revisions to the Education and Criminal Competency Position Statements were tabled. A subcommittee of the Public Policy Committee developed recommended language for the Education and Criminal Competency Position Statements, which is included in the materials.

Public Policy Committee

Agenda Item IV.

Expected Action:

The Committee will review and consider any revisions to recommend to the Council concerning the Position Statements.

Council Meeting

Agenda Item VIII.

Expected Action:

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

Education

Position Statement

All people with disabilities in Texas should have the opportunity to achieve their maximum potential for independence, productivity and integration into the community. Education is a lifelong learning process which is vital to attaining a full and complete life. The postsecondary results of an appropriate public school education for students with disabilities should be evidenced by employment, enrollment in postsecondary school, or both within one year of leaving high school.

The Texas Council for Developmental Disabilities believes that all students regardless of individual needs must be provided with individualized appropriate instruction, research-based positive behavioral interventions and supports, access to the general curriculum, and related services in the least restrictive environment. Related services include but are not limited to adaptive, assistive technology; modifications; and supplementary aides. Related services must be designed to ensure students with disabilities receive a free and appropriate public education in the least restrictive environment. The delivery of individually appropriate instruction and related services must be provided by qualified teachers and service providers with administrative support and opportunities for continued/ongoing professional development in all areas of identified need. It is the position of the Council, as well as the policy of the state, that all children should be treated with dignity and respect when addressing behavioral and disciplinary needs of students.

The Council believes that students who may access publicly funded education through charter schools or schools accepting voucher payments must be accorded the same education as noted above. The Council believes that schools that accept state money to educate students must accept any student with a developmental disability who may apply for admission to that school, abide by federal and state education laws that protect the rights of students with disabilities, abide by Section 504 of the Rehabilitation Act that requires any entity receiving federal funds to include people with disabilities in its program, and accept any student at the state rate of payment asking for no additional tuition or fees beyond the normal fees required by the student's independent school district. If these criteria are not met, then the Council adamantly opposes publicly funded school vouchers and charter schools. The Council is opposed to any initiative that would deplete funds from the public education system and ultimately from funds available for the education of students with disabilities.

The Council believes that full inclusion should be approached as a value and underlying philosophy by which we educate all students. We believe that successful inclusion requires that teacher education programs prepare all educators and administrators to work with the full range of students in inclusive settings. Special education is not a separate educational system, but rather a service provided to people with specific needs within the general educational system. Professional preparation programs should emphasize the shared responsibility of all educators and administrators for all students.

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The Council believes that full inclusion requires the ongoing, shared responsibility of students, parents, guardians, educators, administrators and the community at large.

It is therefore the position of the Texas Council for Developmental Disabilities that all students have a right to learn, play and work with students their own age, with and without disabilities, in the same schools, classrooms and other educational programs attended by their brothers, sisters and neighbors, and that schools, classrooms and programs must be both physically and programmatically accessible to all students.

Reviewed November 3, 2006



Criminal Competency Position Statement

People with disabilities experience greater problems with criminal courts than society at large for a variety of reasons including general discrimination, lack of knowledge and training about disabilities, and inadequate supports and representation in criminal justice proceedings.

A particular problem is invalid and inconsistent assessments for legal competency and sanity. Current assessment procedures do not fully address the needs of this population.

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 psychiatric disabilities share with all people the rights to equal protection and due process under the law.
- People with disabilities are also afforded certain protections, rights and benefits under the Americans with Disabilities Act (Title II), and these protections, rights and benefits extend to involvement with the criminal justice system.
- People with disabilities, as all people, have rights, protections and benefits and responsibilities. When their rights are fairly and equally protected, people with disabilities must accept responsibility for criminal activity. A diagnosis of mental retardation or mental illness does not automatically mean a person is incompetent to stand trial. However, the presence of mental retardation raises so many possibilities of miscommunication, misperceptions and an inadequate defense, that people with mental retardation found competent to stand trial must not be subject to the death penalty. Further, the determination of mental retardation must be made by the court in a proceeding that occurs prior to the onset of a trial.

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

Early Intervention

- Must include valid improved screening during arrest, booking or incarceration, and assessment of disability, and comprehensive training of arresting and booking individuals.

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Recognition

- ❑ Must include ongoing training of criminal justice professionals that is based on research and proven effective practices. This would include recognizing the possible existence of a developmental disability, skill in communicating with people with disabilities, and understanding of stereotypes and stigma about disabilities unrelated to criminal activity. They must also seek expert consultation for competency evaluations. Expert consultants must have specialized training and experience in forensic evaluation, which would include legal competency for adults and fitness to proceed for juveniles.

Due Process

- ❑ Must include reliable, age-specific and culturally competent assessments of and standards for:
 - Determining the existence of cognitive and psychiatric 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 describe any relevant negative 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 include, at all stages of criminal justice proceedings, accommodations to assist in understanding and participating in one's own defense, with physical and cognitive accommodations and assistance in decision making if needed.

The Council recognizes that prevention, early intervention, due process and reasonable accommodations are interwoven and overlapping components of a comprehensive system and that all must be available at all stages of an individual's involvement with the criminal justice system.

Reviewed August 5, 2006



Children and Families

Position Statement

All children belong in families that provide love, caring, nurturing, bonding and a sense of belonging and permanence that best enables them to grow, develop and thrive. Children with disabilities are no different from other children in their need for the unique benefits that come only from growing up in a permanent family relationship. All children benefit and are enriched by being part of an inclusive environment that promotes physical, social, and intellectual well-being and leads to independence and self-determination.

Families of children with disabilities often need supports and services to sustain family life and keep their child at home and included in the community. Family support services are intended to strengthen the family's role as primary caregiver, prevent expensive out-of-home placement of individuals with disabilities, maintain family unity, and foster self-determination.

The Texas Council for Developmental Disabilities believes that:

- All children can and should live in a family. All children need a family to best grow, develop and thrive. All children deserve the love, nurturing and permanency that are unique to family life.
- Families come from many cultures and are multidimensional. No matter its composition or cultural background, a family offers a child a home and a lifelong commitment to love, belonging and permanency. Parents with disabilities are capable of and do provide loving families and homes to children.
- Families, including parents with disabilities, should have available the level of supports and services needed to keep children with disabilities in their own homes. Family support services should include, but are not limited to, respite care, provision of rehabilitation and assistive technologies, personal assistant services, parent training and counseling, vehicular and home modifications, and assistance with extraordinary expenses associated with disabilities. In addition, since the vast majority (over 85%) of individuals with disabilities reside with families in their own households, families of children with disabilities need access to appropriate child care and to before- and after-school programs. Child care for children with disabilities should be affordable, safe, appropriate and in the most integrated setting.
- Providers of family support services must have education and training that will prepare them to work with people with disabilities in inclusive settings to achieve this goal.
- To be effective and beneficial, supports and services must be easy to access, family-driven, individualized, flexible to changing needs and circumstances, culturally sensitive and based on functional needs rather than categorical labels.

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- ❑ When children cannot remain in their own families, for whatever reason, they still deserve to live and grow up in a family. The first priority should be to reunite the family through the infusion of services and supports. When that is not possible and the family can remain actively involved in the child's life, the natural family should be a key participant in selecting an alternate family situation for their child, including foster families, co-parenting and adoption.
- ❑ When families are not actively involved in their child's life, permanency planning must occur to allow the child to live in a family.
- ❑ School districts are an integral source of information and training for parents. Coordination among school districts and outside agencies is critical to provide parents with accurate, timely information regarding services and eligibility requirements.
- ❑ The state Child Protective Services system is essential to guarantee that all children are safe from abuse and neglect. Support of the families of children with disabilities from this system is critical to make sure children remain in a safe, family environment and are not unnecessarily removed from families due to the absence of necessary services and supports.

The Council also believes that when children with disabilities grow up in families, the community at large accepts the value of providing supports to children and families at home so that children become and remain participants and contributors to their communities.

The Council believes that the state of Texas should adopt a public policy statement recognizing the value of families in children's lives and develop programs, policies and funding mechanisms that allow all children to live and grow up in a family.

Reviewed ~~August 5, 2006~~ February 12, 2010



Access to Health Care Position Statement

The Council believes that full access to health care must be based on the following critical principles:

Non-Discrimination - All people, regardless of their disability, age, ethnic background, or ability to pay, must be able to fully participate in all health care systems generally available to citizens of Texas. They must have access to health care which:

- complies with the Health Insurance Portability and Accountability Act;
- prohibits rating practices that discriminate against higher users of health care;
- ensures that all persons, regardless of income or health status, have access to needed health-related services;
- ensures continuity and portability of coverage to and from group, individual and government plans; and
- ensures an appeals process when disagreements exist.

Comprehensiveness - All people, regardless of their disability, age of onset, or age, must have access to affordable and available health care programs that ensure a comprehensive array of health, rehabilitation, personal, and support services across all service categories and sites of service delivery. To be comprehensive, these services should be provided in the context of a medical home, where the clinician works in partnership with the individual and/or family to ensure that all of the medical and nonmedical needs of the patient are met. A medical home is defined as primary care that is comprehensive, accessible, continuous, consumer-centered, coordinated, compassionate, and culturally effective. Through this partnership, the clinician helps the individual and/or family coordinate and access specialty care, educational services, out-of-home care, family supports, and other public and private community services that are important to the overall health of the individual and/or family. In addition to the traditional acute care hospital and physician services, comprehensive health-related services include, but are not limited to the following:

- wellness and preventive services, including services to prevent secondary conditions or a loss of functional ability;
- health promotion/education services;
- diagnostic services;
- long and short term home and community-based services;
- prescription drugs, biologicals and medical foods;
- mental health and counseling services;
- rehabilitation services and specialty care, including audiology, occupational therapy, physical therapy, respiratory therapy, speech-language pathology services, cognitive therapy, vision care, behavioral therapies, and therapeutic recreation;
- personal assistance services and independent living services; and
- durable medical equipment and other assistive technology devices, equipment and related services.

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Choice - All people, regardless of their disability or age, must be assured that comprehensive health, rehabilitation, personal and support services are provided on the basis of individual need, preference and choice which:

- ensure a level of consumer choice in relation to services and providers;
- ensure a range of service settings through an integrated delivery system;
- ensure an appropriate amount, scope and duration of services; and
- ensure the availability of trained personnel.

Equity - All people, regardless of their disability or age, must be ensured equitable participation in all available health care systems and not be burdened with disproportionate costs. An equitable system:

- limits out-of-pocket expenses and cost sharing requirements for participants to a reasonable non-discriminatory level;
- provides access to services based on health care need, not income level or employment status;
- ensures adequate reimbursement for service; and
- ensures equity in coverage between mental health and physical health benefits.

Efficiency - All people, regardless of their disability or age, must have access to a comprehensive health care system - including wellness, prevention and treatment services - that provides appropriate, effective, quality services and which minimizes administrative waste. An efficient system:

- reduces administrative complexity and minimizes administrative costs;
- allocates resources in a more balanced way between preventive services, acute care, rehabilitation and chronic care management; and
- maintains effective cost controls so that all people can get the health care services which they need.

Reviewed ~~November 3, 2006~~ February 12, 2010



Family Support Services Position Statement

National caregiver studies estimate that more than 85 percent of individuals with developmental disabilities reside with and rely on their families for care. Families that care for individuals with disabilities range from young parents learning to care for children with physical and mental disabilities, to parents caring for teenagers and young adults with disabilities, to frail and elderly parents of aging, dependent adults with disabilities. Emotional, social and economic challenges accompany a family's commitment to their family member with a developmental disability. To provide sustained care for a child, a sibling, or an adult with disabilities, families need access to supports and services.

Services to families with a family member with disabilities have a dual focus. Those services support the health and integrity of family units, and they maximize the strengths and potential of individuals with disabilities to independently participate in and be included in their communities. During childhood, family support services are intended to strengthen the family's role as primary caregiver and prevent institutional placement of individuals with disabilities. Throughout an individual's life span, family support services are intended to strengthen and maintain family connections while fostering self-determination, independence, and participation in school, job, recreational and community settings. Adequate support services must be available to people with disabilities so that they can remain in the community rather than face inappropriate institutional placements.

The Texas Council for Developmental Disabilities supports the provision of a full array of flexible family support services that include but are not limited to:

- adaptive equipment and specialized clothing;
- assistive technology devices and services;
- counseling services;
- financial assistance with the extra expenses of providing support;
- home modifications;
- leisure-time planning;
- person-centered comprehensive planning for transition from early childhood to school, from school to adult life, and from adult life to retirement;
- personal assistance services/direct care services;
- respite care that is affordable, safe, age-appropriate and in the most integrated setting;
- service coordination including information and referral services;
- training to empower people with disabilities and their families to advocate for lifestyles they choose;
- transportation; and
- vehicular modifications.

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Providers of family support services must have education and training that will prepare them to work with families and people with disabilities of all ages in inclusive settings to maximize each individual's potential and inclusion with their peer groups.

To be effective and beneficial, family supports and services must be affordable, easy to access, designed by the individual and their family, individualized based on functional needs, flexible to changing needs and circumstances, and culturally sensitive.

Reviewed ~~November 3, 2006~~ February 12, 2010



Education Position Statement

All people with disabilities in Texas should have the opportunity to achieve their maximum potential for independence, productivity and integration into the community. Education is a lifelong learning process which is vital to attaining a full and complete life. The postsecondary results of an appropriate public school education for students with disabilities should be evidenced by employment, enrollment in postsecondary [school-education](#), or both within one year of leaving high school.

The Texas Council for Developmental Disabilities believes that all students regardless of individual needs must be provided with individualized appropriate instruction, research-based positive behavioral interventions and supports, access to the general curriculum, and related services in the least restrictive environment. Related services include but are not limited to adaptive, assistive technology; modifications; and supplementary aides. ~~Related services must be designed to ensure students with disabilities receive a free and appropriate public education in the least restrictive environment.~~ The delivery of individually appropriate instruction and related services must be provided by qualified teachers and service providers with administrative support and opportunities for continued/ongoing professional development in all areas of identified need. It is the position of the Council, as well as the policy of the state, that all children should be treated with dignity and respect when addressing [their](#) behavioral and disciplinary needs ~~of students.~~

The Council believes ~~that students who may access publicly funded education through~~ charter schools or schools accepting voucher payments must ~~be accorded the same education as noted above must provide students the same educational rights and opportunities that they would be accorded in the public education system.~~ The Council believes that schools that accept state money to educate students must accept any student with a developmental disability who may apply for admission to that school, abide by [applicable](#) federal and state education laws that protect the rights of students with disabilities [and](#) abide by Section 504 of the Rehabilitation Act [in](#) that [requires](#) any entity receiving federal funds ~~to must~~ include people with disabilities in its program, ~~and accept any student at the state rate of payment asking for no additional tuition or fees beyond the normal fees required by the student's independent school district. If these criteria are not met, then the Council adamantly opposes publicly funded school vouchers and charter schools. The Council is opposed to any initiative that would deplete funds from the public education system and ultimately from funds available for the education of students with disabilities.~~

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The Council believes that full inclusion should be approached as a value and underlying philosophy by which we educate all students. We believe that successful inclusion requires that teacher education programs prepare all educators and administrators to work with the full range of students in inclusive settings. Special education is not a separate educational system, but rather a service provided to people with specific needs within the general educational system, whenever possible. Professional preparation programs should emphasize the shared responsibility of all educators and administrators for every ~~all~~ students.

The Council strongly supports early intensive intervention and the use of research-based instruction and recognizes that inclusion and future independence may be facilitated by temporary arrangements in highly-specialized settings offering this degree of instruction.

The Council believes that full inclusion requires the ongoing, shared responsibility of students, parents, guardians, educators, administrators and the community at large. The Council recognizes the vital role of self-advocacy efforts within the disability community, the critical importance of networking with community resources based on the current educational climate and will support the advocacy efforts of families and individuals pursuing an appropriate education and improved outcomes for students with disabilities.

It is therefore the position of the Texas Council for Developmental Disabilities that all students have a the right to seek the same educational benefit as their non-disabled peers in the setting necessary to achieve their maximum potential, to learn, play and work with students their own age, with and without disabilities, in the same schools, classrooms and other educational programs attended by their brothers, sisters and neighbors, and that schools, classrooms and programs must be both physically and programmatically accessible to all students.

Reviewed November 13, 2009



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. 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. 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 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.

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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)

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>)

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>)

- ❑ 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.
- ❑ Competency evaluation that is performed by skilled professionals who have ~~They must also seek expert consultation for competency evaluations. Expert consultants must have~~ specialized training and experience in forensic evaluation, ~~which would include~~ legal competency for adults and fitness to proceed for juveniles.
- ❑ Due process protections that include a reliable, age-specific and culturally competent assessments of and standards for:
 - Determining the existence of cognitive and ~~mental health psychiatric~~ 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 ~~describe~~ any relevant negative 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 that are provided include, at all stages of criminal justice proceedings to accommodations to assist the individual in understanding and participating in the proceedings and their one's own defense, ~~with physical and cognitive accommodations and assistance in decision making if needed.~~

The Council recognizes that prevention, early intervention, assessment due process protections, and reasonable accommodations are ~~interwoven and~~ overlapping components of a comprehensive system that is responsive to the needs to people with disabilities and that these

components ~~all~~ must be available to alleged offenders at all stages of the ~~an~~ individual's involvement with in the criminal justice system.

Reviewed ~~August 5, 2006~~ November 13, 2009

**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.”



Education Position Statement

All people with disabilities in Texas should have the opportunity to achieve their maximum potential for independence, productivity and integration into the community. Education is a lifelong learning process which is vital to attaining a full and complete life. The postsecondary results of an appropriate public school education for students with disabilities should be evidenced by employment, enrollment in postsecondary education, or both within one year of leaving high school.

The Texas Council for Developmental Disabilities believes that all students regardless of individual needs must be provided with individualized appropriate instruction, research-based positive behavioral interventions and supports, access to the general curriculum, and related services in the least restrictive environment. Related services include but are not limited to adaptive aids, assistive technology, modifications, therapies and supplementary aides. The delivery of individually appropriate instruction and related services must be provided by qualified teachers and service providers with administrative support and opportunities for continued/ongoing professional development in all areas of identified need. It is the position of the Council, as well as the policy of the state, that all children should be treated with dignity and respect when addressing their behavioral and disciplinary needs.

The Council believes charter schools or schools accepting voucher payments must provide students the same educational rights and opportunities that they would be accorded in the public education system. The Council believes that schools that accept state money to educate students must accept any student with a developmental disability who may apply for admission to that school, abide by federal and state education laws that protect the rights of students with disabilities, abide by Section 504 of the Rehabilitation Act that requires any entity receiving federal funds to include people with disabilities in its program, and accept any student at the state rate of payment asking for no additional tuition or fees beyond the normal fees required by the student's independent school district. If these criteria are not met, then the Council adamantly opposes publicly funded school vouchers and charter schools. The Council is opposed to any initiative that would deplete funds from the public education system and ultimately from funds available for the education of students with disabilities.

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The Council believes that full inclusion should be approached as a value and underlying philosophy by which we educate all students. We believe that successful inclusion requires that teacher education programs prepare all educators and administrators to work with the full range of students in inclusive settings. Special education is not a separate educational system, but rather a service provided to people with specific needs within the general educational system. Professional preparation programs should emphasize the shared responsibility of all educators and administrators for every student.

The Council believes that full inclusion requires the ongoing, shared responsibility of students, parents, guardians, educators, administrators and the community at large.

It is therefore the position of the Texas Council for Developmental Disabilities that all students have a right to learn, play and work with students their own age, with and without disabilities, in the same schools, classrooms and other educational programs attended by their brothers, sisters and neighbors, and that schools, classrooms and programs must be both physically and programmatically accessible to all students.

Reviewed February 12, 2010



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.

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- ❑ 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 ~~all~~ must be available to alleged offenders at all stages of the individual’s involvement in the criminal justice system.

Reviewed November 13, 2009

***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.nasdds.org/pdf/EffectiveInteragencyCollaboration.pdf>)