DISABILITY JUSTICE INITIATIVE

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DISABILITY JUSTICE INITIATIVE

Bridging the Gap Between People with Disabilities and the Criminal Justice System

A Training Manual for ND Criminal Justice Personnel

Disability Justice Initiative Project
Contract #660-04929

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Introduction

In accordance with the American with Disabilities Act (ADA), people with disabilities are entitled to the same services that law enforcement agencies provide to all citizens. Beginning with the deinstitutionalization movement in the 1980's, people with developmental disabilities have had an increasing number of opportunities to become involved with the criminal justice system. To ensure equal justice, criminal justice personnel need to be familiar with the characteristics and needs of persons with disabilities, and be able to respond appropriately when they come into contact with the system. This manual was developed as part of the Disability Justice Initiative (DJI) project, a collaborative effort between the ND Center for Persons with Disabilities at Minot State University, the ND Developmental Disabilities Council, and the ND Protection & Advocacy Project. The goal of the DJI project is to improve interaction between the criminal justice system and citizens with disabilities in ND.

Federal law requires reasonable accommodations for people with disabilities. When law enforcement officers do not recognize or respond to disabilities appropriately, people with disabilities are greatly disadvantaged. They may be repeatedly victimized or have greater difficulty recovering from the trauma of the victimization. Without accommodations for their disability, victims do not receive the support they need to navigate through the complex justice system and ensure that their rights are not further violated. In addition, if the disability of an offender is not recognized, then the disability is not taken into account if and when the case comes to sentencing.

Raising awareness among people with disabilities, service providers, and the criminal justice and law enforcement systems is critical for system change. Education must be threefold: people with disabilities must be taught to avoid, recognize, and report crimes when they occur. Secondly, those who support people with disabilities through advocacy or service provision must be able to recognize the symptoms of abuse and be prompted to report it. Finally, criminal justice system personnel need information on how to interact effectively with people who have disabilities, throughout all aspects of the system. The purpose of this manual is to raise awareness and provide information to criminal justice personnel regarding these issues.

Finally, a word about the terminology used in this manual. The focus of this manual is to provide information regarding mental illness and developmental disabilities, specifically mental retardation. Developmental disabilities is a term commonly used in the disability field which includes several disability categories, including mental retardation. Unless otherwise indicated, the term disabilities will refer specifically to the presence of developmental disabilities and/or mental illness.

Background

People with significant disabilities experience serious crime at a rate four to ten times higher than the general population (Pease, 2000). Most people with disabilities will experience some form of sexual assault or abuse during their lifetime (Sobsey & Varnhagen, 1989). The rate of sexual assault is 10.7 times higher for people with mental retardation than for the general population and 12.7 times higher for robbery. Studies have found that over 80% of women and 30% of men with intellectual disabilities have been sexually assaulted. Even more alarming is that 80% of women who have been sexually assaulted, have been assaulted more than once and 50% have been assaulted more than 10 times (Sobsey & Doe, 1991; Sorenson, 2000).

Vulnerability of victims with disabilities stems from a variety of factors, including:

- dependence on caregivers,
- a devalued position in society,
- desire to please and be accepted,
- a lack of education about sexuality and abuse issues,
- difficulty advocating on their own behalf.

Most perpetrators of crimes against people with disabilities are caregivers (Sobsey, 1994). They are in a position of power over people receiving services. This is also one of the reasons for the high number of repeated sexual assaults against women with developmental disabilities. Caregivers are in a position to pressure the women to remain silent and then to continue the victimization of the women under their care. One study found that an alarming 44% of the offenders against people with disabilities made initial contact with their victims through the network of services provided to people with disabilities (Sobsey & Doe, 1991).

Research has also attempted to document the number of people with mental retardation (MR) who are offenders. Although people with MR can knowingly make informed decisions to become involved in criminal activity, this is not usually the case. People who have MR can easily be persuaded or manipulated into participating in illegal activity or to take the blame when they may not have been responsible. There are numerous examples in the literature of people with mental retardation confessing to crimes they did not commit (Perske, 1994; Perske, 1991). Although representing only 2% of the general population, people with developmental disabilities represent 4%-10% of the prison population (Petersilia, 2000). Although there is no link between mental retardation and criminal behavior, there is a greater likelihood that someone with mental retardation will be caught if involved in criminal activity.

People with mental retardation are more susceptible to arrest and incarceration because they (Petersilia, 2000):

- generally come from low-income groups where police presence is more prevalent,
- are unlikely to meet the criterion for bail which includes employment and having an intact support system,
- often do not fully understand their rights and are likely to waive them,
- are likely to give answers they believe the police want to hear rather then an accurate account of what really happened. In many cases, they will simply respond "yes" to every question until the questioning officer expresses displeasure with a "yes" response. Then they will change their answer to "no".
- are less able to help prepare their own defense,
- will rarely identify themselves as having mental retardation to the arresting officer.

After entry into the criminal justice system, people with mental retardation are more likely than people without disabilities to be convicted, sentenced, and then victimized within prison (Petersilia, 2000)). Victims and offenders with mental retardation are often not identified as having a disability and therefore are not provided effective support to negotiate through the system. Statistics show that mental retardation of offenders is not noted at the time of their arrest 75% of the time. In fact, more than 10% of the time, mental retardation is not identified until they are in prison (McAfee & Gural, 1988).

Determining the extent of criminal victimization for people with disabilities can be difficult for several reasons:

1. Individuals with mental retardation may not recognize that they have been victimized. Because of their cognitive impairments, they may not understand the complex concept of crime.

2. If individuals with disabilities recognize that a crime has been committed against them, they may not have the capacity to report it due to mobility or communication barriers. In addition, they may not know *how* to report it.

3. Because of dependence upon caregivers, victims are not likely to report an assault or other crime perpetrated by a caregiver for fear of retribution or loss of that person's attention.

4. Many crimes against people with mental retardation are identified as abuse or neglect rather than rape or assault. Criminal actions that take place in

institutions or group homes are sometimes handled internally and not reported to outside law enforcement.

Overview of the Disability Services System

The ND Department of Human Services provides a variety of services to people with disabilities, including mental health services and developmental disabilities services. The Department provides direct services to individuals and families through eight regional Human Service Centers, the ND State Hospital located in Jamestown, and the Developmental Center in Grafton.

The Developmental Disabilities division within the Human Service Centers provides support and training for persons to maximize independence and self-sufficiency and prevent institutionalization. To achieve this, the Human Service Centers contract with 36 private, nonprofit, and for-profit organizations to provide residential and vocational services such as on-the-job training, sheltered workshops, group living arrangements, supervised apartment living, and family support such as respite care.

The State Hospital provides mental health services for people whose needs cannot be met in the local community. Both in-patient and out-patient services are available. The Developmental Center is an educational and training facility for people with developmental disabilities. The Developmental Center often works in collaboration with the service providers in the eight regions of the state.

Mental Retardation

Mental retardation (MR) is present in approximately 1-3% of the general population. However, people with MR are 5-10 times more likely than the average citizen to be victims of crime. Some estimates indicate that as many as 80% of people with MR have been victimized. With statistics this high, it is likely that law enforcement officers will encounter victims with MR at some point during their careers.

A person with MR has substantial limitations in intellectual functioning. Although definitions vary, the IQ cutoff generally is 70-75 or below. Related limitations in at least two areas of adaptive behavior are also present. Areas of adaptive behavior include communication, self-care, social skills, work, academics, home living, leisure, health and safety, and self-direction.

Individuals with MR vary greatly in their functioning, some requiring more support than others. Most people with MR who become involved with the criminal justice system as offenders will have a mild level of MR. This is because people with a mild level of MR are more likely to function independently in the community. They are more likely to be exposed to environments where crime occurs and to be influenced by peers who urge them to get involved in criminal activities. Individuals with a more significant level of MR are not as likely to engage in criminal acts; but they are likely to be victimized, especially in sexual crimes.

It is not necessary, or even appropriate, for law enforcement or criminal justice personnel to diagnose mental retardation. What is important is to *recognize* the characteristics of MR so that an effective approach can be used with each person.

There is as much variability of personal characteristics among people with MR as there is in the general population. However, there are a number of specific characteristics that appear are common among people with mental retardation.

The following characteristics *may* indicate the presence of MR:

- *Difficulty with language and communication* – limited vocabulary, difficulty understanding or answering questions, need additional time to process information and respond, may use sign language or a picture communication book, tendency to answer "yes" to almost every question asked, perseverance or repeating the same things over and over.

- *Behavioral indicators* – easily influenced and eager to please, short attention span, easily distractible, lack of confidence, dependence on others for even simple tasks, may act impulsively without considering the consequences of their actions, inappropriate reactions or behavior to the situation, slow to move and respond, difficulty predicting what may happen, and gullibility.

- *Cognitive deficits* – many concepts may be difficult to understand, limited ability to read or write, difficulty understanding references to time and direction.

Mental Illness

Mental illness includes a number of brain disorders that disrupt a person's mood, thought processes, memory, sensory input, feelings, and ability to reason and relate to others. Disorders include manic-depressive illness, schizophrenia, major depression, and severe anxiety. More than seven million adults and five million children in the United States have mental illness which affects their ability to meet the ordinary demands of life.

Symptoms of mental illness vary from person to person depending on the type and severity of the disorder. Some symptoms may not be noticeable at first but become apparent during conversation with the person. The following symptoms *may* indicate the presence of mental illness:

- Delusions and paranoia (e.g. false beliefs that s/he is a famous person, believes others are trying to harm him/her
- Hallucinations, such as hearing voices or seeing, feeling, or smelling imaginary things
- Depression

- Inappropriate emotional response (e.g. silliness or laughter at a serious moment)
- Unintelligible conversation
- Loss of memory other than ordinary forgetfulness (e.g. inability to remember the day, year, or where one is)
- Lack of movement, activity, or expression (catatonia)
- Unfounded anxiety, panic, or fright
- Confusion
- Accelerated speaking or hyperactivity
- Low self-esteem
- Impressionable
- Reactive
- Moody
- Limited emotional expression
- Need immediate gratification

Distinguishing Mental Retardation from Mental Illness

Mental retardation and mental illness are often though of as the same. However, they are two distinct, separate conditions. Sometimes a person may have both conditions (dual diagnosis). People with mental illness are usually of normal intelligence but may have difficulty functioning at normal levels. People with mental retardation are more likely than others to experience mental health problems. Reasons for this include environmental factors, lack of learning opportunities, decreased coping skills, and the impact of the central nervous system on their disability. The following table differentiates between mental retardation and mental illness.

Mental Retardation	Mental Illness
• NOT an illness. • A permanent condition, there is no cure. • Functioning can be improved through training and habilitation.	• It IS an illness. • Usually temporary and often reversible. • There is no cure; but it can often be successfully treated with medications.
• Person has below average intelligence with deficits in adaptive behaviors.	• Person has normal intelligence, but difficulty functioning because of the illness.
• Becomes evident at birth or during childhood.	• May occur at any age. Episodes may occur and then subside.
• Affects approximately 3% of the population.	• Affects 16-20% of the population.

• It is not a disturbance of thought. • Behavior is consistent with the person's level of intellectual functioning.	• Involves disturbances in thought processes and emotions. • Behavior may be irrational and change often.

(Mercer, 1997)

Other Disabilities

Some individuals with mental retardation (MR) have secondary disabilities such as cerebral palsy, seizure disorder, visual impairments, and hearing impairments. Although physical and sensory disabilities are more prevalent among people with MR, keep in mind that people who have physical disabilities do not necessarily have mental retardation.

Some disabilities have characteristics that may be mistaken for other conditions:

- A disability that affects muscle coordination and balance, such as cerebral palsy, may affect the way a person walks or talks; this may be mistaken for intoxication.

- A person with epilepsy may have a seizure that resembles the stupor brought on by alcohol or drug use.

Individuals with mental retardation or mental illness, like their peers without disabilities, may also use alcohol and drugs. However, law enforcement officers should consider the possible presence of epilepsy, cerebral palsy, or other medical conditions before assuming that a person is intoxicated or under the influence of a controlled substance.

Communication

People First Language

The language we use reflects our attitudes and values. Words have the power to build positive interactions or to create barriers to communication. Historically, people with disabilities have been referred to by labels such as "the retarded", "the mentally ill", "cripple", etc. These terms are disrespectful and focus on the disability instead of on the person.

Terms used to describe disabilities have changed over the years as society's attitude toward people with disabilities has shifted. Outdated terminology has been replaced by People First Language, which takes the emphasis away from the disability and focuses the listener on the person. The concept of People First Language is very simple. As

the phrase implies, refer to the person first, not the disability. The table below gives examples of appropriate language to use:

DO SAY…..	DON'T SAY…..
Person with a disability	Victim, cripple, the disabled, disabled people
Uses a wheelchair	Wheelchair bound, confined to a wheelchair, wheelchair user
People with mental retardation "He has a mental illness."	Mentally retarded people, the retards, retarded person, crazy, schizo
Adults (or men and women)	Kids (unless they are kids)

(Mercer, 2000)

Interaction in general can be awkward for those who are unfamiliar with alternative methods of communication. If you are unsure of how to react or don't understand what someone is saying, let him or her know – don't pretend to understand. Some alternative methods of communication that you might encounter include:

> Sign Language – Even if you don't know sign, you might be able to interpret what someone is telling you by watching their actions. One form of sign uses hand gestures on different parts of the body or creates actions specific to an activity. You may need to use a sign language interpreter in some situations.
>
> Communication Books – Some people carry books containing picture symbols. They communicate by pointing to the pictures to relay a message. You can communicate back to the person in the same manner.
>
> Voice Output Systems – These systems have preprogrammed messages that can be activated by pushing buttons (usually marked with picture symbols). A voice output will relay the message.

When talking with someone who uses a communication device, be patient and allow time for the person to find the picture or button they are looking for. Always ask the person for permission before handling their communication device. Remember that some people can understand spoken language even if they cannot speak. Don't be embarrassed if you use phrases such as "see you later" or "lets walk over here" that seem to relate to a person's disability. Place yourself at eye level when speaking to someone who uses a wheelchair, never lean on the chair.

Effective Approaches

- Give people with disabilities the same respect you show to people without disabilities.
- Talk and interact with adults as adults. Do not treat adults with mental retardation as children (e.g. do not use a sing-song voice or place your hand on their head).
- Question the person in an area that is quiet and free of distractions.
- Speak directly to the person, even if there is someone else present who is interpreting or providing support.
- Use short sentences and avoid complex phrases or words.
- Use open-ended questions. Avoid those the person can answer with a "yes" or "no". If a person does not respond, rephrase the question or ask it in another way. Don't ask leading questions. Be aware of your tone of voice, keep it neutral.
- When possible, say it and show it. For example, use pictures, symbols, and actions to help convey meaning.
- Allow at least 15-20 seconds for the person to process information and respond.
- Check for comprehension by asking the person to repeat information in his or her own words, or to show you what was happening in the situation.

Interviewing

When interviewing people with disabilities who may be victims, witnesses, or offenders, the following guidelines will facilitate a more effective exchange of accurate information:

- It is critical to gain the trust of witnesses and victims before formal interviewing takes place. Before the formal interview, ask the person questions about their interests and activities.
- Utilize the knowledge of others who know the person well. Prepare your questions in advance and review them with a person who has knowledge of the individual's functioning so they can help rephrase questions in a way that is likely to lead to a more valid response.
- Be especially wary when another person implicates someone who appears to have mental retardation.
- Provide a distraction-free environment. If possible, use an area that is free of ringing phones and other people that are talking or moving about.
- Avoid or simplify conceptual questions. When referring to time concepts, use everyday events to mark time rather than calendar dates and clock time.
- Use terms that are meaningful to the interviewee.
- Avoid compound questions.

- Avoid "yes-no" questions. Many individuals with mental retardation will answer "yes" repeatedly to questions that they do not understand. Such responses can lead to a false impression of guilt in an interrogation.
- When interviewees are having difficulty explaining an event, ask them to show you what happened.
- Conduct interviews as soon as possible after the initial report. This alleviates memory problems and may prevent the victim from being influenced by others.

Individualized Justice Plan

People who receive services from a service provider will have a support plan in place that describes the assistance that the person needs. If the person has a history, or is at risk of coming into contact with law enforcement, then the support plan may include a component called an Individual Justice Plan (IJP). The purpose of the IJP is to facilitate communication between the disability service system and the criminal justice systems. The IJP outlines support that is recommended for the person with a disability.

The IJP was first introduced in North Dakota in 1987 to address the needs of offenders with disabilities. Input for the original IJP training manual was obtained from both the disability and criminal justice communities. The suggestion to use an IJP can be initiated by either side of the system. However, most often it will be initiated by the defense side of the legal system. In most instances, the defending attorney will not have participated in the IJP process, so someone from the team may need to assist the person with disabilities to present the IJP to the attorney. The flow chart in Appendix A indicates points within the CJ system where the IJP might be introduced.

An IJP can include direction and benefits such as:

- Assisting the person to obtain services/support so that s/he can remain in the community
- Providing a more cost effective response to offenders with disabilities
- Holding the person accountable for their behavior
- Providing treatment/support in a manner the person can understand and benefit from
- Advocating for the person's rights and responsibilities as a member of a community

Components of an IJP:

- Description of problem behavior(s),

- Assessment to determine the cause of the problem and the results
- Team recommendations/options for treatment/support – these should consider the least intrusive but potentially most effective means of addressing the problem.

Sentencing alternatives that may be included as options in the IJP include:

- Behavioral program
- Counseling
- Increased supervision
- Community service
- Hospitalization
- Agency transfer
- Specific treatment program
- Restitution
- Fine
- Probation
- Incarceration

Summary

Traditionally, there has been little training or information provided to workers in the criminal justice system regarding disability issues. As a result, situations involving unequal justice for people with disabilities as both victims and offenders have been a reality. Lack of information does not benefit anyone. In order to make a positive impact, the criminal justice and disability systems need to collaborate. One way to do that is to find out what service providers of mental illness and developmental disabilities are available in the local community. Establish a contact person within each agency who can be called upon to assist when situations involving the law arise (see Appendix B). Arrange for an exchange of training and information between service providers and criminal justice agencies. Open mindedness and effective communication are essential ingredients to positive working relationships. The common goal of equal justice for all citizens is the bridge that brings both entities together.

Disability Justice Initiative
Criminal Justice Personnel Quiz

1. T or F — People with mental illness are usually of normal intelligence but may have difficulty functioning at normal levels.
2. T or F — People with mental retardation vary greatly in their functioning, some requiring more support than others.
3. T or F — An Individual Justice Plan is developed by the court in an effort to deter criminal activity toward persons with disabilities.
4. T or F — Approximately 1-3% of the general population has mental retardation.
5. T or F — A low IQ is enough to diagnose mental retardation.
6. T or F — Most people with mental retardation have physical indicators of the disability.
7. T or F — There is no cure for mental illness, but it can often be successfully treated with medications.
8. T or F — Many people develop mental retardation in their older years.
9. T or F — Persons with mental retardation should be referred to as "the mentally retarded."
10. T or F — Most people who have mental retardation can be easily persuaded or manipulated into participating in illegal activity.
11. T or F — A person can have a dual diagnosis of mental illness and mental retardation.
12. T or F — Mental retardation is a form of mental illness.
13. T or F — Most people with mental retardation live in institutions.
14. T or F — People with significant disabilities experience crime at a rate four to ten times higher than the general population.
15. T or F — All people with mental retardation are incompetent to stand trial.
16. T or F — If a person with mental retardation has a legal guardian s/he cannot be a witness.
17. T or F — An effective way to communicate with a person who has mental retardation is to speak loudly and slowly.

Adapted from Luckasson (1994) as found in McAfee, J.K. (2002). *Assisting Victims and Witnesses with Disabilities in the Criminal Justice System.* A curriculum for Law Enforcement Personnel. The Institute on Disabilities, Pennsylvania's University Center for Excellence in Developmental Disabilities. Temple University.

Quiz Answer Key

1. T
2. T
3. F
4. T
5. F
6. F
7. T
8. F
9. F
10. T
11. T
12. F
13. F
14. T
15. F
16. F
17. F

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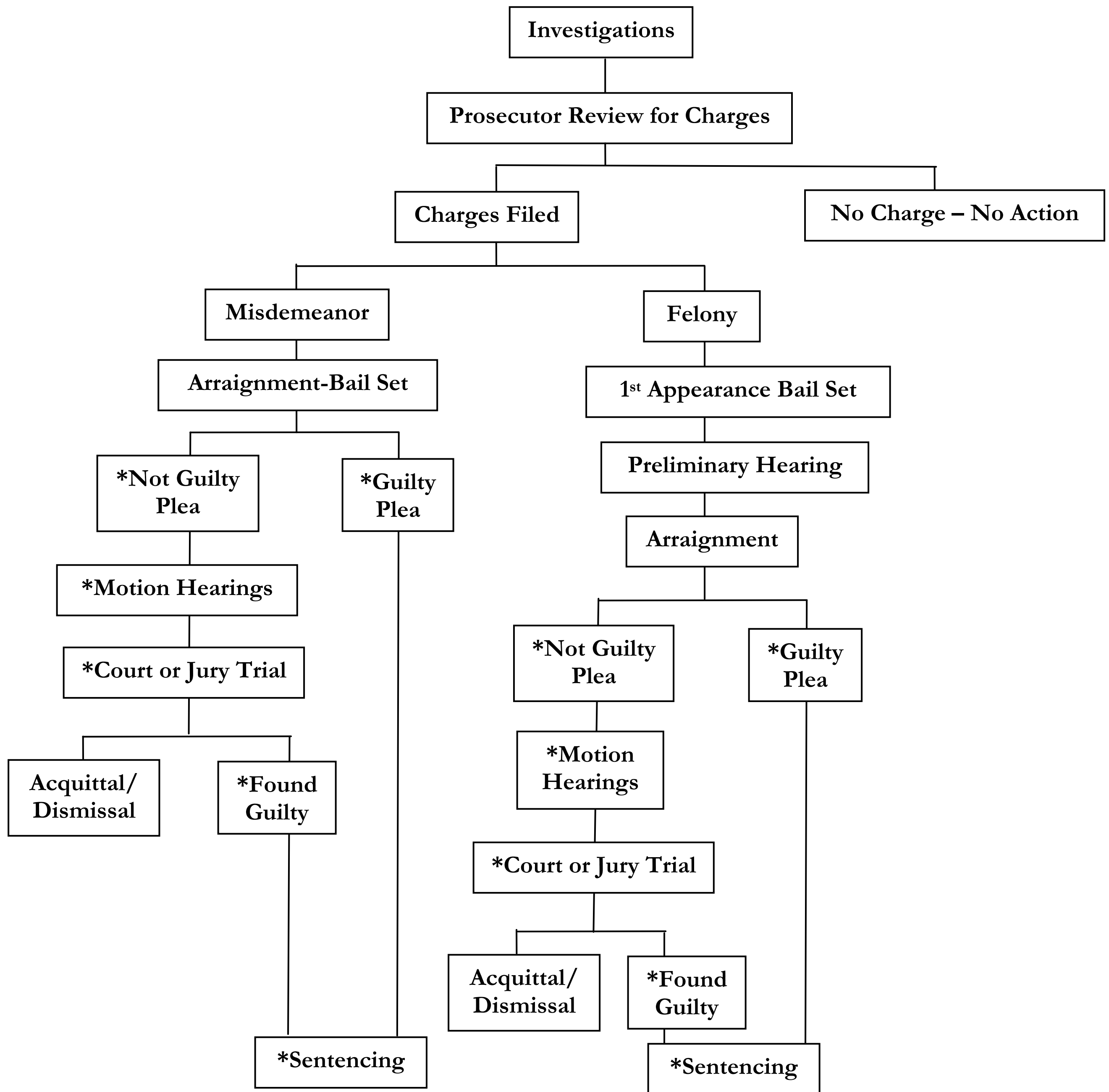
Glossary of Terms and Abbreviations Commonly Used in Disability Services

ADA	Americans with Disabilities Act: An act to prohibit discrimination on the basis of disability.
Age Appropriateness	Treating a person according to their chronological years (number of years old they are), regardless of the level of disability.
Arc	An organization of and for people with mental retardation and related developmental disabilities and their families.
CIL	Center for Independent Living: there are four centers in ND, located in Bismarck, Grand Forks, Fargo, and Minot. They provide services to adults and children with disabilities and their families.
Cognitive	Refers to reasoning or intellectual capacity.
CP	Cerebral Palsy, a condition that affects body movements and muscle coordination, caused by damage to the brain.
DD	Developmental Disability, refers to people with a mental and/or physical impairment that occurs before age 22, and limits them in at least three of the seven major life activities such as language, self-care, or mobility.
Delusions	A false belief not based in reality (e.g. someone can read your mind, the radio is controlling you, people are trying to kill you).
Developmental Assumption	Asserts that under the proper conditions, every person is capable of learning and developing, regardless of the level of disability.
DHS	Department of Human Services, based out of the State Capitol, they provide a variety of services through the State Hospital, Developmental Center, and Regional Human Service Centers.
Dignity of Risk	Allowing people to experience free movement and make choices even though there may be some risk involved.
Dual Diagnosis	Co-existence of both mental retardation and mental illness.
Empowerment	Encouraging people to take control over choices and decisions that affect their lives.

Guardianship	The transfer of rights from a person deemed incompetent to a responsible person who will make decisions in the best interest of the person they represent.
Hallucinations	A false perception not based in reality, it may be visual, auditory, or olfactory (smell), such as seeing a non-existent person.
Illusions	May cause a harmless, everyday object to appear bizarre or even life threatening (e.g. a rope becomes a snake or a stuffed animal comes to life).
ILS	Independent Living Skills, the skills related to activities of daily living.
LRE	Least Restrictive Environment: Environments to live, work, and recreate that include people both with and without disabilities. People are removed only when services are ineffective in these environments.
MI	Mental Illness, various disorders affecting a person's thoughts, emotions, or behavior.
MR	Mental Retardation, one type of developmental disability.
Normalization	The principle of helping people with developmental disabilities to live, work, and recreate as close to 'normal' as possible.
OCD	Obsessive Compulsive Disorder, behavior characterized by repetitive, irrational thoughts called obsessions and actions called compulsions.
People First	A manner of speaking that puts the person first, before disability (e.g. person with a disability vs. disabled person).
Psychosis	A mental disorder that is so severe that the result is personality disintegration and loss of contact with reality.
Service Provider	Agency that provides services to people with disabilities.
TBI	Traumatic Brain Injury: injury to the brain caused by an accident.
Touch Talker	A communication device with preprogrammed voice output activated by the person touching buttons or pictures.

Appendix A

CJ Flow Chart



*Where IJP may be introduced

Appendix B

Service Provider Contact Information

Post this sheet in your agency and use it as a reference when assistance is needed in situations involving a person with a disability.

Service Provider: ____

Type of services provided: ________________________________

Contact person: ____

Phone #: ____

Service Provider: ____

Type of services provided: ________________________________

Contact person: ____

Phone #: ____

Service Provider: _______________________________________

Type of services provided: _______________________________

Contact person: ____

Phone #: ____

Service Provider: _______________________________________

Type of services provided: _______________________________

Contact person: ____

Phone #: ____