

Criminal Justice Position Paper

General Philosophy/Values

People with disabilities in the criminal justice system have the same rights to due process and equal protection as all citizens of the United States. The Pennsylvania Developmental Disabilities Council (DDC) has identified barriers that prevent persons with disabilities from receiving due process and equal justice in the criminal justice system. This position paper will discuss some of these barriers and offer recommendations for change. The paper addresses those who enter the criminal justice system as victims or witnesses, as accused or convicted offenders, or as criminal justice workers. While it does not specifically address mental health issues, we note that people with mental illness face many of the same barriers.

People with disabilities who are members of minority groups face particularly high barriers, because they are often discriminated against, both on the basis of their disability and their minority status. Therefore in addition to addressing the barriers outlined below, we must ensure that all services and supports are provided in a culturally and linguistically competent manner with specific attention to the needs of minority communities.

The Developmental Disabilities Council DDC (DDC) does not propose that people with disabilities should fail to be held accountable for criminal behavior. It is, however, a fundamental right of every citizen, including persons people with disabilities, to receive the supports and accommodations needed to assure due process and equal protection within the criminal justice system.

Factors Affecting People with Disabilities

Communication Between Systems

Communication barriers between the disability community and the criminal justice system have been identified by both groups. People with disabilities are frequently devalued, ignored, seen as less than credible, and denied due process and equal protection.

People with disabilities who are victims must be informed about rape crisis, domestic violence, and other victim services programs. To meet the standards of the Americans with Disabilities Act, these programs need to be physically and programmatically accessible. People with disabilities also must also receive supports to serve as credible witnesses. Both people with disabilities and those who work in the human services system must be educated about identifying and reporting criminal behavior.

Training

All prospective and current police and parole officers must receive training and continuing education to enable them to understand their legal obligation to people with disabilities, and to provide them with the skills needed to distinguish characteristics and

prosecuting attorneys, law enforcement personnel, psychologists, psychiatrists , and others who work in the criminal justice system also need information and training regarding people with disabilities to increase their sensitivity and understanding and to equip them with the knowledge that will allow them to make good decisions in serving people with disabilities. Defense attorneys must be educated to effectively represent and speak on behalf of their clients with disabilities. Judges and lawyers must ensure that jurors have the information that they need to make their decisions.

People with disabilities, family members, providers , and others who work in human services need training to help them understand the criminal justice system. They must be trained about how the criminal justice system operates and about their rights and responsibilities. Young people involved in the juvenile justice system and their families and school officials need to understand the juvenile justice system , and their rights and responsibilities.

Accommodations and Accessibility

The lack of physical, programmatic and communication accessibility is a major barrier. Police vehicles, jail cells, courthouses, ambulances, etc. , often are often inaccessible to those with mobility impairments. The lack of certified interpreters, telecommunication devices (such as tdd's and amplified phones) and/or written information in accessible formats frequently deprive s s persons who are deaf or hard of hearing and those who are blind or have visual impairments of equal access and due process of law. Those with cognitive and communication disabilities are especially vulnerable to abuse in the system. Domestic violence shelters and other victim services programs are often physically and programmatically inaccessible.

All those with disabilities who are employed in or participate in the criminal justice system, such as attorneys, members of juries, victims and witnesses, also need access , too, so that they can participate freely.

Specialized supports and services must be provided in all phases of the criminal justice system to those who need them. Specialized supports and services, as well as appropriate medical and mental health treatment, must be provided in all phases of the criminal justice system to those who need them. Programs that receive federal financial assistance must comply with all relevant law and regulations, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. For example, police departments that receive federal financial assistance are required to evaluate their policies and practices to ensure that persons with disabilities can access and benefit from policing services, and to include persons with disabilities and advocates when they do their evaluations.

Assessment , Assessment, Accurate Identificat ion of Disability, and Appropriate Sentencing

Professionally recognized screening procedures improve the accuracy of identification of people with disabilities entering the criminal justice system. Appropriate assessment helps insure that people get the treatment, supports, services and accommodations that they need. Judges should place greater emphasis on ensuring that these needs are met. Again, training is important to make sure that criminal behavior in the disability

service system is recognized and addressed. Alternatives to sentencing and incarceration should also be considered when appropriate.

In one particular instance, the import of accurate identification and appropriate sentencing is clearly demonstrated. In *Atkins v. Virginia* , 122 S.Ct. 2242 (June 20, 2002), the U. S. Supreme Court held that the execution of any individual with mental retardation violated the Eighth Amendment's prohibition on cruel and unusual punishment. Pennsylvania, like other states, must revise identification and sentencing procedures to fairly implement the Supreme Court's decision.

In conclusion, for people with disabilities to receive due process and equal protection, the criminal justice system must be more responsive to address many barriers. At the same time, it is essential that we continue and increase our investment in community supports and services and provide necessary training and technical assistance to communities. By addressing barriers and investing in community services, we will keep those who do n't not belong out of the criminal justice system and ensure that those who do belong are appropriately sentenced and receive adequate support and supervision.

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