

JUVENILE DELINQUENCY: A PROTOCOL FOR YOUTH WITH DISABILITIES

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DISCLAIMER: This protocol is not intended to serve as legal advice of any kind. Jurisdictions differ tremendously in their intake and court procedures. Therefore this protocol is designed to address generalized principles utilized in the juvenile justice system. The specifics may need to be modified to accommodate the specific procedures followed in different jurisdictions.

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This protocol is organized in the following manner for purposes of clarity and effectiveness:

Stage 1: Pre-Arrest

Stage 2: Arrest

Stage 3: Adjudication
Stage 4: Disposition (Sentencing)
Stage 5: Post-Disposition
Special Issues
Recommendations for Further Reform

STAGE 1: PRE-ARREST

The youth with disabilities needs to understand and prepare for what will happen when contacted by law enforcement before it actually happens. Advocates should review the following with the youth with disabilities before an arrest takes place:

- Stay calm and be polite.
- Don't be hostile or defensive.
- Don't run or resist arrest.
- Do not give any statements until a lawyer/guardian is present.
- Don't sign any papers.
- Know full name, address, and phone number.
- Keep identification card at all times.
- Explain to law enforcement that you have a disability and how it affects you.
- Inform law enforcement that you need an environment which is quiet and free from distractions.
- Any responses should be brief and noncommittal.
- Request to speak to a lawyer and family/guardian.
- If you don't understand something that is stated to you, indicate that to law enforcement.
- Review legal vocabulary which may be used during law enforcement encounter.

STAGE 2: ARREST

Indicators for law enforcement that a youth may have a disability:

- Poor verbal skills.
- Difficulty communicating.
- Alleged offense is committed in a disorganized manner.
- Significant delinquency history.
- Impulsivity
- Poor social skills
- Hyperactivity

When encountering youth with a potential disability, law enforcement should remember the following:

- Use simple language, speak slowly, and clearly.
- Give one direction at a time.
- Have the youth repeat your directions in their own words.
- Be patient for a response.
- Provide alternate Miranda reading so that the youth will more easily understand the substance of the warnings.
- Police should record information about the perceived disability and bring it to the attention of the detention center if the youth is taken into custody.

Detention Facility

The detention center should be aware of the following symptoms of disabilities which could impact the youth with disabilities throughout the juvenile justice process. This information should be recorded and distributed to all professionals involved.

- Reading difficulty
- Writing difficulty
- Memory difficulty
- Anger control issues.
- Depression
- Anxiety
- Self-esteem problems.
- Poor executive functioning (organization skills)
- Fidgeting
- Talking excessively or seldom.

The following constitute critical tasks to be performed by the staff at the detention center:

- Initial screening to identify immediate risk of harm to self and others. For

serious mental health issues, consider mental health hold procedures involving hospitalization.

- Initial screening procedure for educational, social, behavioral and substance abuse. This screening should be rapid, simple, safe and accurate. There should be appropriate referrals for professional care as needed.
- Ensure that any necessary medications are received.
- In-person and telephone contact procedures between youth and attorney/family should be implemented.
- Comprehensive staff trainings on identification and treatment of youth with disabilities should be established.
- Distribute written policies of youth's rights and remedies at detention center which youth can keep for future reference.
- Immediate transfer of youth's educational records from public and private educational programs.
- Facility overcrowding must be monitored to safeguard safety needs of youth with disabilities.
- On-site individual and group therapy services available to serve the youth. There should be a trained psychologist/social worker readily available to address immediate issues.
- Necessary accommodations should be made in programs at detention facility for youth with disabilities.

A comprehensive anti-bullying process should be established and implemented. This process should:

- Generate a written report of all relevant incidents.
- Evaluate remedial measures.

- Inform youth of outcome.
- Follow-up counseling should be made available.

Seclusion and restraint procedures should be utilized only in emergency situations when there is imminent danger to the youth or others. It should not be utilized for discipline or punishment.

It should be discontinued at the earliest point possible.

STAGE 3: ADJUDICATION

Courtroom Issues

Consider some or all of the following actions at each court hearing:

- Courtrooms should be modified to accommodate the needs of a youth with disabilities. Such accommodations could include but are not limited to:
 - Modifying lighting in courtroom.
 - Closing the hearing to the public.
 - Rearranging chairs in the courtroom so that the youth may comprehend the hearing more easily.

- Appointment of a Guardian ad Litem to represent the best interests of youth when complex educational and/or disability issues are present. Counsel or Guardian ad Litem should inform the court of special needs of youth with disabilities and what specific accommodations should be made in the courtroom.

- Certified interpreters should be present if youth is hearing or visually impaired.

- Have literature available for parents/guardians/advocates. This literature should describe options to obtain legal representation and why counsel for youth is important. The literature should also include lists of outside resources and an overview of the juvenile justice process.

- Maintain sufficient security in the courtroom when necessary to deter and contain aggressive behaviors.

- Court hearing postponements are highly discouraged. Such postponement can lead to the youth experiencing prolonged uncertainty and anxiety.

Critical Tasks for Attorney of Youth

When meeting with the youth with disabilities, the following tactics should be followed:

- Be polite and patient.
- Use words that are easy to understand.
- Avoid long or complex questions with too much information.
- Be direct in stating reason for interview.
- Invite youth to ask questions at any time.
- Be non-judgmental.
- Don't correct the youth's grammar or vocabulary.
- Read any written paperwork to the youth who has a reading disability.
- Defuse the youth's anger when possible.
- Demonstrate empathy for their situation.
- Make eye contact but make sure you are not perceived as aggressive.
- Recognize the youth's strengths.
- Review the court process with the youth.

Counsel should meet the youth as soon as possible and before the first court hearing to obtain pertinent information regarding the nature of the disability. At this initial meeting, the following should be accomplished:

- Counsel should advise the youth that he should not talk about the facts of the case with anyone else.
- Discuss the disability with the youth.
- Inform the client that the only way an attorney can be most useful is if he is told accurate information.
- A business card should be provided to youth with easily understood contact information.
- Write down the next court date, time, and where it will take place.

Other critical tasks for the attorney:

- Treat family and friends of the youth with respect and dignity. Acknowledge that they know the youth well and have important information to share.
- Review youth's history through school records including psychoeducational reports, individualized education program, vocational education records, and employment records.
- Speak with professionals who have knowledge about youth concerning relevant issues.

Preliminary Legal Issues

Consider these legal procedures to protect against adjudication:

Competency to stand trial:

The issue is whether the youth has the sufficient present ability to consult with his or her lawyer with a reasonable degree or rational understanding and have a rational as well as factual understanding of the proceedings. The youth must also have the capacity to assist in preparing the defense of the case. In the case of youth with disabilities, the issue is likely to involve the youth's compromised ability to comprehend and/or communicate information, but not necessarily resulting from low intelligence.

Capability of understanding Miranda warnings:

If the youth with disabilities is not capable of comprehending these warnings, any admissions may be suppressed and not used as evidence against the youth.

Specialty courts:

Consider having the case transferred to a specialty courts such as a drug court, mental health court, or teen/peer/youth court. In these courts, there is typically more intensive methods of achieving effective treatment and rehabilitation. Research indicates that these cases generate lower rates of recidivism. These courts typically offer more consistent, predictable, and immediate sanctions and incentives.

Prosecutorial waiver, mandatory transfers, and automatic exclusions:

These procedures are not recommended for the youth with disabilities. If any one of these possibilities is raised, counsel for the youth must be prepared to raise disability, mental health and child/adolescent development issues. If the case is subject to adult court jurisdiction, consider competency evaluation and suppression of evidence issues in the adult court.

Diversion:

These programs are highly recommended for youth with disabilities when appropriate. They are designed to reduce juvenile delinquency and recidivism, change juvenile offenders' behavior and attitudes and reduce costs within the juvenile justice system. A diversion program results in no official action by the legal system with regard to a specific juvenile if the juvenile satisfactorily completes a period of formal supervision with provided services. Services offered the juvenile include, but are not limited to, diagnostic needs, assessments, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling, counseling during a crisis situation, and follow-up activities. The diversion program for the youth with disabilities should be highly structured, treatment oriented and well supervised.

Forensic Testing:

Forensic evaluations may be utilized to enable the court to further understand the youth's disability. In selecting an evaluator, the following factors should be considered:

- Significant experience in evaluating children/adolescents.
- Extensive forensic training.
- An understanding of the relevant law and legal issues in the case.
- An awareness of how cultural bias can impact evaluations.

The evaluator should possess the youth's educational, delinquency, and medical records while conducting the evaluation.

Counsel should request a protective order from the court to protect youth's Fifth Amendment right against self-incrimination. This court order should preclude the prosecution from utilizing any statements made by the youth in the course of the evaluation.

Plea Agreements:

Counsel should make sure that any plea agreement is knowing and voluntary in light of the child's educational attainment, literacy level, and trauma history.

Youth with Disabilities as Witness:

Before testifying in court, the youth should be adequately prepared about applicable courtroom procedures. Specifically, the youth should be aware of issues such as witness credibility, eye contact, anger control, and anticipated cross-examination.

STAGE 4: DISPOSITION (SENTENCING)

The presentence investigation should include any special education history and copies of the current individual education program.

The youth with disabilities should consider writing a letter to the court with thoughts and personal recommendations. Additional supportive documentation to present to the court may include the following:

- Letters of recommendation from service providers, teachers, clergy, etc.
- Recent and positive school report cards.
- Positive behavioral reports from detention facility staff.

The individualized education program should be utilized to keep the youth in the community. This may be accomplished by informing the court about what the youth's needs are and how they can be met through the IEP.

The least restrictive placement alternative is preferred. Consider foster care or a group home as a potential placement when a residential facility is not necessary but returning home is not a practical option. Placement in the community may include prescribed services such as multi-systemic treatment. Day treatment programs should be considered. Substance abuse programs should be utilized when appropriate.

The court should consider ordering a term and condition of probation that the youth is required to comply with his or her individualized education program. This term and condition should take into account the intellectual functioning, adaptive functioning, and emotional behaviors associated with the disability and be subject to a manifestation determination. Consider an additional term and condition of probation that the juvenile be provided information about understanding their disability and develop strategies to manage it.

The court should consider ordering the participation and successful completion of an independent living skills program and social skills training program for the youth with disabilities.

STAGE 5: POST-DISPOSITION

Probation

If granted probation, the probation officer's responsibility is to ensure that the youth does not reoffend solely because he or she could not comprehend what was expected. The probation officer should also be able to identify the specific community facilities and programs that might be most effective for the youth with disabilities's particular needs.

Juvenile residential treatment facilities

Staff at juvenile residential treatment facilities should consider the following:

- The youth with disabilities should be placed in the type of facility which meets the youth's particular needs. For instance, a facility which specializes in dual diagnosis treatment may be appropriate for those youth with disabilities with an accompanying substance abuse disorder.
- The facility should implement comprehensive staff training on identifying and treating youth with disabilities.
- The facility should distribute written policies of residents' rights and remedies which the youth can maintain for future reference.
- The facility should arrange for the immediate transfer of educational records and academic credits from the youth's former school.
- The facility should conduct an immediate and comprehensive special education assessment when appropriate.
- The facility should establish and implement an effective anti-bullying safety plan (see topic under Detention Facility heading).
- The facility and the other involved professionals should develop a timely and comprehensive aftercare plan which includes school, work, and the home environment. In order to develop an effective aftercare plan, the facility should maintain a database of aftercare programs that are successful/unsuccessful.

Adult Facilities:

Staff at adult facilities should consider the following:

- The adult facility should implement a comprehensive safety plan to protect against possible abuse youth with disabilities.
- The adult facility should comply with all special education rights which the youth with disabilities maintains through the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

SPECIAL ISSUES

Probation Revocation Hearing:

The youth's parent, guardian, or advocate should attempt to retain the same lawyer that represented the youth on the original charge. Consistency of counsel will yield benefits to the youth with disabilities by virtue of the youth being familiar with the particular attorney. It should also reduce the attorney's learning curve associated with developing client history pertaining to the disability.

Youth with Disabilities as Victim:

- The youth should know how to call 911 in an emergency.
- Victim compensation funds should be centralized into a single judicial institution to expedite processes, coordinate decisions, and minimize impact on the disabled victim.

RECOMMENDATIONS FOR FURTHER REFORM

- There should be increased specialized training among all juvenile justice professionals for protecting the rights of youth with disabilities in the juvenile justice system. This information should be disseminated to all interested policymakers, law enforcement personnel, and the public.
- There should be enhanced coordination of services between professionals in addressing the needs of youth with disabilities involved in the juvenile justice system.
- There should be improved communication and collaboration between schools and juvenile professionals regarding identification of disabilities and in the development and implementation of educational plans.
- There should be increased training of law school students with appropriate internships. Special education law should become an essential element of the juvenile law classroom curriculum.