

ONE SIZE FAILS ALL  
REPORT SERIES

# MISUNDERSTOOD AND MISTREATED

How Individuals with Intellectual and  
Developmental Disabilities Experience the  
Texas Criminal Legal System



OCTOBER 2020



This series explores the failures of Texas' criminal justice system to adequately address the needs of undervalued and marginalized populations, including teenagers and young adults, people with substance use and mental health issues, the LGBTQ community, people without stable housing supports, and people with intellectual/developmental disabilities (I/DD). Not only are these populations failed by the justice system, but Texas families and communities are harmed as more people are driven into incarceration, and taxpayers are left to foot the bill for unsuccessful policies and practices. We urge you to join us in calling for reforms that will create healthy, safe, thriving Texas communities.

The Texas Criminal Justice Coalition advances solutions and builds coalitions to reduce mass incarceration and foster safer Texas communities.

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How Individuals with Intellectual and Developmental  
Disabilities Experience the Texas Criminal Legal System

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# Definitions

## (Commonly Used Terms)

**Developmental disability (DD)** — DDs are characterized by substantial functional limitations in at least three of the following areas: self-care, learning, walking/moving, self-direction, independent living, economic self-sufficiency, or language. These involve physical and/or mental impairments with an onset of symptoms occurring before age 22<sup>1</sup> and include autism spectrum disorder and cerebral palsy. DDs frequently co-occur with an intellectual disability (ID) and 50 to 80 percent of those with autism spectrum disorder also have an I/DD.<sup>2</sup>

**Direct support professional (DSP)** — DSPs are hired staff members who provide direct, necessary supports and services to individuals with I/DDs in the community, in their homes, and at work sites.

**Neurodevelopmental disability (ND)** — A “group of conditions with onset in the developmental period,” that “produce impairments of persona, social, academic or occupational functioning.”<sup>3</sup>

**Intellectual disability (ID)** — IDs are “deficits in intellectual functioning,” which include “reasoning, problem solving, planning, abstract thinking, judgement, academic learning,” and/or “experiential learning.”<sup>4</sup> An individual with an ID must also have impairments in adaptive functioning, which include “communication, social skills, personal independence at home or in community settings,” and “school or work functioning.”<sup>5</sup> Onset of an ID must occur before age 18.

**Trauma** — Individual trauma results from an event, series of events, or set of circumstances experienced as physically or emotionally harmful or life-threatening with lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.<sup>6</sup> People with I/DDs are especially vulnerable to trauma and are more likely to have been exposed to trauma during childhood than children without I/DDs.<sup>7</sup>

## Texas Medicaid and Health and Human Services Programs

**Home and Community-based Services (HCS)** — A Medicaid waiver program that provides community-based services and supports to qualified individuals with I/DDs. The HCS program provides individualized services and supports to people with I/DDs who are living with their family, in their own home, or in other community settings, such as small group homes.<sup>8</sup>

**Intermediate Care Facility (ICF)** — An ICF provides community residential and habilitation services. ICFs are typically group homes that offer a variety of services, including medical treatment, specialized therapy, and personal, social, and vocational skills training.<sup>9</sup>

**Local Intellectual and Developmental Disability Authority (LIDDA)** — LIDDAs are points of entry for publicly funded I/DD services. They enroll eligible individuals with I/DDs into various waiver programs (e.g., HCS and ICFs); provide supports and services, such as employment support, skills training, and crisis support; and engage in permanency planning for various individuals.<sup>10</sup>

**Local Mental Health Authority (LMHA)** — Texas Health and Human Services contracts with 37 regional entities to provide an array of programs and services that help people manage mental illness, including through case management, pharmacological management, counseling, psychosocial rehabilitative services, and skills training, among other supports.<sup>11</sup>

**State-Supported Living Center (SSLC)** — A large intermediate care facility that houses 97 to 446 people; there are 13 SSLCs in Texas. SSLCs are structured residential facilities operated by the Texas Health and Human Services Commission to provide I/DD services, including medical treatment, specialized therapies, and training in the acquisition of personal, social, and vocational skills.<sup>12</sup>

## Where do people with IDD reside in Texas?

### Home & Community Based Services (HCS)--Medicaid Waiver (5-15 year waitlist)

Companion Home (with an HCS paid family-like setting)



Own Home

HCS staffed group home (4 HCS recipients max.)

### Own Home or Family/Friend Home

Without housing services



### Unregulated Homes (board & care)

Homes are unlicensed, & privately owned



Typically numerous people in a residence (6-50)

### ICF Group Home-- Medicaid required

6+ people in the home, 24/7 nursing



### State Supported Living Center-- Medicaid required

13 facilities in the state (average 247 people per facility)



### Experiencing Homelessness

Camping, temporarily residing in shelters or couch surfing



*On a cold January day in Austin, Texas, Jeff was picked up from his shift at Goodwill. He is a six-foot tall, 18-year-old Black man who recently graduated high school and works six hours per week at Goodwill, his first job. While riding home silently with his direct support staff, Jeff abruptly opened the van door, hopped out, and began walking down the shoulder of the road.*

*His support staff followed and called out to him; then a police cruiser appeared. Two officers approached Jeff from behind, announced themselves, and ordered him to stop walking and turn around. When Jeff did not comply, the officers repeated their commands, stood in front of him, and again repeated their commands as he continued to walk forward. When one police officer began to handcuff him, Jeff spit on him. The officers tackled and handcuffed him.*

*Jeff has a moderate intellectual disability, schizophrenia, and a traumatic brain injury from early adolescence. Despite efforts by Jeff's group home staff to intervene and explain his disabilities and communication style, officers arrested and charged him with a felony for spitting on an officer.*

*Later, Jeff said he left the van because he was made fun of at work and was practicing walking away when upset to "cool off"—a skill his mental health caseworker had been teaching him. Officers stated that he presented with suspicious behavior, which prompted their interaction.*

*Jeff served five days in solitary confinement "for his own safety" because jail staff identified he might have intellectual and/or developmental disabilities. No other accommodations or referrals were made. He was placed on probation for six months; however, because of his inability to maintain the conditions of community supervision, such as paying fees, his probation lasted 30 months.*

Jeff's story is one of many that show how individuals with I/DDs often experience significant and unique obstacles when confronted with the criminal legal system. Some studies estimate that these individuals comprise two to three percent of the U.S. population, yet represent four to ten percent of the adult incarcerated population.<sup>13</sup> This number is likely conservative since I/DDs are often unrecognized by criminal legal professionals who are either untrained or use untailored assessment tools to identify individuals with I/DDs.

Texas has an estimated population of 29 million,<sup>14</sup> which includes more than 500,000 people diagnosed with I/DDs.<sup>15</sup> However, not all of these individuals receive a diagnosis or state services; thus, the number is likely much higher.<sup>16</sup> Since the criminal legal system does not appropriately track data when a diagnosis is known, it is only estimated that approximately 14,700 people with I/DDs are currently incarcerated in Texas. There are presumed to be even more individuals in the juvenile justice system whose disabilities have not yet been identified.<sup>17</sup>

**A lack of fully funded community-based services and a criminal legal system that does not consider accommodations for people with disabilities discriminates against individuals with I/DDs, driving people with disabilities into the criminal legal system in Texas and keeping them there.**

Compounding problems for individuals with I/DDs, Texas has the highest percentage of people without health insurance in the country.<sup>18</sup> Texas Medical Association data shows that 18 percent of Texans do not have health insurance, of which 61 percent are Hispanic and 10 percent are Black.<sup>19</sup> The lack of health insurance coupled with the lack of unbiased medical and mental health care leaves Black and Latinx individuals without proper diagnoses and unable to access treatment options.<sup>20</sup>

Furthermore, people with disabilities are commonly misperceived as:

- Unable and incapable of understanding and communicating effectively with others
- Being all the same
- Problematic to themselves, others, and society
- Unable to restrain themselves from self-harm or harming others and unreasonable or irrational

Such misperceptions can wrongly drive individuals with I/DDs into the legal system. The Arc of Texas estimates that **50 to 80 percent of police encounters involve people with some type of disability.**<sup>21</sup> Black youth and young adults with a disability have a 55 percent chance of being arrested compared to 37 percent for those without a disability.<sup>22</sup> While the United States does not track the number of people with disabilities killed by police, the Ruderman Family Foundation estimates that **one-third to one-half of all people killed by police have a disability.**

Bullying, trauma, isolation, misunderstanding and misinterpretation by others, and exclusion from evidence-based therapies and preventive treatments can result in individuals with I/DDs entering the criminal legal system at higher rates than those without I/DDs. Once involved with the criminal legal system, the I/DD population faces numerous unique challenges and obstacles, such as increased victimization in jail and prison, longer sentences, and decreased likelihood of probation or parole.

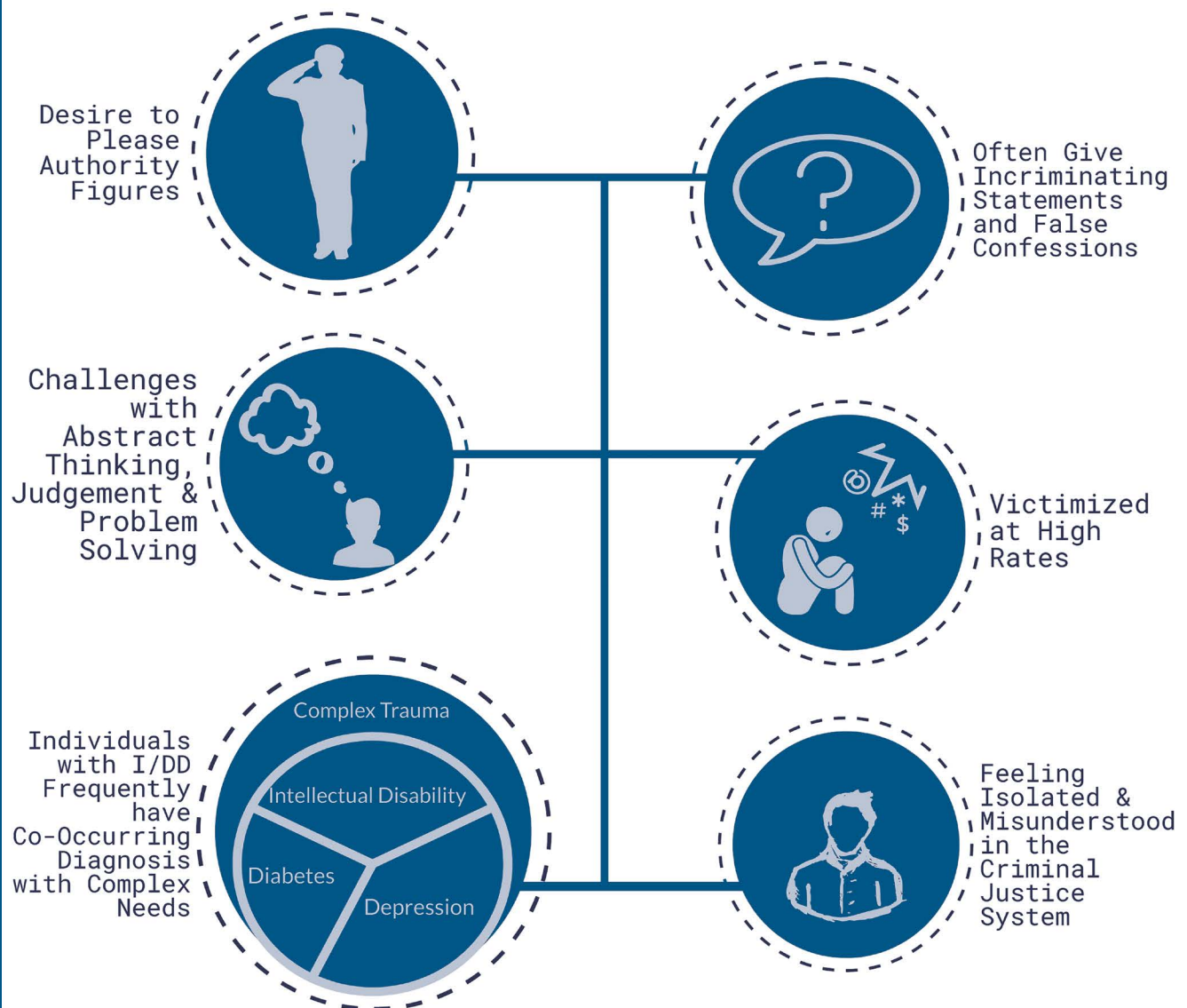
This report focuses on the multitude of factors that have driven more and more individuals with I/DDs into the criminal legal system, leaving them and the system without solutions.



# Unique Vulnerabilities That Unfairly Increase Criminal Legal System Involvement and Personal Harm

Individuals with I/DDs experience vulnerabilities in navigating the criminal legal system, which lead to more individuals with I/DDs being inappropriately assessed as a danger to the community. These individuals also remain in the criminal legal system longer than people without disabilities.

## Common Challenges Persons with I/DD Experience in the Criminal Justice System



## Lack of Support to Navigate the Criminal Legal System

The I/DD population often lacks the support needed to navigate the criminal legal system safely and successfully, putting them at higher risk of harm. Research suggests that individuals with I/DDs, who are not known by law enforcement to be connected to a support system or services, have a higher chance of being processed through the criminal legal system, rather than referred back to their support network and/or services within the community.<sup>23</sup> Further, the potential risk or vulnerabilities of a person with I/DDs may not always be detected by criminal legal system staff.<sup>24</sup>

## Challenges with Communication

Individuals with I/DDs may experience communication challenges and are likely to have difficulties understanding required advisements about their basic rights.<sup>25</sup> They also have higher rates of “susceptibility to suggestion” and eagerness to “please authority figures,” which can lead to unintentional “self-incrimination and confession” and increase vulnerability to coercion, deceit, and intimidation.<sup>26</sup> Additionally, expressive language (how a person communicates with others) and receptive language (how a person receives communication from others) often cause confusion and miscommunication when individuals with I/DDs are communicating with someone who is unfamiliar with their communication style<sup>27</sup> (e.g., grunts, gestures, or another language such as American Sign Language).

The Arc of Texas suggests that law enforcement use a modified Miranda warning when communicating with someone with I/DDs:

Traditional Version	Modified Version
You have the right to remain silent.	I want you to know that you have rights. You don't have to talk to me about what happened.
Should you give up the right to remain silent, what you say can and will be used against you in a court of law.	But if you do talk to me, I can tell the court whatever you tell me. The judge will find out what you say to me and decide if you did something wrong or not. Can you tell me in your own words what I just told you?
You have the right to an attorney present during questioning.	You can talk to a lawyer if you want to. Your lawyer will help you and is your advocate when you become a suspect of a crime. You can talk to a lawyer before I ask you questions. Your lawyer can be with you when I ask you questions. Can you tell me in your own words what I just told you?
If you want an attorney, but cannot afford one, one will be appointed for you.	If you don't have enough money to hire a lawyer to help you, we will get one for you. You don't have to pay. You can have the lawyer for free. Can you tell me in your own words what I just told you?
Do you understand these rights as I have explained them to you?	Do you have any questions about what I have just told you? Do you want me to get you a lawyer?

## Higher Rates of Victimization

People with disabilities are three times more likely to be violently victimized than people without disabilities.<sup>28</sup> People with developmental disabilities are between four and ten times more likely to experience abuse.<sup>29</sup> Further, childhood sexual abuse of people with I/DDs is far more common than sexual abuse against people without I/DDs.<sup>30</sup>

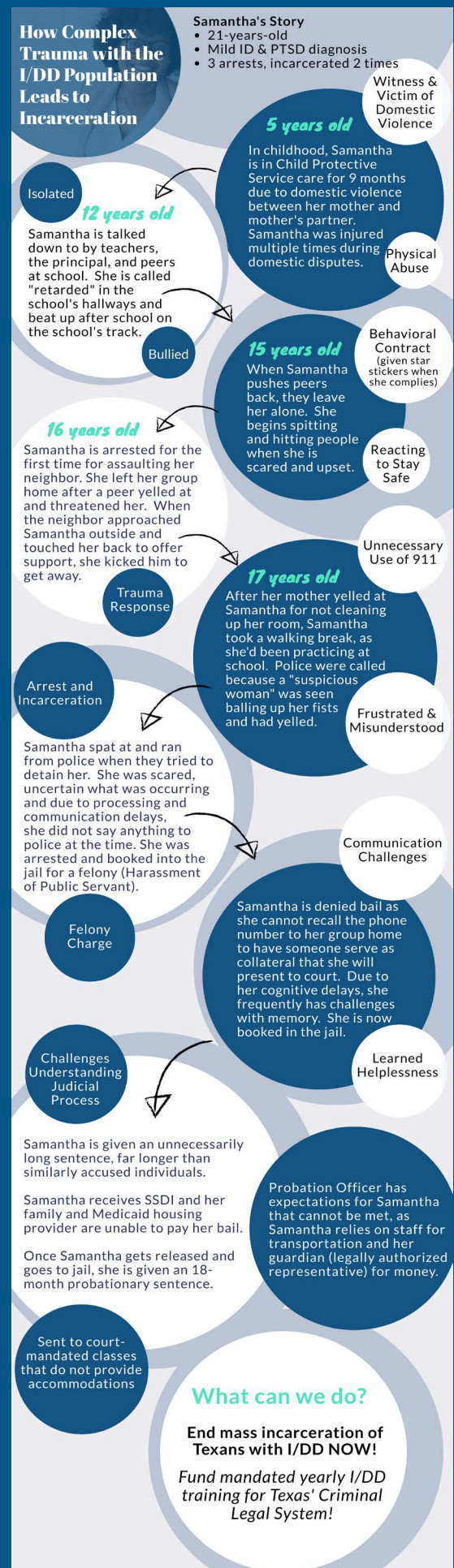
Those who experience childhood trauma are at high risk of entering the criminal legal system later in adulthood.<sup>31</sup> People with I/DDs who experience violence, including sexual violence, may be more prone to stress in adulthood and exhibit higher rates of conflicts with peers.<sup>32</sup> Further, unaddressed exposure to physical and sexual violence likely leads to increased stress and higher rates of offending in adulthood.<sup>33</sup> In Travis County, it is believed that a disproportionately high number of individuals with I/DDs are arrested on felony assault charges.

## Invisible Vulnerabilities

Due to prior trauma, abuse, and bullying, individuals with I/DDs may feel stigmatized by their disability and choose not to disclose it, causing their disability to go unrecognized by others, including those in the criminal legal system. When entering the system, professionals may be unaware of a disability, thus overlooking a person's needs for accommodation and misinterpreting a person's presentation or actions. For example, if a person with I/DDs does not answer an officer promptly due to delays in cognitive processing, the lack of response could be misinterpreted as intentional noncompliance and lead to more criminal charges or harsher punishments.

Also due to stigma, families often reject an I/DD diagnosis label in the education system, so children might never receive supportive services, transitional services, or services in adulthood. Not only does this distort data about the number of people with I/DDs, it is more challenging for individuals to connect to support later in life, which may help prevent crisis and criminal legal system involvement.

Individuals with I/DDs often have challenges with memory, such as recalling basic information (e.g., names of group home staff, phone numbers, or their home address). They may struggle to recall event details and the sequence of events, leading to misleading statements and increasing their chances of arrest and wrongful conviction.





## Common Vulnerabilities



Challenges Communicating  
with Others  
(ex: may use gestures)



Disability Goes  
Undetected  
(cloak of competence)



More Likely to  
'People Please'  
(resulting in false  
confessions)



Pre-trial Services:  
Typically need to be  
able to call someone to  
help vouch for a bond  
release



Challenges with  
memory recall

Furthermore, when under stress, such as being interrogated or confined, an individual's symptoms may be exacerbated. Individuals with I/DDs are often put in segregated settings like solitary confinement, increasing the chances they will regress or mentally decompensate, which results in more disciplinary offenses and prolongs their incarceration and solitary confinement. However, **an individual with I/DDs is less likely to be restored to competency in a jail or institutional setting, decreasing their ability to advocate for themselves and increasing their chances of staying incarcerated.**

## Lack of Access to Supportive and Preventative Services

### Mental Health/Dual Diagnosis

Early intervention is essential to prevent unnecessary arrests and criminal legal system involvement for individuals with I/DDs. Many have co-occurring needs and dual diagnoses that often go untreated or undertreated, contributing to crisis events. Approximately one in three individuals with an ID also has a mental illness like depression, bipolar disorder, and/or anxiety disorder.<sup>34</sup> This population has a high rate of post-traumatic stress disorder due to their increased likelihood of experiencing sexual, physical, and mental abuse.

### Unavailable and Underfunded Community Programs

Wait times for the Home and Community-based Services (HCS) Medicaid waiver in Texas can run from five to 15 years. Criteria for Medicaid waiver programs are narrow and require extensive historical information regarding an individual's developmental period, which is not always accessible later in life.

An individual has to be assessed by a clinician – typically a psychologist through a Local Intellectual and Developmental Disability Authority (LIDDA) – to qualify for community-based I/DD services. Many LIDDAs cannot or will not meet with individuals when they are incarcerated; thus, individuals go without services until they are released. If an individual is incarcerated for more than 30 days, their state Medicaid services are suspended or terminated and they must reapply for benefits upon release. For individuals enrolled in community-based services, the criminal legal system often does not know how to contact the service providers to divert an individual from jail or plan for a safe release, increasing the chance of recidivism. These barriers preclude many individuals from accessing HCS.

Texas ranks  
49th out of  
51 states\* for  
providing  
I/DD Services<sup>35</sup>

\*Including Puerto Rico



Program/Setting		Average Cost Per Person Per Month	Average Cost Per Person Per Year
Community Living	Home & Community Based Services	\$4,290	\$51,481
		versus	versus
Facility Living	State-Supported Living Center	\$26,768	\$321,212

Facility costs in Texas are

**6x**

the cost of community living for people with I/DD in Texas.

Source: Texas Health and Human Services Commission

### Lack of Access to Therapeutic Services

While community-based Medicaid services for people with disabilities cover talk therapies or other clinical recovery or evidence-based programs to address trauma or mental health needs, practitioners often incorrectly believe people with I/DDs cannot benefit from talk therapy. Also, very few providers in Texas offer individual therapy to those with I/DDs. Unaddressed abuse and trauma can lead to stress response reactions (fight, flight, or freeze), opening another door into the criminal legal system. **Easily accessible and ongoing therapeutic prevention for individuals with I/DDs will likely decrease their stress responses, which may decrease their involvement in the criminal legal system.**

## Medicaid Waiver Programs

In Texas there can be a 5 to 15 year wait for community-based Medicare waiver programs.



Therapy Services (OT/PT)



Residential Support



Medical Services



Community Living



Adaptive Aids

“There is just very little innovation when it comes to providing services for this population; it’s not drawing clinical professionals.”

-Advocate for people with I/DDs

## An Unjust Justice System

Individuals with I/DDs experience excessively long waits in jail due to procedural problems. In Texas, people charged with certain violent felonies who are determined incompetent to stand trial must wait for months in county jail to be transferred to a state hospital for competency restoration. Even with extenuating circumstances related to I/DDs that call into question the seriousness of the offense, Texas statute designates only one facility, Vernon State Hospital, to provide competency restoration for those charged with felonies involving violence.<sup>36</sup> The hospital has only one unit to treat individuals with I/DDs. The entire process, from jail time to hospital admittance, often takes a year to 18 months.

If Vernon State Hospital assesses an individual as not “manifestly dangerous,” the individual is admitted to the Mexia State Supported Living Center for risk assessment to determine whether the individual is allowed to return to the community or a local SSLC.

## Recommendations

The following are presented in order of importance:

### Strategies to Prevent Involvement with the Criminal Legal System

- ***Increase funding for HCS Medicaid providers to pay their full-time direct support staff a living wage while providing ongoing trauma-informed and person-centered services, which will ultimately help reduce the waiting list for those needing community-based services.*** Salaries remain around \$10.72 an hour for direct support professionals working with the I/DD population.<sup>37</sup> Medicaid providers consistently report challenges with hiring and retaining staff, which may result in the provision of subpar services in the community. Additionally, the lack of consistent trauma-informed and person-centered practices contributes to crises, which increase the frequency of calls to law enforcement and the subsequent arrest of people with I/DDs.
- ***Increase funding for the HCS waiver to allow more individuals with I/DDs, especially youth aging out of foster care, to receive this service yearly.*** Current wait times for Medicaid waiver services are five to 15 years, including HCS. Historically, a number of HCS slots have been released yearly for youth aging out of foster care; however, as of 2020, no slots are available for these youth in Texas.<sup>38</sup>

- ***Fund urgent therapeutic service options for individuals with I/DDs to prevent unnecessary arrest/incarceration and psychiatric hospitalization.*** Community members, law enforcement, jail staff, mental health and I/DD staff, and persons with I/DDs who have experienced the criminal legal system support the need for urgent therapeutic service options. To prevent unnecessary law enforcement involvement, LIDDAs should build, hire, train, and maintain — or contract with a similar agency — urgent therapeutic service options for the I/DD population and partner with Local Mental Health Authorities’ (LMHAs) crisis teams to coordinate care.
- ***Offer incentive programs for mental health clinicians to work with individuals with I/DDs.*** To attract clinicians, who bring clinical expertise and innovation to services for individuals with I/DDs, Texas must increase the provider rate. Addressing trauma and more complex issues with highly trained clinical staff may help prevent crises and decrease criminal legal system involvement for this population.

### **Strategies to Prevent Arrest**

- ***End overreliance on law enforcement to manage challenging behavior of individuals with I/DDs.*** Individuals with I/DDs who are in crisis can have traumatic and ineffective responses to law enforcement. To avert such situations, mental health professionals should respond, which will help reduce the number of individuals with I/DDs from entering the criminal legal system. The I/DD population also should have access to fully funded services to meet their needs in the community and have options for immediate crisis support.

### **Strategies to Identify People with I/DDs in Jail and Rapidly Coordinate Their Release**

- ***Revise jail assessment and housing standards for people with I/DDs.*** Texas law requires jails to conduct assessments “at the earliest stages” of a criminal proceeding to identify if people have mental illness or I/DDs.<sup>39</sup> Texas has policies to assist jails in identifying whether people are receiving services from a mental health authority or LIDDA. However, many people with I/DDs do not receive services from LIDDAs. Whenever an individual is assessed and determined to have I/DDs, a LIDDA should be notified. Moreover, the assessment instrument is not written to ensure that people with I/DDs understand. The State should require the Texas Commission on Jail Standards (TCJS) and I/DD experts to jointly write and regularly update the assessment instrument.

Further, because the jail standards for housing individuals with I/DDs are unclear, TCJS should work with I/DD experts to promulgate standards for protected housing, prevention of extended periods of isolation, monitoring, etc.

- ***Mandate statewide ongoing training for magistrates, pretrial staff, defense attorneys, prosecutors, and jail staff concerning individuals with I/DDs.*** Individuals with I/DDs need access to criminal legal system personnel who will provide fair treatment based on their disability. Appropriate training for criminal legal system officials will provide better identification and connection with supports, such as communication (interpreters and/or accessible technology and collateral support for communication preferences), access to community-based diversion programs, confidential access to their attorney, and post-incarceration community re-entry support (e.g., Medicaid waiver services, Social Security, and housing).

### **Strategies for Trainers to Hire Self-Advocates/People with I/DDs to Co-lead and Provide Immersion-Based Training<sup>40</sup>**

- ***Maximize outpatient competency restoration and reduce the wait times for people with I/DDs.*** Under Texas law, courts must release on bail people determined to be incompetent to stand trial and who do not pose a danger to others on a Class B or Class A misdemeanor.<sup>41</sup> Recognizing that extended periods of detention are dangerous and destabilizing for the I/DD population, when individuals with I/DDs are found incompetent to stand trial, courts must prioritize release without conviction or outpatient competency restoration with a LIDDA. Courts may also place people who are charged with felony offenses and do not pose a danger to others into outpatient competency restoration programs. In both misdemeanor and felony cases, the individual must be treated in an appropriate outpatient competency restoration program and the court must be given a comprehensive treatment plan. All LIDDAs, mental health authorities, and courts in Texas must work together to establish outpatient competency restoration programs.

Individuals with I/DDs who do not qualify for outpatient competency restoration due to the nature of the offense must be sent directly to Mexia State Supported Living Center, bypassing Vernon State Hospital. They also should be reassessed yearly to determine if commitment by the courts is still necessary.

- ***Provide ongoing education to individuals with I/DDs on how to navigate the criminal legal system.*** To promote self-advocacy and self-confidence in times of crisis, free courses on how to interact with police, fire, and emergency medical professionals should be offered to individuals with I/DDs. Reinforcing and supporting such individuals can help prevent crises that lead to criminal legal system involvement and bolster these individuals' ability to anticipate and problem-solve solutions to barriers (e.g., memorizing their home phone number and carrying a card to give to first responders that outlines who they are, their preferred communication style, and contact information for a collateral person) before an interaction with first responders.



- ***Collect and publish aggregate data on individuals with I/DDs who come into contact with law enforcement and/or enter the criminal legal system.***  
This will allow an understanding of when, where, and how often Texans with I/DDs are interacting with the criminal legal system and will inform exact lengths of incarceration. Ultimately, data-informed services can improve the I/DD population's interactions with the criminal legal system and provide fair and just treatment to people with I/DDs.

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