

# INTELLECTUAL DISABILITIES IN THE CRIMINAL JUSTICE SYSTEM

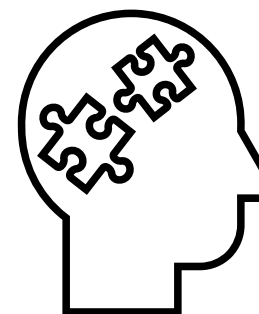
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Mental Health Justice Clinic - Yale Law School

# MENTAL HEALTH JUSTICE CLINIC

- Led by Prof. Marisol Orihuela, Clinical Professor of Law, Yale Law School
- Started in Spring 2023
- Students work on a mental health justice project in Connecticut
  - representation of individuals in the criminal legal system, the civil detention system, or other civil rights areas
  - representation of a community group engaged in local or state-level advocacy



# ROADMAP TO PRESENTATION

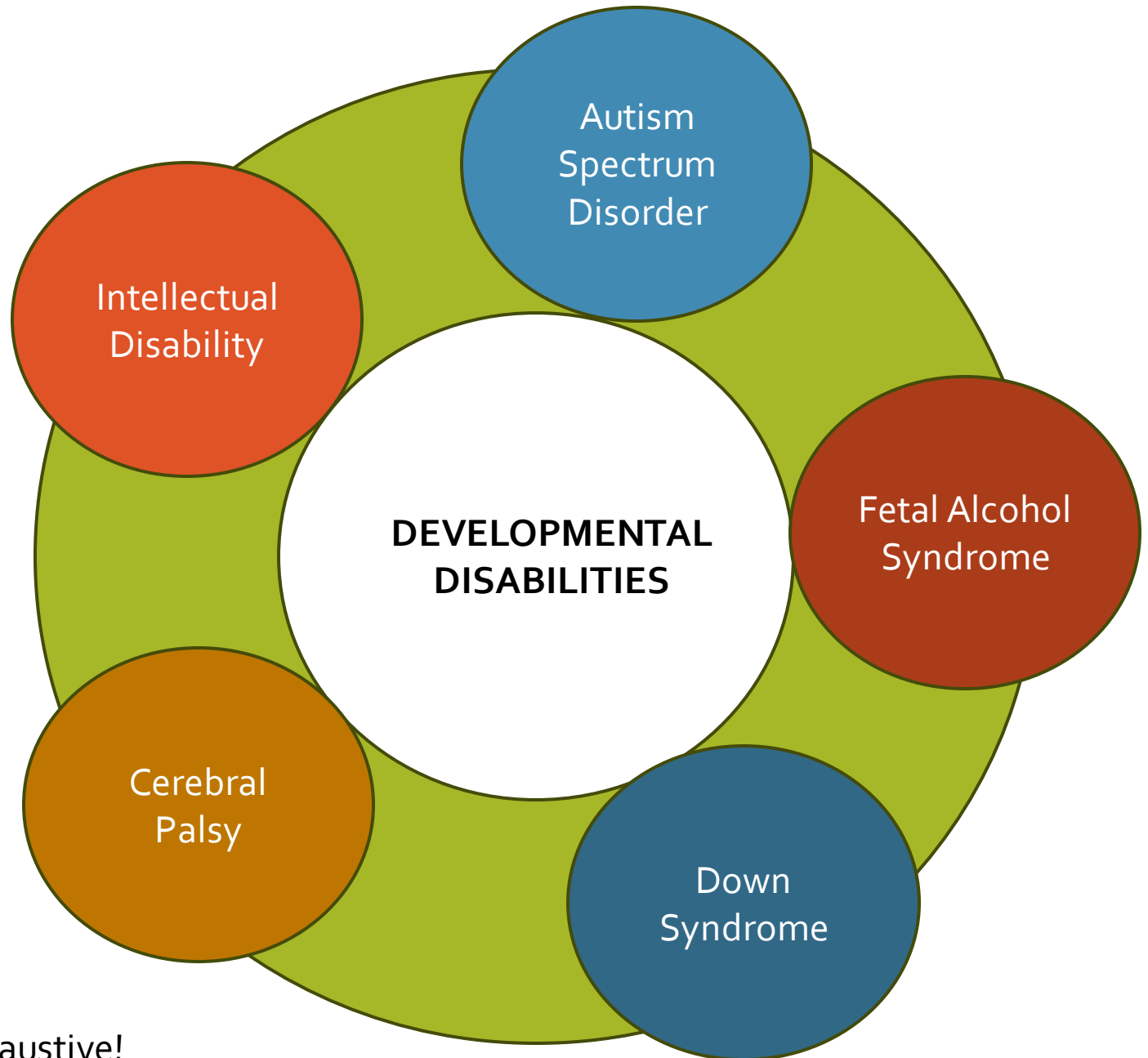


- Introductions
- Connecticut Sentencing Commission Statutory Directive
- Definitions
- Our Work
- Intellectual Disability in the Criminal Justice System
  - Screening
  - Diversion
- Questions/Comments

# STATUTORY DIRECTIVE (effective July 2023)

- The Connecticut Sentencing Commission shall study the experience of persons with an intellectual disability or other developmental disabilities, including, but not limited to, autism spectrum disorder, who are involved in the criminal justice system.
- Such study shall include, among other things,
  - the advisability of behavioral assessments of such persons before sentencing
  - best practices of other states concerning such persons.
- The report shall include the commission's recommendations for sentencing considerations for such persons.

# Terminology



Note: not exhaustive!

# Intellectual Developmental Disorder



According to the DSM-5:

Characterized by deficits in general mental abilities, including reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience.

The deficits result in impairments of adaptive functioning, such that the individual fails to meet standards of personal independence and social responsibility in one or more aspects of daily life, including communication, social participation, academic or occupational functioning, and personal independence at home or in community settings.

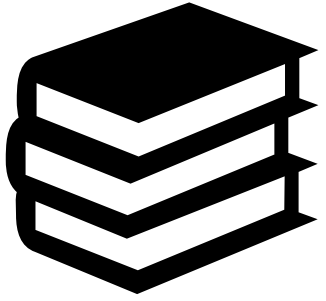
The three diagnostic criteria are

- (1) deficits in general mental ability (usually measured by IQ test),
- (2) impairment in adaptive functioning, and
- (3) onset during the developmental period.

# Connecticut's Statutory Definition "Intellectual Disability" Conn. Gen. Stat. § 1-1g



1. significant limitation in intellectual functioning existing concurrently with
2. deficits in adaptive behavior that
3. originated during the developmental period before eighteen years of age.



# Our Work (Research Methods)



- Searched for research articles on screening processes
  - Academic publications; empirical studies; international organizations
- Searched for any diversion programs for people with ID available in every state, both state-level and county-level programs
  - State websites; county websites; disability non-profit websites; federal websites; etc.
  - Searched for "intellectual disability diversion program" or "developmental disability diversion program" + State
  - Once any program was located, googled for more specific information on that program
- TBD: Will be creating a memorandum describing our findings and possible recommendations



# Our Work (Annotated Bibliography)



- Summarized each source found into a short paragraph
- Kept a running list of states where we were able to locate an applicable diversion program vs. could not locate
- Compiled all the sources together into a two-part annotated bibliography, split between Screening and Diversion Programs

# Our Work (Annotated Bibliography)

## OKLAHOMA

“Mental Health Court.” *Central Oklahoma Community Mental Health Center*, Oklahoma Department of Mental Health and Substance Abuse Services, [www.odmhsas.org/cocmhc/services/MentalHealthCourt.htm](http://www.odmhsas.org/cocmhc/services/MentalHealthCourt.htm).

This source describes two Mental Health Courts in Oklahoma: one in Oklahoma County, and one in Cleveland County. Both Mental Health Courts are designed to divert individual with mental illness, including developmental disabilities, from receiving a prison sentence. Defendants can be referred by others or self-referred to the court, at which point a screening must be completed to see if they are eligible for participation.

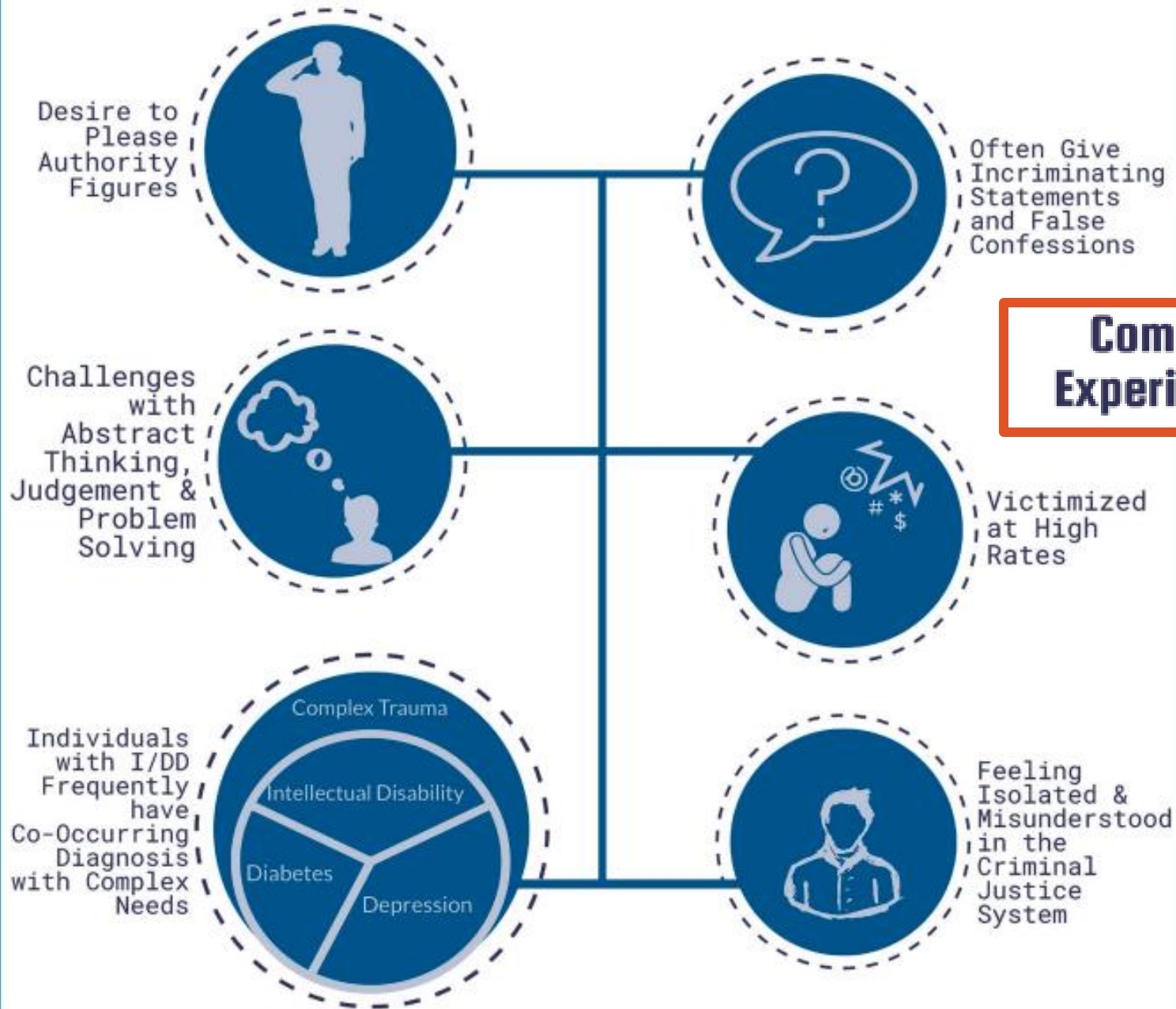
Sample excerpt from Diversion Program research

Scheyett, A., Vaughn, J., Taylor, M., & Parish, S. (2009). Are we there yet? screening processes for intellectual and developmental disabilities in jail settings. *Intellectual and Developmental Disabilities*, 47(1), 13–23. <https://doi.org/10.1352/2009.47:13-23>

Scheyett and collaborators surveyed North Carolina jails to ask about screening practices. The results showed a very haphazard and worrying system. The methodology used in this survey could be useful to surveying CT DOC facilities.

Sample excerpt from Screening research

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



*Misunderstood and Mistreated* [Online image]. Texas Center for Justice & Equity. <https://www.texasjc.org/misunderstood-and-mistreated>

# Common Challenges (cont.)



- Unknowing waiver of rights
- Masking—may work to fit in and ID will not be readily apparent at first contact
- IDD can influence criminal behavior or arrest:
  - Resisting arrest
  - Unusual behavior perceived as threatening
  - Unable to read social cues well



# SCREENING

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# Why does screening for IDs matter?

- Reliable ID screenings that are consistently implemented early on help alert key actors that an individual may have an intellectual disability.
- This knowledge, early in a case's trajectory, can:
  - help contextualize a defense attorney's client relationship and inform case strategy
  - alert a prosecutor to consider other charges or plea recommendations
  - guide judge's consideration of alternative sentencing options.

# Why should we prioritize screening?



- **We need to know who to connect to services**

# How should we screen?



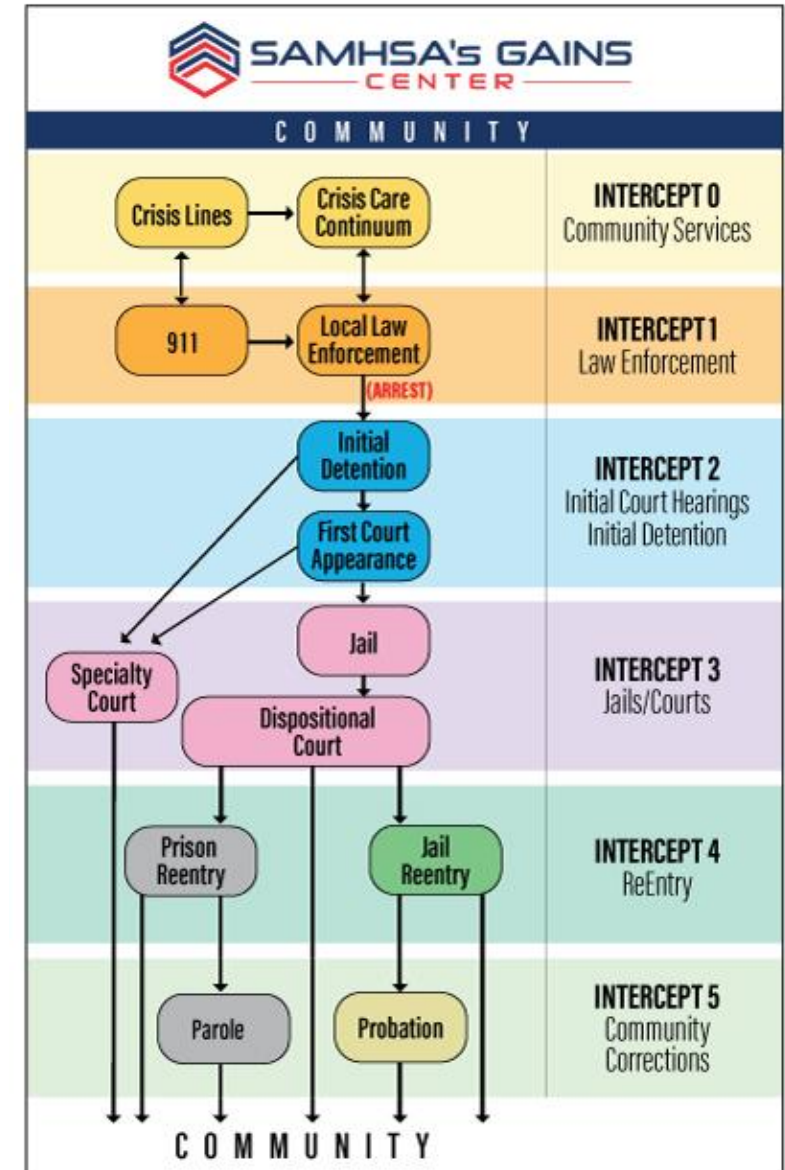
1. Screen Early
2. Screen Broadly
3. Use a Proven Screening Tool



# 1. Screen Early



- Want to intervene as early as possible so that diversion or services can have maximum impact
- Sequential Intercept Model (see image) can provide guidance on points of intervention



<https://www.samhsa.gov/criminal-juvenile-justice/sim-overview>

## 2. Screen Broadly



- A screening test is not diagnostic
- It refers someone for further testing (or not)
- The screener is the “sieve,” and the subsequent psychological testing is the “sort”
- Screening works better when it is widely, not selectively practiced.



### 3. Use a Proven Screening Tool



- Hayes Ability Screening Test (HASI)
- Learning Disability Screening Test (LDSQ)
- An ideal test is brief, reliable, and can be administered by a non-psychologist.
- The outcome is whether to refer for further testing.

# Results of Screening Research



- **Academic studies: Pennsylvania, North Carolina, New York**

- Similar findings among these jails/prisons: varying levels of inconsistency in screening, or no screening at all.

- Sources:

Hutchison, M., Hummer, D., & Wooditch, A. (2013). A Survey of Existing Program Strategies for Offenders with Intellectual and Developmental Disabilities Under Correctional Supervision in Pennsylvania. *Probation Journal*, 60(1), 56–72.

Scheyett, A., Vaughn, J., Taylor, M., & Parish, S. (2009). Are We There Yet? Screening Processes for Intellectual and Developmental Disabilities in Jail Settings. *Intellectual and Developmental Disabilities*, 47(1), 13–23. <https://doi.org/10.1352/2009.47.13-23>

Wijetunga, C. (2020). Evaluating Intellectual Disability Screening in a Correctional Setting (Order No. 27995585). Available from ProQuest Dissertations & Theses Global; ProQuest Dissertations & Theses Global Closed Collection. (2462421937). <https://www.proquest.com/dissertations-theses/evaluating-intellectual-disability-screening/docview/2462421937/se-2>.

- Limited Access to Connecticut records
- Screening has been more researched in an incarcerated population in the United Kingdom and Australia. One important difference is that Australia and UK studies find a higher rate of ID in prisons than the US studies.



**DIVERSION**

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# What is a diversion program?



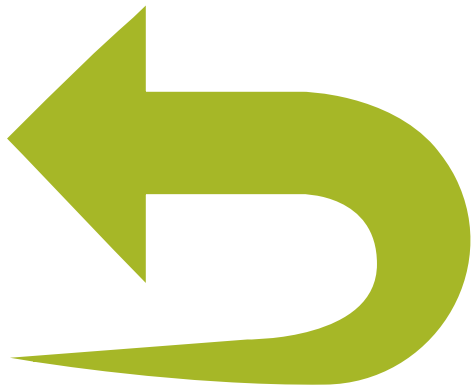
- Pre-trial process of redirecting a criminal defendant away from the traditional criminal justice system.
- Typically includes an alternative system of supervision or connecting a defendant to community resources.
- Upon completion of a program, a case is typically dismissed.
- Goals vary, but typically are to
  - hold defendants accountable for their criminal conduct,
  - while connecting them to treatment and rehabilitation services and
  - preserving court resources.

Jurisdictions approach diversion programs very differently.



# Intellectual Disabilities and Diversion Programs

- Aim to prevent a cycle of incarceration/recidivism, particularly for individuals with low-level or non-violent crimes
- Prevent sending someone with an intellectual disability to a setting that cannot support their needs well
- Help maintain or grow a routine/skill set through community programs
  - Individuals could maintain connections with community-based programs after completing a diversion program
- Typically individualized to each program participant



# Where do diversion programs for individuals with IDs already exist?



- Many places!
- Mostly county-specific initiatives:
  - Local Mental Health Courts can explicitly include those with intellectual or developmental disabilities
  - Non-profits that advocate for individuals through letters detailing personalized treatment plans
- Some state-wide initiatives:
  - California – by state statute since 1980
  - Pending legislation in NY and MA



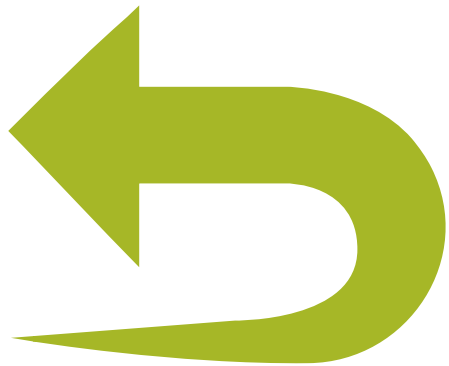


# EX: Maricopa County, AZ

## Developmental Disabilities – Felony Diversion Program

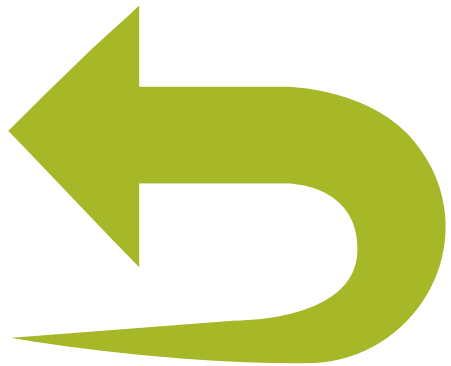


- For defendants with lower-level felonies and with a qualifying Developmental Disability diagnosis.
- If eligible, DA suspends prosecution for 2 years for completion of diversion.
  - Average program length is one year.
- Administered by Southwest Behavioral and Health Services, a community-based, behavioral health organization.
- Individual therapy-based services and Applied Behavioral Analysis principles to "increase language and communication skills, improve attention and focus, and decrease problem behaviors."



# Ca. Pen. Code §§ 1001.21-1001.30

## Diversion of Defendants with Cognitive Developmental Disabilities



- A version of this statute has existed since 1980.
- Eligible defendants: a developmental disability diagnosis and a misdemeanor or select felony charge.
- Judge refers a defendant to a regional center for evaluation and tailored treatment plan. Probation department and Prosecutor also prepare reports.
- If eligible and if the court deems diversion appropriate, the court refers the defendant to a regional center (from an established list of private nonprofits) for diversion-related treatment and habilitation services.
- Maximum 2 years, with progress reports at least every 6 months.



# Other Ways States Account for IDs in the Criminal Justice System



- **Virginia: deferred disposition**
  - Allows court to dismiss criminal case against defendant diagnosed with an intellectual disability.
  - By clear and convincing evidence, criminal conduct was caused by or had a direct/substantial relationship to the disability.
- **Georgia: guilty but with intellectual disability**
  - With this conviction, Department of Corrections evaluates and treats the mental health needs of the person upon their placement into DOC custody.
- **Colorado: petition for early sex offender registry removal**
  - A person may file a petition to exclude themselves from the sex offender registry if they have a severe intellectual disability and thus are permanently incapacitated and do not present an unreasonable risk to public safety.



**QUESTIONS?**  

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**COMMENTS?**

**THANK YOU FOR LISTENING!**