

IDD-ASD Initial Study Design (UPDATED))
08.29.2024

I. INTRODUCTION

Individuals with intellectual or other developmental disabilities (IDD), including but not limited to autism spectrum disorder (ASD), encounter the criminal justice system at disproportionate rates.¹ When this occurs, these individuals often experience particularly negative outcomes including, for example, physical, sexual, and/or psychological abuse; solitary confinement and disciplinary measures once incarcerated; loss of skills due to lack of habilitative and/or neurodevelopmental treatment and other harm while incarcerated, among other problems.² The problems encountered by people with IDD and/or ASD in the criminal justice system are pervasive throughout the process from the point the first interaction with a law enforcement officer, arrest, the booking process, pretrial and trial court process, incarceration in jail and prison, and release and re-entry.³

People with IDD and/or ASD in Connecticut's criminal justice system face similar challenges as in other states. In 2023, the Connecticut General Assembly passed Public Act 23-137, *An Act Concerning Resources and Support Services for Persons with an Intellectual or Developmental Disability*. In doing so, the Legislature directed the Sentencing Commission to study the experiences of persons with intellectual or other developmental disabilities (I/DD), including but not limited to autism spectrum disorder (ASD), involved in the criminal justice system.

According to Public Act 23-137, the Study shall include, *but need not be limited to*:

- (1) rates of incarceration of such persons compared to the overall population of such persons in the state,
 - (2) the advisability of behavioral assessments of such persons before sentencing and costs of such assessments, and
 - (3) best practices of other states concerning such persons.
- The report shall also include the Commission's recommendations for sentencing considerations for such persons.

Public Act 23-137 (*emphasis added*).

This proposed study design includes: goals and objectives; Study questions; methodology, including the population and study components; topics to be addressed; and recommendations and potential remedies; and a proposed timeline for completion and the various components of the Study.

¹ See Laura M. Maruchuck, Jennifer Bronson, Ph.D. & Muriel Alper, Ph.D., "Survey of Prison Inmates, 2016, Disabilities Reported by Prisoners," THE UNITED STATES BUREAU OF JUSTICE REPORT (March 2021) (2016 study of a sample of state and federal prisoners 18 years and older finding that 23% of prisoners in state and federal prisons had a cognitive disability and that 24% had been enrolled in special education); see also Laurin Bixby, Stacey Bevan, and Courtney Boen, *The Links Between Disability, Incarceration, and Social Exclusion*, 41 HEALTH AFFAIRS 1460 (2022).

² See Chiara Eisner, *Prison is Even Worse When You Have a Disability Like Autism*, MARSHALL PROJECT (Nov. 2, 2020), <https://www.themarshallproject.org/2020/11/02/prison-is-even-worse-when-you-have-a-disability-like-autism>; see also See Becky Crowe, Chritine Drew, *Orange is the New Asylum: Incarceration of Individuals with Disabilities*, 14 BEHAV. ANAL. PRACT. 387 (2021), available at [Orange is the New Asylum: Incarceration of Individuals with Disabilities - PMC \(nih.gov\)](#)

³ See *id.*

At the conclusion of the Study, the Team will issue a final report to the Sentencing Commission and ultimately through the Sentencing Commission will issue a report to the General Assembly as required by Public Act 23-137.

II. GOALS AND OBJECTIVES OF THE STUDY

There are several overall goals for the Study. One goal is for the Sentencing Commission, through the Study, to identify the systemic problems that lead people with IDD and/or ASD to enter Connecticut's criminal justice system and make recommendations to the General Assembly, as it has requested, with respect to prevalence, the advisability of assessments and related costs, and recommendations with respect to sentencing alternatives. Other goals include identifying ways to divert people with IDD and/or ASD out of the criminal justice system to the greatest extent possible, to avoid having people with IDD and/or ASD coming into contact with the criminal justice system in the first place, and to improve their overall outcomes.

In order to meet these goals, in addition to providing the Legislature with answers to the specific questions that it posed in [Public Act 23-137](#), the research team (Team) is responsible for carrying out the Study will research how individuals with IDD and/or ASD come into contact with the Connecticut's criminal justice system. In doing so the Team will look at the systemic problems on the "front end" that cause people with IDD and/or ASD to encounter the criminal justice system in the first instance. This includes a specific focus on service eligibility restrictions, lack of sufficient service capacity and service gaps for individuals with IDD and/or ASD. Because there are specific differences in the availability of and array of services available for people with IDD who are eligible for DDS services versus those with IDD, including ASD who are not eligible for DDS services, the Team will examine these questions separately within the Study and report, but also to evaluate them together when evaluating the service system overall.

The Team will also examine problems that individuals with IDD and/or ASD encounter once they enter the criminal justice system. This will include reviewing issue pertaining to the lack of identification, assessment, and effective communications and other needed reasonable modifications/accommodations to make the arrest, pretrial, trial, incarceration, and other related programs, services, and activities accessible to people with IDD and/or ASD, as well as to ensure that they are afforded equal access to the programs, services, activities of the criminal justice court process and of the process, and are not discriminated against on the basis of the disabilities. Additionally, the Team will review the vulnerabilities and deleterious effects of incarceration on people with IDD and/or ASD and how to avoid these harms through screening and behavioral and other assessments, and provision of needed habilitative and neurodevelopmental treatment/services, diversion and sentencing alternatives, among other interventions.

The Team will identify and analyze the problems people with IDD and/or ASD face at the "back-end" of the criminal justice system when they are preparing for and experiencing discharge from jail or prison and re-entry. This will include studying service needs and other barriers to obtaining appropriate community placement and services and other barriers, how to address these gaps so that individuals with IDD and /or ASD can remain successfully in the community upon their release from incarceration and avoid recidivism.

Finally, the Team, based on the results of the Study, will make a series of policy and other recommendations to the Sentencing Commission which will in turn make recommendations to the Legislature in response to the questions raised by Public Act 23-137.

III. STUDY RESEARCH QUESTIONS

The following are [proposed] research questions for the Study. As the Study is implemented there may be additional questions that are added and/or modifications to the existing questions.

- A. What are the rates of incarceration of adults with IDD compared to the overall population of people with IDD in Connecticut?
- B. What are the rates of incarceration of adults with ASD compared to the overall population of people with ASD in Connecticut?
- C. Should there be behavioral assessments completed of adults with IDD and/or ASD prior to sentencing?
- D. What types of behavioral assessments, if any, should be completed for adults with IDD and/or ASD prior to sentencing?
- E. What are the costs associated with completing behavioral assessments for adults with IDD and/or ASD prior to sentencing?
- F. What are the best practices with respect to addressing the needs of individuals with IDD and/or ASD who are in the criminal justice system in other states?
- G. What, if any, proactive steps can be taken and policies adopted for people with IDD and/or ASD to avoid contact with the Criminal Justice System? What are the costs of implementing such steps?
- H. Can individuals with IDD and/or ASD be successfully diverted away from the criminal justice system following an arrest? How? At what cost?
- I. What steps should be taken to reduce recidivism for people with IDD and/or ASD? How? At what cost?

IV. METHODOLOGY

A. Population

The individuals who are the focus of this study are adults with IDD/or ASD who have been charged as adults. Because there are different and more expansive services available in Connecticut for people with intellectual disabilities who are eligible for services from Connecticut's DDS, those services will be reviewed and analyzed separately within the Study and the report when necessary and as appropriate throughout the Study. Likewise, because transition-aged youth with IDD and/or ASD who are eligible for special education between the ages of 18-21 are entitled to services available under the Individuals with Disabilities Education

Act (IDEA) 20 U.S.C. § 1400, *et seq.* and corresponding Connecticut Special Education law and for those who are Medicaid-eligible and eligible for services under Medicaid’s Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program up through the age of 20, such services will be reviewed and analyzed separately as necessary and appropriate.

B. Study Components

In order carry out the Study, the researchers will engage in the following activities:

1. Literature and Legal Review
 - a. Social Science and Clinical Literature Review

Researchers will engage in a comprehensive literature and legal review. The literature review will include a review of the relevant social science, policy, and clinical professional literature. This process has already started. The Yale Mental Health Law Clinic students have assembled a bibliography as part of the literature review which is attached as Appendix A. Additionally, secondary bibliography to support the literature review has been started by Disability Rights Connecticut (DRCT) which is attached as Appendix B.

- b. Legal Review

Researchers will also conduct a legal review of relevant law review articles, statutes, regulations and case law. This will specifically include:

- Review of Federal and Connecticut State Disability Antidiscrimination Law

This will include review of federal disability antidiscrimination laws including Title II of the ADA, 42 U.S.C. § 12131, *et seq.* and Section 504 of the Rehabilitation Action of 1973, 29 U.S.C. § 794a, and their respective implementing regulations.⁴ This will also include a review of Connecticut antidiscrimination law under Conn. Gen. Stat. § 46a-64 and its implementing regulations.

- Review of Federal and Connecticut Constitutional Law
- Review of Connecticut Law Defining ID and ASD and Related Eligibility Laws and Similar Laws in Other States
- Review of Relevant Criminal Laws and Court Processes
 - Connecticut
 - Diversion
 - Incompetency to Stand Trial
 - Sentencing
 - Accommodation processes
 - Other
 - Other states
 - Diversion
 - Incompetency to Stand Trial
 - Sentencing
 - Accommodation processes

⁴ As of July 8, 2024 HHS’s newly promulgated regulations will go into effect. See [2024-09237.pdf \(govinfo.gov\)](#)

- Other

- Review of Adult Protective Services Laws
- Review of Federal and State Special Education Laws, with a focus on responsibilities of LEAs to transition-aged youth
- Review of Medicaid law
- Review of other Relevant Laws

This review will not only include relevant law review articles but also relevant statutes, regulations, and case law. This process has already been started by DRCT.

2. Review of Policies, Practices, Services, Activities, and Reasonable Accommodations/ Modifications in the Criminal Justice System for People with IDD and/or ASD

This component of the Study will involve a descriptive review of policies, practices, services, activities, and accommodations in the Connecticut criminal legal system relevant to individuals with I/DD and/or ASD as well as in other states throughout the United States.

This will include reviewing current diversion policies, practices and procedures. It will also include a review of current policies, practices and procedures related to competency evaluations and restoration. Although there is another group within the Sentencing Commission that is addressing the issue of competency evaluation and restoration generally, it is important to examine this issue with respect to people with IDD and/or ASD as it is relevant to issues including competency to participate in diversion, the specific negative impact of delays in competency evaluations and/or restoration, where these services take place (*e.g.*, in Whiting Forensic Hospital(WFH) or in the community).

3. Data Review and Analysis

The Team will seek to obtain, review and analyze a range of data dating relevant to answer the research questions described in Section III, above. The specific data to be requested and the steps to secure the agreements to obtain the data must be determined. However, it is anticipated that the data sought will include, but not be limited to:

- Available data of the numbers of adults with IDD and/or ASD in Connecticut. Sources of this data are likely to include, but not be limited to:
 - DDS
 - DSS
 - CSDE/School Districts/OCR
 - DOC
 - DMHAS
 - DCF
 - Courts-particularly probate courts

- Data from DDS on the number of people without services who are waiting for services on the emergent, urgent, or will need them within next two or more years.⁵
 - Data from DDS on the numbers and types of incidents of substantiated abuse and/or neglect of people with ID residing in jail, prison, or in the community
 - Data from DDS regarding problems finding qualified provider staff to serve people with ID in the community (including provider vacancies, rate issues, etc.).
 - Data on the waiting time for assessments to diagnose individuals suspected of having ASD.
 - Data from DDS regarding provider rates for Medicaid providers providing assessments to diagnose ASD.
 - Data from DDS on Medicaid service providers available to provide neurodevelopmental services to individuals with ASD.
 - Data from DSS on the number of people with ASD without services on the waiting list for Medicaid waiver services.
 - Data regarding incidents reports from DOC regarding involving the following: the use of medical restraints; punitive/non-medical restraints, involuntary psychotropic medication, solitary confinement (for punitive reasons), solitary confinement (for administrative reasons), injuries, altercations, and disciplinary inmates with IDD and/or ASD
 - Data from Whiting Forensic Hospital regarding the number of current admissions of individuals who have a diagnosis of IDD and/or ASD.
 - Data from Whiting Forensic Hospital regarding the number of individuals admitted to WFH who have a diagnosis of IDD and/or ASD (even if with a co-occurring mental health diagnosis
 - Data regarding costs and budget for services for adults with ID who are eligible for services from DDS.
 - Data from DSS regarding costs and budget for services for adults with ASD
 - Other data identified by the Research Team
4. Identification and Interviews of Stakeholders

As part of the Study, researchers will also interview key stakeholders to obtain information responsive to the Study questions. An initial list of specific stakeholders has been identified by DRCT and is attached as Appendix C. Before the interviews of people with lived experience, their families and/or care providers and possibly other stakeholders can take place, approval from the University of Connecticut's IRB must first be obtained. Additionally, Disability Rights Connecticut will need to obtain written consent from these individuals to release information that its staff obtains as a result of these interviews.

The categories of relevant stakeholders are set forth immediately below:

- Individuals with lived experience and their families and/or care providers
- Policymakers

⁵ This information is published quarterly in DDS's Management Information Services reports. *See e.g.*, [mir_december_2023_with_attachment.pdf\(ct.gov\)](#).

- Legislators
- State and local governmental agency staff and leadership
 - DDS
 - DMHAS
 - DCF
- Criminal-Justice Stakeholders
 - Judges (Criminal Courts, Juvenile Justice, and Probate)
 - Prosecutors
 - Defense Attorneys
 - Police officials (state and local police)
 - Department of Corrections staff and leadership
 - Probation staff and leadership
 - Parole staff and leadership
- Non-Governmental Stakeholders
 - Non-Legal Stakeholders
 - Legal Advocacy Stakeholders

Prior to conducting the interviews, the researchers will develop interview questions and/or probes to use during the interviews.

5. Identification and Interviews of Subject Matter Experts

The Team, as part of the Study, will also identify and interview a range of subject matter experts to help the Team better understand the systemic issues, the causes, related data and recommendations for systemic change. The categories of these subject matter experts include:

- Clinical Experts
- Policy Experts
- Social Science and Data Experts
- Legal Experts
- Local Experts (including advocates, providers, etc.)

Prior to conducting the interviews, the researchers will develop interview questions and/or probes to use during the interviews

6. Review of National Frameworks and Best Practices Throughout the United States

The details of the methodology used in the study will be included in the report.

V. TOPICS TO BE ADDRESSED IN THE STUDY

Below is a list of topics to be addressed in the Study.

A. *Legal Framework*

1. Relevant State and Federal Constitutional Law and Protections
2. Applicable State Criminal Laws and Regulations
3. State and Federal Disability Antidiscrimination Law, Regulations and Protections

- a. Title II of the Americans with Disabilities Act
 - b. Section 504 of the Rehabilitation Act of 1973
 - c. Connecticut State antidiscrimination law
 - 4. Other Relevant State and Federal Laws (*e.g.*, Medicaid law, IDEA, etc.)
- B. Overview of Intellectual Disability and Autism Spectrum Disorder*
- 1. Overview of Intellectual Disability
 - a. Clinical definition and characteristics
 - b. Prevalence Nationally
 - c. Prevalence in Connecticut
 - d. Eligibility for DDS Services in Connecticut
 - e. Connecticut’s Service System for Individuals with Intellectual Disabilities
 - 2. Overview of Autism Spectrum Disorder
 - a. Clinical definition and characteristics
 - b. Prevalence Nationally
 - c. Prevalence in Connecticut
 - d. Eligibility for DDS Services in Connecticut
 - e. Connecticut’s Service System for Individuals with ASD
- C. Factors Contributing to Incarceration of People with IDD and/or ASD*
- D. Rate/Prevalence of People with IDD and/or ASD in the Criminal Justice System and Incarceration Rates*

The topics to be addressed with respect to the prevalence of people with IDD and/or ASD in the criminal justice system and incarceration rates including:

- 1. Rates of incarceration of such persons compared to the overall population of such persons in the state;
 - 2. Reasons why it is hard to quantify-lack of screening, assessment & training;
 - 3. Factors leading to disparities related to people without IDD and/or ASD; and
 - 4. Overcoming these issues to lower rates of incarceration of people with ID and/or ASD.
- E. Advisability of behavioral assessments of such persons before sentencing and costs of such assessments, and lack of assessment, screening earlier on-reasons for screening and assessment.*

1. Documenting what is in place today in Connecticut.
2. What are the professionally accepted screening and assessment tools that should be used to screen for and assess the needs of individuals with IDD and/or ASD?
3. Why clinically appropriate screening tools and assessments are important including comprehensive multi-model assessments and the need to screen and assess at the earliest juncture possible?
4. What, if any, barriers exist to screening and assessments-strategies to overcome such barriers?
5. What are the costs of screening: screening tools, training for implementation of screening tools, and implementation of screening?

F. Special Considerations for Transition-Aged Youth with IDD and/or ASD who are 18-21 years old.

1. Entitlement to special education and related services.
2. Entitlement to EPSDT services for transition-aged youth with IDD and/or ASD who are Medicaid-eligible.

G. Review and analysis of best practices of other states concerning people with IDD and/or ASD who are involved with the criminal justice system including:

1. Education and awareness at all points throughout the criminal justice system;
2. Appropriate diversion with habilitative services;
3. Specialty courts;
4. Sentencing alternatives;
- b. Reasonable modifications in pretrial and trial services;
- c. Reasonable modifications to detention and carceral physical environments and programs, and services and activities of the criminal justice system and effective communications; and
- d. Developing service systems to proactively prevent interaction with criminal justice system and to ensure successful and sustainable reentry.

H. Other Issues for Consideration

Below is a non-exhaustive list of other issues to be considered for inclusion in the Study and the report.

1. Service gaps for people with IDD and/or ASD in Connecticut.
 - Lack of service capacity-dearth of appropriate habilitative, neurodevelopmental services, and habilitative mental health services and qualified providers.
 - Lack of funding for needed services for individuals with ASD-*e.g.*, limited slots on ASD waiver (Long waiting list) and cap on amount of services provided under the waiver.
 - Lack of funding for needed services for individuals with ID.
2. Eligibility criteria and service exclusions and limitations.
3. Identification of areas for potential collaboration among state and local service systems with responsibilities to serve people with co-occurring IDD and ASD and related discrimination.
4. Stigma and misconceptions of people with IDD and/or ASD.
5. Risk factors for individuals with IDD and/or ASD and interaction with the criminal justice system and deleterious effects of incarceration on people with IDD and/or ASD.
 - a. Intersection of competency restoration issues and diversion
 - b. Other issues?

VI. PROPOSED TIMELINE

Task	Projected Completion Date	Notes
Draft of Initial Study Design Completed	July 8, 2024	
Review of Best Practices/Model Programs in Other States	September 30, 2024	
Complete Social Science Literature Review	September 30, 2024	
Complete Clinical Literature Review	September 30, 2024	
Complete Policy, Practice, et al. Review	September 30, 2024	
Complete Legal Review	September 30, 2024	
Analyze and synthesize literature and best practices/model review for descriptive study	October 15, 2024	

Descriptive Study Preliminary Draft	September 30, 2024	
Develop questions/probes for policymaker interviews	September 30, 2024	
Identify policymakers for interviews	August 30, 2024	
Begin policymaker interviews	Oct. 1, 2024	
Complete policymaker interviews	TBD	
Develop interview questions/probes for stakeholders	September 30, 2024	
Identify stakeholders for interviews/focus groups	TBD-contingent upon IRB process and approval	
Begin stakeholder interviews	TBD-contingent upon IRB process and approval	
Complete stakeholder interviews	TBD-contingent upon IRB process and approval	
Develop interview questions/probes for subject matter experts	August 2024 and ongoing	
Identify subject matter experts for interviews	August 30, 2024 and ongoing	
Begin subject matter expert interviews	September 15, 2024	
Complete subject matter expert interviews	November 1, 2024	
Analyze results from subject matter experts interviews	November 3, 2024	
Analyze all data and information collected	November 3, 2024	
Draft Outline for Report	November 4, 2024	
Complete first draft of Report	November 30, 2024	
Complete second draft of Report	February 18, 2025	
Complete final draft of report	March 31, 2025	
Finalize and completed report	June 2025	