

DISABILITY JUSTICE INITIATIVE

This training manual was developed by the North Dakota Center for Persons with Disabilities to be used by *ND Service Providers*. We encourage use of this publication by not-for-profit agencies for educational and research purposes.

Suggested citation:

Arrayan, K. (2003). Bridging the Gap Between People with Disabilities and the Criminal Justice System: A Training Manual for ND Service Providers. Minot, ND: Minot State University, North Dakota Center for Persons with Disabilities.

Production of this manual was supported by funding from:
North Dakota Developmental Disabilities Council
North Dakota Protection & Advocacy Project
North Dakota Center for Persons with Disabilities/Minot State University

Copyright 2003
by North Dakota Center for Persons with Disabilities
A University Center of Excellence at Minot State University



The opinions expressed in this manual are those of the author and do not necessarily reflect the policy or opinion of the ND Developmental Disabilities Council or the ND Protection & Advocacy Project.

This manual is available in alternative formats upon request.
Layout and design of manual by Susan Anderson.

DISABILITY JUSTICE INITIATIVE

Bridging the Gap Between People with Disabilities and the Criminal Justice System

A Training Manual for ND Service Providers

Disability Justice Initiative Project
Contract #660-0429

M. Bryce Fifield, Ph.D., Project Director
Kari Arrayan, Project Coordinator
Susan Anderson, Project Secretary

Acknowledgements

The North Dakota Center for Persons
with Disabilities wishes to thank all who
contributed to the production of this manual.



Introduction

This manual was developed as part of the Disability Justice Initiative (DJI) project, a collaborative effort between the ND Center for Persons with Disabilities at Minot State University, the ND Developmental Disabilities Council, and the ND Protection & Advocacy project. The goal of the DJI project is to improve interaction between the criminal justice system and citizens with disabilities in North Dakota. To facilitate this effort, education must be threefold; people with disabilities must be taught to avoid, recognize, and report crimes when they occur. Secondly, those who support people with disabilities through advocacy or service provision must be able to recognize the symptoms of abuse and the need to report it. Finally, criminal justice system personnel need to be taught how to effectively interact with people who have disabilities throughout all aspects of the system.

The vulnerability of people with disabilities stems from dependence on caregivers, a devalued position in society, desire to please and be accepted, and lack of education about sexuality and abuse issues. Victims with disabilities are often unable to advocate on their own behalf for services and equal justice. Raising awareness of these issues among people with disabilities, service providers, and the criminal justice system is critical for system changes.

As a service provider, it is likely you will encounter situations where you need to support someone who has come into contact with the justice system. The criminal justice system can be complicated and intimidating for those who do not work with it on a regular basis. Although each state may differ somewhat in how situations are handled, this manual will give a general overview of the criminal justice system. Suggestions will also be given on how to support people you serve who have developmental disabilities and/or mental illness, in the event they should encounter the criminal justice system as either a victim or an offender.

This manual has been designed to be used by service providers who work with and for people with disabilities. The DJI project has developed a parallel publication designed for use by people working in the criminal justice system. Both manuals provide useful information as a self-study guide and reference. However, they can most effectively be used as part of a coordinated community training effort involving people with disabilities, those who provide services to them and those who work in the criminal justice system.

Components of the Criminal Justice System

There are basically three types of crime that are dealt with by the criminal justice system:

- Felony – Crimes that are punishable by imprisonment for more than one year, a fine, or both.
- Misdemeanor – Crimes that are punishable by imprisonment for up to one year in a county jail, a fine, or both.
- Criminal Traffic – Specific violations of traffic laws punishable by imprisonment of up to one year in a county jail. Most traffic violations are considered infractions and punishable by fine.

Although the criminal justice system is made up of many agencies, it has four main components: 1) law enforcement, 2) prosecution, 3) judiciary, and 4) corrections.

1. Law Enforcement

Agencies that *enforce* the laws make up the law enforcement component of the justice system. Examples of law enforcement agencies include city, county, and state police departments. Most of the time, it is law enforcement that has the first contact with crime victims or offenders.

Law enforcement officers are responsible for such legal duties as:

- Receiving and documenting reports of crime
- Investigating reported crimes
- Gathering and holding evidence of the crime
- Arresting alleged offenders
- Conducting follow-up investigations

The officer that responds to a crime scene may not necessarily conduct the investigation; a detective may be assigned to pursue the investigation. This varies within agencies, depending on the size of the organization and its structure.

When an alleged offender has been identified, that person is often arrested and taken to the local jail or corrections facility for processing. In some situations, depending on the nature of the crime, the alleged offender may be eligible to receive a citation to appear in court, and therefore would not be taken into a facility for processing. In other cases, especially those involving more sensitive and/or serious crimes, the evidence may be presented to a grand jury by the prosecutor. After hearing the evidence, the grand jury decides whether or not to charge (indict) the alleged offender.

Officers are often called upon to testify in the prosecution of a case. They may be involved in grand jury hearings, preliminary hearings, and as witnesses during the actual trial.

The Police may arrest and take into custody anyone suspected of a crime, including people with disabilities. The law assumes that adults are competent unless found to be incompetent by the court. Because of this, the legal process may be well underway before a person is recognized as having a disability.

2. Prosecution

The prosecution of people accused of committing crimes is conducted by the prosecuting attorney's office appropriate to the jurisdiction (e.g., state, county, city, etc.). The prosecutor's role is to represent the interests of the state or community in criminal proceedings, including the first court appearance of the alleged offender, plea negotiations, preliminary hearings, the trial, and at sentencing. The prosecutor has the power to decide whether a case will be prosecuted or dismissed. It is during the prosecutorial phase that many of the rights of an alleged offender and crime victim must be dealt with.

The offender's rights in court proceedings include:

- The right to have legal representation
- The right to a speedy trial
- The right to be informed regarding the proceedings
- The right to be heard.

The prosecutor can use discretion in providing the following services to victims:

- Keeping victims apprised of the status of their case
- Notifying victims of all court proceedings in their case
- Representing the victims' interests in all court appearances, plea negotiation, restitution and at sentencing
- Prosecuting anyone who attempts to threaten witnesses.

Many prosecutors have established within their office a victim/witness assistance program to work directly with victims and witnesses to provide services and assistance.

3. Judiciary

This component is also known as the Criminal Court System, and is comprised of district court and municipal court.

The role of the judge is to oversee the court proceedings associated with the prosecution of any criminal case. The judge is responsible for ensuring that the law is followed at all stages of the criminal justice process. The judge makes the final decision, or ruling, at each stage.

In regard to an offender, the judge has the authority to:

- Decide the release status of an offender
- Decide whether or not to accept a guilty plea or a negotiated plea
- Oversee the trial where the offender is determined to be guilty or not guilty
- Determine the final sentence of the court for a convicted offender.

The judge can also support victims with practices such as:

- Allow victims and witnesses to be on call for court proceedings
- Establish separate waiting rooms for victims and state's witnesses, away from the defense witnesses and the defendant's family
- Consider the interests of victims and witnesses when ruling on case continuances
- Allow written and oral victim impact statements at sentencing hearings
- Order restitution in cases where the victim has suffered a financial loss.

4. Corrections

The primary function of the corrections component is to carry out the sentences imposed by the court against a criminal defendant. These sentences (sanctions) can include fines, probation, a suspended sentence, time in jail or prison, or community service.

The corrections component includes institutional supervision and community supervision. Community supervision is known as *probation* when granted by a judge on a suspended prison sentence, and is called *parole* when granted by a parole board after a

portion of a prison sentence has been served. Each part of the corrections system has specific responsibilities to the court, the victim, and the community.

Probation

Probation can be used as an alternative to incarceration. A sentence of probation allows offenders to remain in the community where they can pay restitution, fines, court fees, and attend counseling as required. A person may be supervised directly by the court (court probation), or s/he may be supervised by a probation officer. Probation is usually only considered for offenders who are not perceived as a threat to the community. In some communities, a probation officer is responsible for preparing a pre-sentence investigation report for the court. The report provides the judge with information about the offenders' background, and may include a victim impact statement. Any violations of the conditions of parole may result in the offender returning to court for revised or additional sentencing.

When offenders are sentenced directly to jail or prison, they become the responsibility of the corrections staff within the facility. The corrections staff provide legal duties such as:

- Maintaining the security of the facility
- Providing supervision of inmates, which may include counseling or education programs
- Providing medical care for inmates
- Processing inmates for release from the facility, either on parole or when the sentence has ended.

Parole

When an offender is released from jail or prison before serving the entire sentence, s/he is paroled and is supervised in the community by a parole officer. A parolee has conditions of parole to follow that are similar to the conditions of probation. If parolees violate the conditions of their parole, they may be taken into custody and possibly returned to jail or prison to fill out the remainder of their original sentence. The corrections staff normally notifies the victim of an offender's release.

Stages of the Criminal Justice System Process for Offenders

There are generally seven stages that people who are accused of committing crimes will experience from the time of arrest:

1. Arrest – After a crime is reported to law enforcement an investigation is conducted. The investigation may include interviewing witnesses,

obtaining statements, and the collection of evidence. When the investigation is complete, law enforcement will either arrest the alleged offender and file charges with the State Attorney's office or file a warrant pending a future arrest.

2. Initial Appearance – Any person who is arrested is entitled to appear before a judge following their arrest. The purpose of the initial appearance is for the accused to be advised as to why s/he has been arrested, for the judge to make a determination of probable cause that the accused did in fact commit the crimes and for the accused to be advised of the amount of bail needed to be released from jail.
3. Charging Decision – Usually within two weeks of an arrest, a case is submitted to the Criminal Intake Bureau of the State Attorney's office by law enforcement. The State Attorney determines what charges, if any, should be filed against the defendant.
4. Arraignment – After a defendant has been formally charged, s/he is arraigned on the charges by the court. At the arraignment, the defendant is given a copy, advised of the nature of the formal charges, and asked to enter a plea. If a plea of not guilty is entered, a date for trial is set. If there is a plea of guilty or no contest, a date for sentencing is set or sentencing can be done immediately.
5. Pretrial or Docket Sounding – Between the arraignment and the trial, both the state and defense prepare for trial by interviewing their own witnesses and by taking sworn statements (depositions) from witnesses. Also, motions are filed to determine what evidence will be permitted at trial. Prior to the trial date, it is decided whether the trial will be held before a jury or in front of the Judge without a jury (bench trial).
6. Trial – If the trial is by jury, both the state and the defense will be allowed to question the potential jury members to determine if they would be appropriate jurors in the case. Both sides are given the opportunity to present their witnesses and evidence. The jury members vote as to whether the defendant is guilty or not guilty.
7. Sentencing – If the jury finds the defendant guilty, a date is set for sentencing. The Judge decides the appropriate sentence for a defendant, which may include imprisonment, fines, and/or probation. Alternative sentences may be appropriate for offenders who have disabilities. Refer to the [How To Support Offenders](#) section of this manual for information on sentencing options.

Juvenile Justice Issues

The processing of a case involving children or youth varies from state to state, and sometimes even from community to community. Usually, it is law enforcement that makes the decision to divert a juvenile case out of the criminal justice system and into alternative programs. Such a decision would be made after law enforcement talks with the victim, the juvenile, and the parents, and after reviewing the juvenile's record of contact with the criminal justice system.

How to Support Victims of Abuse

Research has shown that most abuse of people with disabilities occurs from caregivers or service providers. It is critical for human service workers to recognize the symptoms of abuse and advocate for people who become victims. Each service agency has their own policies and procedures for reporting abuse. This manual is not intended to replace, but rather to enhance, the information already provided by individual agencies.

Sexual abuse, in particular, is common among people with disabilities. Research indicates that 80% of women and 30% of men with disabilities have been sexually assaulted, and that 50% of the women have been assaulted ten or more times. Most perpetrators of crimes against people with disabilities are caregivers or service providers (Sobsey, 1994). This can result in difficult situations amongst coworkers in human service settings. However, advocating for the safety and rights of people they support must be the highest priority for workers. North Dakota state law enacted by the 1989 legislature specifies who *must* report (mandatory), as well as who *may* report (voluntary) alleged abuse. Every medical, mental health, developmental disabilities or educational professional, law enforcement officer, or caretaker *must* report any alleged abuse that they suspect. State law also emphasizes that those who willfully fail to report abuse, neglect, or exploitation (if mandated by law to do so) are guilty of an infraction (NDCPD, 1997).

Training for people with disabilities is the best protection against sexual abuse. People need to be taught about their rights, how to avoid, and how to report abuse. Because the abuse often is not reported by the victim, service workers need to be able to recognize the signs and support the victim through the process.

Indicators of sexual abuse include (NDCPD, 1998):

- Difficulty in walking or sitting
- Torn, stained, or bloody underclothing
- Pain or itching in the genital area
- Bruises or bleeding in genital or anal area
- Venereal disease
- Pregnancy

- Difficult sleeping, or sudden and frequent nightmares/sleep disturbances
- Avoidance of a previously trusted and well-liked person
- Unexplained stomachaches or change in eating habits
- Fear of being left alone, or the unusual desire to be alone (withdrawal)
- Sudden infantile behavior (sucking, biting, rocking, bedwetting, etc.)
- Change in leisure habits, or reluctance to join in previously enjoyed recreational activities
- Delinquency or running away
- Bizarre, sophisticated, or unusual sexual behavior or knowledge
- Hypochondria
- Refusal to undress, to bathe, or to be bathed
- Depression
- Self mutilations
- Excessive masturbation
- Poor self-image.

Indicators of physical abuse may include:

- Cuts, lacerations, punctures, wounds
- Bruises, welts, discolorations, grip marks
- Any unexplained injury that doesn't fit with the given explanation of the injury
- Any injury incompatible with the person's history of unexplained injuries
- Any injury which has not been properly cared for (sometimes injuries are hidden on areas of the body normally covered by clothing)
- Poor skin condition or poor skin hygiene
- Dehydration and/or malnourishment without illness-related cause
- Unexplained loss of weight
- Burns, possibly caused by cigarettes, caustics, acids or friction from ropes or chains, being dragged on the ground
- Overmedication.

Indicators of verbal mistreatment/abuse may include:

- Repeating or imitating inappropriate statements made by others, using language or concepts not otherwise familiar to the person speaking
- Signs of helplessness, hesitation to talk openly, fear, withdrawal, depressions, denial, agitation, anger, confusion, or disorientation in the person,
- Non-compliance or overly compliant.

Support staff who become aware of an abusive situation need to report it according to their agency policy. Some situations also need to be reported to law enforcement. If a person comes to you to report information about abuse, or if you observe the signs of

abuse, establish an atmosphere of comfort and trust. Listening to the person will be one of the most important things you can do for a victim. Believe a person who reports abuse on their own, don't try to "talk them out of it". Use language that the person can understand. Avoid making any judgments about the person or the situation other than affirming for the person that what happened is not their fault or due to something they did. It is most beneficial to report to the police immediately and let them handle the investigation. However, if you do have discussion with the victim about the incident, actions that will be helpful to a later investigation by police include:

- Be careful not to suggest things to the victim. Let him or her relay the information at his or her own pace and manner.
- Do not ask leading questions. It is most beneficial to leave the questioning to the police. Focus your attention on making the person comfortable. Provide reassurance to the person that they are safe and will be helped.
- Write the information down immediately after, or even during, the discussion. Use language and terms that the person used. Don't reword statements the person made.
- Do not wash away any physical evidence.
- Be available, but do not insist, on being involved during police questioning. The police will let you know if your assistance is needed with interpretation or other support.

Teach the people you support about their rights, and what constitutes a violation of those rights. Training should include issues regarding abuse, neglect, and exploitation. Teach people what to do if they are victimized.

Assist people supported by your agency to obtain a card for their purse/wallet that describes the type of support they need and a contact person. This can be invaluable if the person becomes a victim and either because of the trauma of the situation or lack of communication skills, they cannot access the support they need. An example of such a card is included in Appendix A.

How to Support Offenders

For individuals whose behavior places them at risk of becoming involved with situations that conflict with the law, a component called an Individual Justice Plan (IJP) may be added to their existing support plan. For individuals who unexpectedly come into contact with the law and do not have such a component in their plan, it can be added at any time. The purpose of the IJP is to facilitate communication between the disabilities and criminal justice systems and outline recommended support for the person receiving services.

The IJP was first introduced in North Dakota in 1987 to address the needs of offenders with disabilities. Input for the original IJP training manual was obtained from both the disability and criminal justice communities. The suggestion to use an IJP can be initiated by either side of the system, the DD community, or the CJ community. However, most often it will be initiated by the defense side of the legal system. In most instances, the defending attorney will not have participated in the IJP process, so it may be necessary for someone from the team to assist the person with disabilities to present the IJP to him or her. The person with disabilities or his/her guardian must approve this action in advance. The flow chart in Appendix B indicates points within the prosecution system where the IJP might be introduced. In ND, the IJP alternative is not widely known and is largely underused.

The IJP is a written document that outlines specific support and/or treatment for the person who has a disability and has come into/or is at high risk to come into contact with the law. The IJP becomes part of, but does not take the place of, an existing support plan (i.e., Individual Habilitation Plan, Individual Support Plan) that has been developed specifically for an individual.

IJP can include direction and benefits such as:

- Assist the person to obtain services/support so that community placement is not jeopardized
- Provides a more cost effective response to offenders with disabilities
- Holds the person accountable for his or her behavior
- Provides treatment/support in a manner the person can understand and benefit from
- Advocates for the person's rights and responsibilities as a member of a community.

Support teams should include members of the disability and the justice communities. Persons to consider include relevant family members or guardians, probation officer, legal counsel, and case manager. It is recommended that the number be kept to a minimum to allow the team to quickly convene when necessary to address issues.

Components of an IJP:

- Description of problem behavior
- Assessment to determine the cause of the problem (antecedent) and the results (consequences)

- Team recommendations/options for treatment/support – these should consider the least intrusive but potentially most effective means of addressing the problem.

Sentencing alternatives that may be recommended as options in the IJP are included below. Some of these options may be beyond the authority of the support team, but can be advocated for in the best interest of the person.

- Behavioral program
- Counseling
- Increased supervision
- Community service
- Hospitalization
- Agency transfer
- Specific treatment program
- Restitution
- Fine
- Probation
- Incarceration

Part of a support plan may also include training to prepare a person for what may happen if s/he is stopped by police or arrested. The following information should be considered for inclusion in training, adapted with language the person can comprehend:

Actions that are against the law or might bring a person into contact with the police:

- ✚ Taking things from a store without paying for them
- ✚ Writing checks when you don't have enough money in the bank
- ✚ Not paying your rent or other bills
- ✚ Playing loud music late at night in your apartment or house
- ✚ Going into someone's house or apartment without their permission
- ✚ Having sex or making intimate contact with someone when they don't want to or they don't understand what is happening
- ✚ Making prank phone calls
- ✚ Leaving a restaurant without paying your bill
- ✚ Drinking or buying alcohol when under the age of 21, or purchasing alcohol for a minor.
- ✚ Requiring people to pay you for sex
- ✚ Smoking or buying cigarettes when under age 18
- ✚ Calling 911 when there is not an emergency
- ✚ Exposing private body parts in public or to others.

What happens when stopped by the police?

- ✚ The police will ask who you are and may want to know where you are going or where you have been.
- ✚ Tell the police your name or give them your ID card.
- ✚ Don't run away. Stay calm.
- ✚ Let the police know if you need help or do not understand.
- ✚ Tell the police you have a disability and what kind of support you need.

What happens if arrested?

- ✚ The police may handcuff you and search you.
- ✚ You will be told about your rights.
- ✚ Tell the police if you don't understand.
- ✚ You will be taken in a police car to the police station.
- ✚ If you are placed in jail, you may be searched again, your picture will be taken, and you will be fingerprinted.
- ✚ All your personal belongings will be taken from you and put in a safe place.
- ✚ You will be allowed to make one phone call. Call a parent, support person, or friend who can help you.
- ✚ Ask for a lawyer. Let your lawyer know you have a disability.
- ✚ Sometimes bail money can be used so you won't have to stay in jail.
- ✚ Tell the police and your lawyer the truth.

What happens if you go to Court?

- ✚ You or your lawyer will talk to a judge about the crime.
- ✚ The judge, or sometimes a group of people called a jury, decides if you did the crime.
- ✚ If they say you did not do the crime you are free to go. If they think you are guilty you will be punished. You might have to pay money, go to jail, or attend counseling or therapy.

Contacts

Find out specifically how the criminal justice system in your community functions. Establishing a positive working relationship ahead of time can enhance the assistance obtained during crisis situations. Consider scheduling periodic meetings with justice personnel to exchange information and develop a positive rapport. Find out who the appropriate contact person is for specific types of issues, and who can provide general information or assistance. Law enforcement personnel can also provide guidelines regarding when to call for assistance, and explain what actions the police can or cannot take when they are called. Increasing this understanding can reduce frustration among care providers. Make note of key contact people using the form provided in Appendix C.

More information on supporting people with disabilities within the Criminal Justice System can be obtained from the following resources:

The ARC of the United States
1010 Wayne Ave, Ste 650
Silver Springs, MD 20910
301-565-3842
info@thearc.org
www.thearc.org

Temple University
The Institute on Disabilities
Pennsylvania's University Center for Excellence in Developmental Disabilities
1301 Cecil B. Moore Ave.
Room 423, Ritter Annex
Philadelphia, PA 19122
215-204-1356 (voice TTY)
<http://disabilities.temple.edu>

Resources

Materials for this manual have been adapted from the following sources:

A Criminal Justice System Overview. Osceola County Clerk of Circuit Court's Office.
Retrieved on 8-12-03 from
http://www.osceolaclerk.com/criminal_justice_system_overview.htm.

Aadland, J.K.; Afwerke, P.; Schumacher, K (1988). *Individual Justice Planning*. A training manual (Rev. Ed.).

North Dakota Center for Persons with Disabilities, a University Affiliated Program at Minot State University. (1998). *Sexuality and Developmental Disabilities*. (Rev. Ed.)

North Dakota Center for Persons with Disabilities, a University Affiliated Program at Minot State University. (1997). *Legal Issues*. (Rev. Ed.)

Overview of the Criminal Justice System. The National Center for Victims of Crime.
Retrieved on 8-12-03 from <http://www.ncvc.org>.

Sobsey, D. (1994). *Violence and abuse in the lives of people with disabilities: The end of silent acceptance?* Baltimore: Brookes Publishing Co.

Warning Signs. Oregon Department of Human Services. Retrieved on 9-4-03 from
www.dhs.state.or.us/abuse/disabilities/mental_illness/warning_signs.htm.

Appendix A

Sample Purse/Wallet Card

Sample Card:

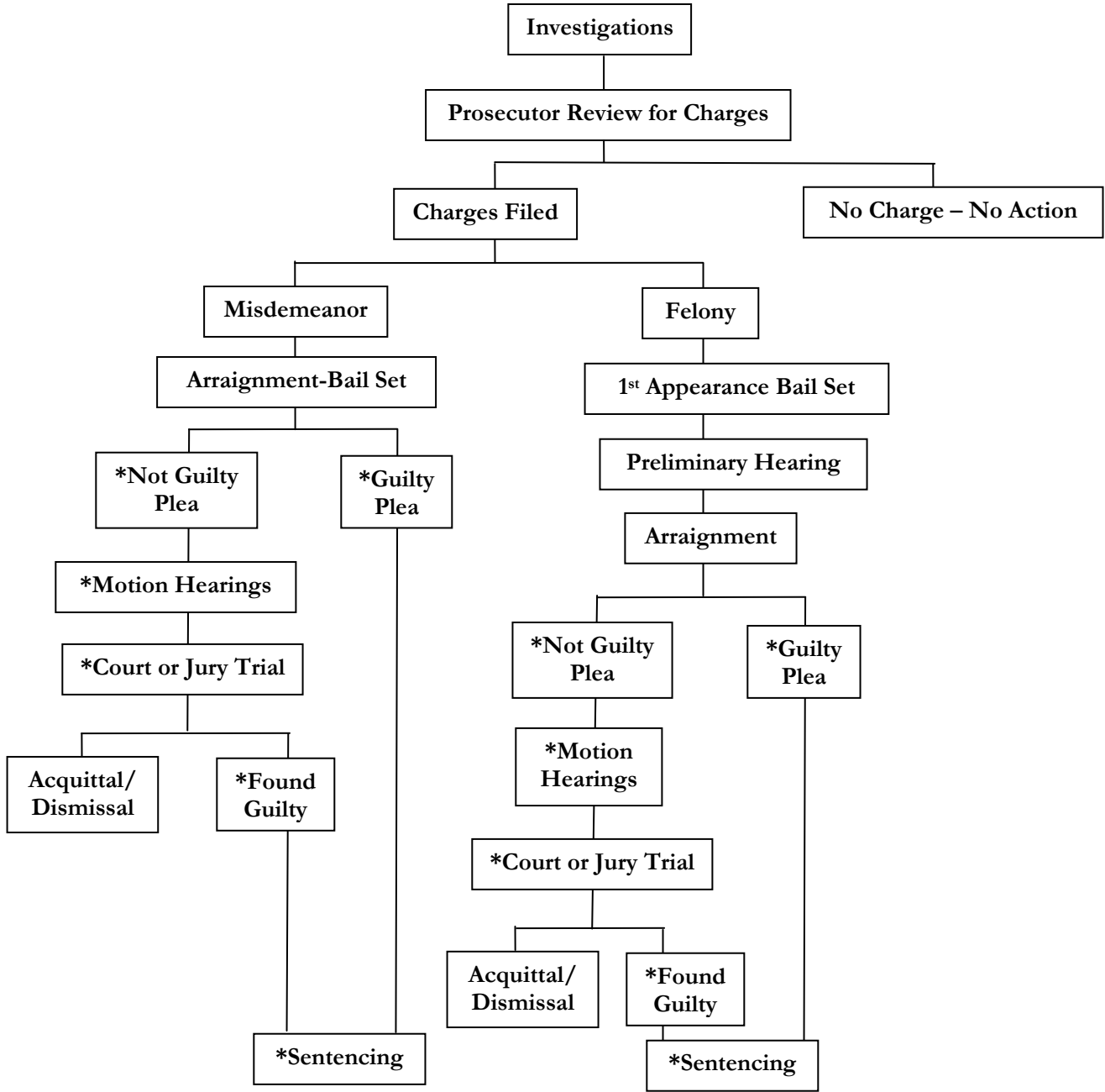
<p>My name is: _____</p>
<p>I receive services from: _____</p>
<p>If I am arrested or stopped by police, please call: Name: _____ Phone # _____</p>

Specific disability information can also be added when applicable. Some examples may include:

- ❖ I am hearing impaired but can read lips, please look at me when speaking.
- ❖ I can communicate with you using my [name device, such as picture book, touch talker, etc.]
- ❖ I have a seizure disorder and may appear disoriented following a seizure, please give me time to reorient to my surroundings.
- ❖ I cannot speak or hear but I use sign language. Please get a sign language interpreter if you do not know sign language.
- ❖ I have a disability and may not clearly understand instructions, questions, or requests that are made. Please call my service provider as listed on this card.
- ❖ I have cerebral palsy, which affects my balance, body movements, and speech. Please do not assume I have consumed alcohol or drugs.
- ❖ I have a mental illness and am having difficulty at this time. Please contact my mental health provider as indicated on this card.

Appendix B

Legal System Flow Chart



*Where IJP may be introduced

Appendix C

Police/Sheriff Department Contacts

Police Department Contacts:

Name/Job Title_____

Telephone number_____

Name/Job Title_____

Telephone number_____

Sheriff Department Contacts:

Name/Job Title_____

Telephone number_____

Name/Job Title_____

Telephone number_____

