



Association of Regional Center Agencies
Forensic Committee

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Special acknowledgment, recognition and gratitude are warranted for all of the members of the Committee. The Committee has demonstrated an exemplary commitment to preparing this report. It is our hope that this report will serve as a blueprint for real action and comprehensive systemic change which will improve and enhance the lives of persons with developmental disabilities.

Dexter A. Henderson
Chair, ARCA Forensic Committee

Committee Members, March 2002

Olivia Balcao, Alta California Regional Center
Barry Benda, Golden Gate Regional Center
Paul Billodeau, Valley Mountain Regional Center
Maria Bosch, Lanterman Regional Center
Terry Bremer, Organization of Area Boards
Don Daniels, Eastern Los Angeles Regional Center
Michael Danneker, Westside Regional Center
Lynn Fjeld, Central Valley Regional Center
Melinda Gonser, Department of Developmental Services
Dexter Henderson, South Central Los Angeles Regional Center
Oran Hutton, North Bay Regional Center
Carolyn Jackson, South Central Los Angeles Regional Center
Ruth Gordean Janka, North Los Angeles County Regional Center
Holly Nogales, Regional Center of Orange County
Jim Prudhomme, Alta California Regional Center
Pam Ray, San Gabriel/Pomona Regional Center
Curtis Rogers, Department of Developmental Services
Lon Russell, Far Northern Regional Center
Joseph Tillman, South Central Los Angeles Regional Center

Committee Members, 2000

Barry Benda, Golden Gate Regional Center
Terry Bremer, Alta California Regional Center
Linda Carpenter, Far Northern Regional Center
Michael Cohen, North Bay Regional Center
Mark Dubie, Harbor Regional Center
Lynn Fjeld, Central Valley Regional Center
Angela Gilmartin, Eastern Los Angeles Regional Center
Ruth Gordean, North Los Angeles County Regional Center
Carolyn Jackson, South Central Los Angeles Regional Center
Joseph Tillman, South Central Los Angeles Regional Center
Pam Ray, San Gabriel/Pomona Regional Center
Curtis Rogers, Department of Developmental Services

EXECUTIVE SUMMARY

The Criminally Involved Consumer With Developmental Disabilities.

California law defines a developmental disability as a condition that is manifest before age 18, is expected to continue indefinitely, and which creates a substantial handicap for the individual. Mental retardation (IQ < 70), autism, cerebral palsy, epilepsy and other conditions that require treatment similar to that required by mentally retarded individuals are qualifying conditions. Approximately 2% of the general population has developmental disabilities.

Some persons who have developmental disabilities may commit crimes. When these individuals get involved with the criminal justice and court systems, they are at a distinct disadvantage at every stage in the process because their level of functioning and/or cultural background creates a substantial impairment. Because of the stigma associated with their condition, they may not wish to acknowledge their handicap.

Persons with developmental disabilities are more suggestible, therefore more vulnerable, to the pressures of interrogation. These characteristics leave them open to false confessions.

Once incarcerated, prisoners with developmental disabilities are more likely to endure poor treatment and suffer abuse (physical and verbal) from other inmates. Their recidivism rate is higher than other offenders.

Because of varied survey techniques and definitions of mental retardation used by researchers, the prevalence of developmentally disabled prisoners in incarceration settings, such as state and federal prisons, county jail, juvenile halls, and other detention facilities, lacks consensus. Authorities estimate 2% - 10% of the jail and prison population have developmental disabilities.

The Regional Center System.

California's twenty-one regional centers are resources for service coordination, services and supports for all individuals who qualify because they exhibit a developmental disability. These centers each serve persons within defined catchment areas in the state.

Surveys of regional center forensic services were conducted by various parties

in 1996, 1997, 1998 and 2000. The results of these surveys were fairly consistent in that they found that staff at the centers varied in their perceptions of their responsibilities to provide services and supports to persons who are developmentally disabled who are defendants, prisoners, probationers and parolees. Accordingly, regional centers demonstrated this variation in their staffing levels and systems to track and maintain contact with incarcerated consumers and training.

A self-survey of regional centers completed in May 2000 indicates most regional centers are concerned about forensic issues. Many do not appear to have adequate identification and tracking systems, do not have special forensic training for service providers, and generally do not maintain contact to plan for community reentry while consumers are incarcerated. Centers expressed a strong interest in additional training and a need to improve the availability of specialized services. All centers expressed interest in a fully-funded prevention and support system for criminally involved consumers.

The committee developed the following major recommendations:

Recommendations

General Recommendations

1. Develop a comprehensive, fully-funded service support system for forensically-involved developmentally disabled individuals that is available on a statewide basis. Elements of the system would include: a criminal justice liaison who is an employee of each regional center, training for regional center and justice system staff, access to multidisciplinary expertise, specialized services for juveniles and adults, and interagency collaboration.
2. Appoint an ARCA standing committee on forensic issues, to support regional centers in implementing task force recommendations. This standing committee should advocate for changes in legislation, policy and practices to improve services for forensically involved developmentally disabled individuals.
3. ARCA and DDS should collaborate so that the appropriate vehicle(s) are made available to provide training and multidisciplinary technical support to regional center staff on the rules necessary to follow in making court appearances,

communicating with judicial system personnel, developing diversion recommendations and in developing court reports.

Recommendations for Supports and Services

1. Enhance resources throughout the state for a continuum of residential living arrangements for developmentally disabled juveniles and adults who are at-risk of offending or are on parole from California Youth Authority or an adult correctional facility. These living arrangements should have auxiliary services and supports as appropriate for each developmentally disabled consumer's needs. The services and supports may include substance abuse recovery, sex offender treatment, anger management services, and employment training and placement as appropriate for each consumer's needs.
2. Develop a statewide curriculum for training law enforcement, judicial system agencies, regional center staff, vendors, service providers, and generic agencies.
3. Develop training for consumers with developmental disabilities. The program should cover competency issues, self-advocacy and the use of the judicial system as is appropriate to their level of functioning.
4. Develop a system of comprehensive early identification, assessment and evaluation of forensically involved developmentally disabled individuals. Such a system might be best facilitated by using specially trained multidisciplinary expertise available at regional centers.
5. Collaborate with generic community agencies to implement programs and services to prevent involvement of developmentally disabled adults and juveniles in criminal activity.
6. Develop and enhance partnerships with generic agencies to maximize individuals' opportunities to access resources.

The Description of the Population

The California definition of developmental disability is found in the Lanterman Developmental Disabilities Services Act and includes mental retardation, cerebral palsy, epilepsy, and autism. The definition also includes disabling conditions that are closely related to mental retardation or require treatment similar to that required for mental retardation. The condition must be manifest before the person becomes 18 years old, be expected to continue indefinitely, and constitute a substantial disability for the person. Anyone living in California who meets the definition is eligible for regional center services.

It has been recognized for many years that some persons with developmental disabilities, as with the general population, commit crimes and get involved with law enforcement agencies and the court system.

Since a developmental disability is defined differently by the federal government and by some other states, comparisons of the prevalence of incarcerated individuals with developmental disabilities between different states should be interpreted cautiously.

In addition, many studies of criminal populations focus solely on mental retardation and do not include other developmental disabilities. However, most of the people with developmental disabilities who become involved with the criminal justice system have mental retardation.

Mental retardation refers to significantly sub-average intellectual functioning (IQ of 70 or below) with concurrent impairments in adaptive behavior, and which occurs before the age of 18 (Grossman et al., 1983).

National Demographic Data

Prevalence of Persons with Developmental Disabilities in Prison. The two earliest studies of the prevalence rate of developmentally disabled offenders in prison were surveys by Brown and Courtless (1968), which found 9.5% of American prisoners with mental retardation. Allen (1968) reported the results of a 1963 study of 200,000 offenders in the United States; 9.5% were found to have an IQ less than 70, and 1.6% of prisoners were reported to have an IQ under 55.

As Veneziano and Veneziano (1996) note, most prisons do not keep information about prisoners with disabilities in a form that can be readily retrieved. Nevertheless, Veneziano, Veneziano, and Tribolet (1987) surveyed all of the prison systems at the state and federal level by mailing surveys to prison officials. Although over one-third of respondents indicated that such information was not known, those who did respond and provided a figure (the basis for which is uncertain) provided widely variable data, ranging from less than 1% to over 60%. As Denkowski and Denkowski (1985) note there are widely divergent ideas about what constitutes mental retardation among the criminal justice officials who are surveyed.

Recidivism. Offenders with mental retardation have been found to have higher rates of recidivism than others who are released from prison (Coffey, Procopiow, and Miller, 1989).

The Texas Special Offender Program has demonstrated that recidivism of offenders with mental retardation can be significantly reduced through a combination of special needs parole programs, pre-release planning, and county-based diversion programs (Texas Council on Offenders with Mental Impairments, 1995). In 1993 a 63% reduction in arrest rate was obtained for offenders who participated for 12 months in the diversion program. Between 1987 and 1990 there was a 45% recidivism rate for offenders with mental retardation, compared with a 63% recidivism rate for mentally retarded offenders who lived in counties that did not have these programs.

National Initiatives

The federal government has recognized the plight of persons with mental retardation in the criminal justice system since the early 1970's. It has convened a number of task forces and conferences on the subject, one of which lead to the seminal work in the field, The Criminal Justice System and Mental Retardation (Conley, Luckasson and Bouthilet, 1992).

The American Bar Association (ABA) has produced a set of recommendations for the treatment of persons with mental disorders and persons with mental retardation in the criminal justice system. (ABA, 1989, 1997)

California Demographic Data

In 1997, the Incarceration Committee of the California Criminal Justice Task Force (CCJT) mailed surveys to all 58 county sheriff's departments and received an 86% response rate. This task force was funded by the State Developmental Disabilities Council to survey resources and make recommendations regarding the treatment of prisoners with developmental disabilities. The task force found that prevalence rate of prisoners described as having mental retardation was reported to be 2%, much smaller than any other published estimate. A rate of 2% is also obtained by comparing the approximate daily average number of prisoners who are regional center consumers and who are known by the regional center law enforcement liaison to be in the Los Angeles County Jail system--about 35--to the average total number of prisoners in the system--about 19,900. Even using even the conservative 2% figure, one would expect about 400 prisoners in California's jails to have mental retardation.

Similarly, using the conservative 2% figure, it is estimated that at least 3200 of the approximately 160,000 prisoners in the California prisons are developmentally disabled. The findings from the recent *Derrick Clark, et al, vs. the State of California* settlement identified approximately 1500 Department of Corrections prisoners who are or have been regional center consumers.

The Legislative Analyst in their FY 2000-2001 comments and recommendations regarding the Department of Corrections treatment of persons with developmental disabilities quotes an estimate that 4% of the prisoners in California's prisons are developmentally disabled.

However, it should be noted that many prisoners with mental retardation may not to be regional center consumers. As Petersilia (2000) has estimated, only about 22% of persons in California with developmental disabilities may be active regional center consumers. Many of those who are not regional center consumers are likely to be higher functioning with disabilities that are less noticeable; however, this population is more likely to be incarcerated. Hence level of intelligence is a risk factor for incarceration. It is reasonable to conclude that there is a much larger proportion of the jail and prison population in California with mild to borderline intellectual functioning than has been identified through regional center caseloads.

Following local concerns about "dangerous" consumers housed at the state developmental centers, the Department of Developmental Services (DDS) was directed by the California Legislature in the 1998-99 and 1999-00 Budget Acts to

provide a comprehensive plan for housing and treatment for consumers who "have had a confrontation with, or been arrested by, law enforcement officials, or who have intensive behavior treatment needs." The Department of Developmental Services was required to provide the Legislature with a comprehensive plan, an update on the "forensic" population residing at the State's five developmental centers, and a three-year projection of that population. The 2000-01 Budget Act required DDS to provide a status update of the population figures. That Act also capped the number of "high risk residents" at Porterville Developmental Center, where many forensic consumers reside, at 256. The current number of forensic consumers housed at Porterville is over 275. There is a waiting list for available beds.

In 1998 California's Budget Trailer Bill was used to amend the Welfare and Institutions Code (Section 4640.6 [h]) to require regional centers to have "Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee."

Funds were not provided to enable regional centers to staff this mandate.

Two other specific pieces of legislation are AB 3632 and AB 2585. AB 3632 changed the California Government Code in 1984 to entitle special education students in the California School System to receive mental health services, which may include residential service under certain circumstances. The "Hughes Bill," AB 2585, requires behavioral assessment and treatment procedures for certain students in special education classes if serious behavior problems are exhibited and are not adequately addressed by other interventions. Since early demonstration of serious mental health problems and behavior problems by school students are shown to be good predictors of later involvement in the criminal justice system, effective intervention is a key to reducing the population of developmentally disabled youth (and later, adults) in the criminal justice system.

Consumers With Developmental Disabilities and The Legal Process

Consumers with developmental disabilities generally, and mental retardation in particular, are recognized as being at a significant disadvantage at each step in the criminal justice process, especially because of their limited ability to comprehend the meaning of the process and to protect themselves from exploitation and manipulation.

Initial Contact with Law Enforcement. Problems begin at initial contact with law enforcement agencies and continue through imprisonment and parole.

When police officers do not identify suspects as having a developmental disability they naturally employ the same interrogation methods they use with non-disabled suspects. This oversight may result in misunderstandings, false confessions, and an abrogation of the protections afforded to other citizens who more fully understand their rights. During interrogation suspects with a developmental disability are more influenced by authority figures, may be encouraged to provide more incriminating information about themselves than non-retarded persons, and are more likely to give false confessions (Leo & Ofshe, 1997). This behavior often takes the form of giving the answers a suspect thinks will please the authority figure. Suspects with mental retardation tend to be more suggestible and therefore more vulnerable to the pressures of interrogation (Kassin, 1997). When this is combined with a propensity to acquiesce to people in authority, suspects with mental retardation are more likely to confess to a crime they did not commit (Sigelman et al., 1981).

Citizens with mental retardation who become suspects in criminal cases often do not understand or benefit from the protections afforded them by the Miranda warning against self-incrimination. The Miranda warning is typically read or stated to a suspect by a police officer at the time of arrest. The officer takes at face value the assurances given by suspects that they understand their constitutional rights and options to waive or protect those rights. Research shows that the cognitive ability required to understand the Miranda warning is at the 7th grade level; the cognitive abilities of mildly retarded people are generally below the 6th grade level. Defendants with mental retardation often answer "yes" to each of the police officer's questions, because they do not want others to know of their retardation and lack of understanding and because of their propensity to acquiesce to those in authority. Individuals with mental retardation will often attempt to hide their disability to avoid the attached stigma (Edgerton, 1967).

Competence to Stand Trial. It is important to understand that a person with a developmental disability or an individual who is suspected of having a developmental disability is not automatically considered incompetent to stand trial. If that possibility is raised, the local regional center may be asked to evaluate the individual for both the presence of a developmental disability and competency.

A defendant is mentally incompetent if, as a result of a mental disorder or developmental disability, the defendant is unable to understand the nature of the

court proceedings or to assist counsel in the conduct of the defense in a rational manner. Unless the district attorney and defense counsel agree that the individual is incompetent to stand trial, the issue of competency may proceed to trial to decide this question.

If a person with developmental disabilities is not identified as incompetent to stand trial, he or she is subject to the same judicial process faced by all people who are judged competent to stand trial.

Defendants with mental retardation often pass through the system and are forced to stand trial even though they may not have the requisite competence to understand the proceedings or to assist in their own defense, the standard for competence (PC 1367). Suspects with developmental disabilities often are unable to understand court proceedings, assist effectively in their own defense, and/or understand the significance of their punishment. Significant impairments in expressive language, reading, understanding verbal information, short attention span, and deficits in working memory are among the problems frequently seen in these suspects. Assessment tools to help determine whether a defendant is competent to stand trial primarily assess court-related vocabulary and information that may be "parroted" without full understanding. These tests do not assess the fluid cognitive abilities that enable a person to understand their legal defense options. Many defendants' incompetence is not recognized by defense attorneys or judges, so that the issue of trial competency is never raised and never formally assessed.

If the defendant is found mentally incompetent the normal judicial process is suspended by the court until the defendant becomes mentally competent through training. The regional center makes a recommendation for placement and treatment to the court for placement on an interim basis, usually to a state developmental center or an outpatient treatment program. Commitment to these programs runs for a period not to exceed three years.

After that period the case may be dismissed (PC 1385), produce a finding that the individual is dangerous to himself or others because of a mental health diagnosis and be placed in a locked mental health facility (LPS Conservatorship) or result in commitment because the person is judged dangerous to himself or others and is mentally retarded. (Welfare & Institutions Code Section 6500)

Diversion. Diversion means that a consumer charged with a crime can have his or her case redirected from the criminal justice system into a treatment driven

program. There are two forms of diversion: Single Agency Diversion means the regional center service coordinator is responsible for monitoring the consumer in terms of his or her compliance concerning the terms of diversion. The court will also require a report to be submitted by the service coordinator focusing on this issue. Dual Agency Diversion requires the participation of the regional center and the probation department. Monitoring to ensure that the terms of diversion are being complied with becomes the responsibility of both systems. The service coordinator will be required to submit a progress report to the probation department at six-month intervals. Progress reports are made to the court by the probation department. Upon successful completion of the diversion program by the consumer, the legal record will reflect that no conviction had occurred. Data suggests that many district attorneys and courts are not familiar with the option of diversion for persons with developmental disabilities. Diversion is only available for misdemeanor offenses.

Incarceration. Defendants with developmental disabilities are at greater risk of being incarcerated than other suspects and are more likely to endure poor treatment and to suffer abuse (physical and verbal) from other inmates. Probation is less frequently granted to offenders with mental retardation and they have more difficulty adjusting to prison routines, are less likely to participate in rehabilitation programs, and are more frequently the objects of sexual and physical abuse. Inmates with mental retardation tend to serve longer sentences because of the higher frequency of infractions in prison and have greater difficulty in securing parole. Their failure to comply with prison routine, in part because of their inability to read and to understand prison rules, and to advocate effectively for themselves, contributes to their more often being denied parole.

Recidivism. Once released from prison, offenders with mental retardation have a higher recidivism rate than other released offenders probably because of the lack of provisions to help them adjust back into the community.

Litigation and Case Law. Two lawsuits have been brought recently against the State of California in an effort to assert the rights of persons with developmental disabilities who are incarcerated in state prisons. *The Derrick Clark et al vs. the State of California* (discussed earlier) and *Armstrong vs. Wilson (1997)* both required the State Department of Corrections to significantly modify its processes and procedures to accommodate persons with developmental and other disabilities. However, there is no litigation or case law that would specifically protect the rights of persons with developmental disabilities in city or county jails.

California laws and procedures used by criminal justice agencies are not sufficient to facilitate equal justice and protections for fair and knowledgeable treatment for persons with mental retardation. Clearly, much needs to be done at all stages of the criminal justice process to ensure fairness for suspects, defendants, prisoners, and parolees with mental retardation and other developmental disabilities.

Less effort has been expended on offenders with mental retardation than any other group of offenders, yet they are the most vulnerable people in the criminal justice system and least understood by law enforcement and court personnel

Overview of Existing Services and Supports

Surveys of regional center forensic services conducted by the California Criminal Justice Task Force (CJTF) in 1996 and 1997, the Department of Developmental Services (DDS) in 1998 and the ARCA Forensic Task Force in 2000 provide the same basic profile that illustrates a significant variation of services and supports is offered to criminally involved consumers by their regional centers. The greatest discrepancy among the centers is in their perception of their role and responsibility to those who are incarcerated. The extent to which centers believe that prison or jail (as a generic service) bears primary responsibility for the consumers' welfare varies. Some centers provide assistance with pre-trial and post-release phases of their consumers' legal involvement. Some regional centers have specialists on staff to assist consumers, and some have service coordinators with specialized criminal caseloads; others do not. Some regional centers provide training to case management staff on criminal issues; others do not.

Regional centers were surveyed in May 2000:

A three-point rating scale was used for self-assessment ratings:

- 3 = Current services are adequate
- 2 = Service is provided but needs significant improvement
- 1 = Service is not provided (but is needed)

Regional centers rated themselves relatively high on providing specialized evaluations (mean score 2.5), on staff training (2.4), and on inter-agency coordination (2.4). They rated themselves less well on residential services for this specialized population (1.9) and on services to forensically involved juveniles (2.2). Two regional centers rated themselves as providing adequate services in all five areas.

Training for Regional Center Staff. Five respondents said that they provide annual training for “specialized staff,” probably meaning forensic liaisons or specialized case managers (although questions regarding case management specialization were not specifically asked); eight provide training but not on an annual basis; four provide annual training for all case management staff. Ten respondents indicated that they believe that additional training for their staff would be beneficial.

Training for Criminal Justice System. Nine respondents provide training to police, nine to attorneys, seven for judges, and five for probation and parole personnel.

Overall, it appears that most regional centers are involved with forensic issues. Most, however, do not appear to have adequate identification and tracking systems, do not have annual training for service providers, and do not maintain contact to plan for services upon release when their consumers are incarcerated in prison. There appears to be strong interest in additional training and improvement on specialized services.

Based upon the results from the survey conducted by DDS in 1998 the Department estimates that as many as 600 consumers (state-wide) could be incarcerated without any regional center contact or intervention.

The CJTF also surveyed county probation departments, public defenders, and district attorneys. The results legitimized concerns about lack of awareness among court personnel of developmental disabilities issues and indicated a clear need for training. Probation officers reported little contact with developmentally disabled persons and indicated that such persons convicted of a crime were unlikely to be placed on probation. This is consistent with the literature that indicates that persons with mental retardation especially are less likely to receive probation.

Program Models in California

The California State Council on Developmental Disabilities targeted criminal justice as one of its three primary areas for funding and support for a five-year period, beginning in 1996. In addition to the Criminal Justice Task Force (CJTF) the Council funded a number of other initiatives to support this population: In 1997 and 1998 grants were provided to fund and support the South Central Los Angeles Regional Center Forensic Project. The Project serves all seven Los Angeles County regional centers and is comprised of four components: 1) a Multi-Agency Advisory Board, 2) a Juvenile Liaison Program, 3) various training initiatives, and 4) a multi-

disciplinary Forensic Assessment Team (FAT). A full description of the Project, its activities, and consumer outcomes are provided in its two Annual Reports (1998, 1999). The Project works closely with the SCLARC law enforcement liaison, a regional center staff position that has provided services to Los Angeles County regional center consumers in the County jail system since the mid-70's.

The SCLARC Project demonstrates that a multidisciplinary, collaborative approach to addressing issues raised by persons with developmental disabilities who are in the criminal justice system provides the most effective treatment and services.

Kern and Valley Mountain Regional Centers have had well-organized forensic programs for a number of years. Kern Regional Center has an interdisciplinary team to review court cases with service coordinators, and it has a court liaison who interacts with the judicial system to provide advocacy for forensically involved consumers. When a consumer's legal status is defined by the court system, the court liaison receives the case for ongoing case management. Valley Mountain Regional Center has a Legal Services Review Team, which meets weekly to review legal cases, monitor court dates, and provides follow-up information to the court regarding consumers' compliance with court orders. A paralegal member of the team maintains a database, serves as a legal consultant, and, when requested, appears in court. Valley Mountain Regional Center has also produced an excellent forensic training manual to assist with staff training.

The Department of Developmental Services (DDS) published two annual reports, "Plan for Individuals with Forensic or Severe Behavior Needs" (DDS, 1999 & 2000). The reports focus on the population housed in the Porterville Developmental Center and those formerly housed at Napa State Hospital forensic programs. In addition to describing the two populations and services provided to them, projections are made regarding future service needs and plans for addressing those needs. Of the approximately 3700 people in state DC's, 10% are criminally involved.

Statistics for regional center consumers are available through a compilation of Client Development Evaluation Reports (CDER's). The CDER is completed annually by the consumer's service coordinators. Service coordinators list whether or not each consumer is on diversion (PC 1001.20) and on either probation or county or state parole. The following are the numbers of consumers state-wide in these two categories from December 31, 1992, through December 31, 1996, compared to the total number of consumers who had been diagnosed with a developmental disability.

Table 1: Regional Center Consumers on Diversion, Probation, & Parole

	1992	1993	1994	1995	1996
Diversion	251	244	237	233	224
Probation/Parole	715	720	755	745	822
Total in System	102536	106365	109363	113050	117541

As seen in Table 1, a decreasing percentage of consumers were on diversion, from 1992 through 1996, while an increasing percentage were on probation and parole over the same period. It is noteworthy that a reversal in this trend was seen from the first year (1997-98) to the second year (1998-99) for the consumers served by the SCLARC Forensic Assessment Team. In the first year of the project, 48% of consumers reviewed were placed on probation; in the second year, only 31% received probation. Only 10% of consumers received the less restrictive diversion outcome in the first year, but 23% were placed on diversion in the second year. Effective regional center forensic services may help to obtain less restrictive court outcomes, especially when courts are increasingly made aware of the options available for regional center consumers.

The Department of Developmental Services Fact Book (1998), also utilizing the CDER data, found that the percentage of consumers with "severe behavior problems" remained at about the same overall rate between 1993 (6.7%) and 1998 (6.8%). However, it is significant that the percentage of those identified with severe behavior problems that lived in the home of a parent increased dramatically, from 38% to 54% over that period of time. The percentage that resided in developmental centers declined over the period from 34% to 16%. Persons who exhibit severe behavior problems, particularly when they also exhibit mild mental retardation or borderline intellectual functioning, are considered to be at high risk for forensic involvement. This group has increased markedly between 1993 and 1998.

The SCLARC Forensic Project (1999) provided a profile of the 158 consumers who were reviewed by the Forensic Assessment Team during the first two years of the project. Eight-five percent of the consumers were adults, and 15% were juveniles. There were 143 males (91%) and 15 females (9%). The great majority

(83%) had been diagnosed with mild mental retardation. Another 8% were in the borderline intellectual functioning range, 7% had moderate mental retardation, and 1% had severe mental retardation. There were no profoundly retarded consumers in this population. One consumer had average intellectual ability (but was diagnosed with autism). Many consumers were dually diagnosed. That is, thirty-two percent had major mental health disorders, in addition to their diagnoses of developmental disability. Forty-five percent had no significant mental health disorders i.e., only mental retardation. These statistics may be compared with the 8% of all active regional center consumers who are dually diagnosed (DDS website).

A large majority of the 158 consumers reviewed by the SCLARC Project had previously been arrested, and many had previously been placed on diversion, probation, or parole. Only 25% lived in residential facilities, 46% resided with family members, and 28% lived, primarily without regional center supports, in their own homes. Very significantly, a large percentage (46%) were not involved in a vocational or school program at the time of their offense. The charges brought against these consumers included substance abuse, burglary, sex crimes, robbery, assault (including assault with a deadly weapon), and arson, as well as several lesser crimes. No one category of offense predominated.

Recidivism data are also available from the SCLARC Forensic Project. At the end of the first year of the project, the recidivism rate was just 6% (including consumers who were re-jailed because of probation violation without committing a new offense). At the end of the second year of the project, the true recidivism rate was 21%. Recidivism rates naturally increase over time, since initial offenders in any year have additional time in which they re-offend with each passing year, those who re-offend in the second year to come up with the recidivism rate after two years of the initial offense.

A relatively high rate of re-offense occurred when illegal substances were involved in the initial criminal activity; a zero rate of re-offense was found for sex offenders. It was also notable that when recommendations from the Forensic Assessment Team were substantially followed, there was an even lower rate of recidivism. The Team's recommendations were substantially followed for only three of the sixteen recidivists (19%) listed in the 1999 report, including fourteen who were reviewed in the Project's first year and two reviewed in the second year. By contrast, 67% of the Team's recommendations that had known outcomes were followed in the first year of the Project.

Conclusion

California's twenty-one regional centers provide some services to consumers with developmental disabilities who become involved with the criminal justice system as suspects, defendants, and prisoners. These consumers are often at a severe disadvantage compared to others who are arrested, at every step of the criminal justice system process, from initial police interrogation through the court process to imprisonment and parole.

The types and adequacy of services available to forensically involved consumers with developmental disabilities vary greatly from one regional center to another. There are differences in interpretation of the degree of responsibility regional centers believe they bear for consumers who are incarcerated. There are many gaps in needed residential and support services. Several surveys of the services available through each of the twenty-one regional centers have helped identify these needs.

The following are recommendations compiled by the ARCA Forensic Committee. These recommendations were generated from the results of surveys conducted over the past five years of regional center practices and resources for the forensically involved population who are developmentally disabled.

Recommendations

Key Elements of Service Delivery

Improvement of Regional Center Forensic Services. Additional funding will be required to provide effective services. Each regional center provides services to the criminally involved population in different ways, based on the geographic distribution of the general population in its catchment area and the types of resources currently available. In order to provide effective assistance to consumers, each regional center should be able to meet the following standards:

- 24-hour response to law enforcement.
- Court advocacy.
- Expert assistance for case management staff on interactions with attorneys, judges, and law enforcement. Such assistance should include help with

writing letters to attorneys and courts to propose diversion and other legal options in which the regional center will participate.

- Appropriate residential resources for forensically involved clients, such as: Level 4 facilities for adults and juveniles that are prepared to address such behaviors as escape/ abscondence risk, sex offenses, drug offenses and gang affiliation.
- Regional centers should be provided the resources and expertise to provide training on issues related to judicially involved persons who are developmentally disabled for all court personnel, including: judges, district attorneys, public defenders, court investigators and probation officers. Training should be provided in partnership with advocacy groups, the state and local Bar Associations, and other relevant groups.
- A brochure for law enforcement personnel should also be developed, as a tool for identifying and communicating with persons with developmental disabilities and for accessing regional centers. Sections of the Welfare and Institutions and Penal Codes should be included to provide lawyers and judges with a quick reference guide when regional center consumers' cases come to court. Among those sections are Penal Code Sections 1001.20, 1367, 1369, 1370.1-1370.4, 1600, and 1601, and Welfare and Institutions Code Section 6500.
- Annual training of all case management staff in provision of services for forensically involved consumers should be offered. The Valley Mountain Regional Center forensic training manual is one good resource for this training.

A comprehensive, uniform curriculum for use with regional center staff, service providers, and the community should be developed and disseminated.

Staff involved in residential and clinical treatment programs (especially staff and administrators at individual drug programs), sex therapists, and staff of residential facilities which are or may be resources for forensically involved consumers should be primary targets for training efforts.

- Develop additional resources, services and supports, such as: treatment for substance abuse, anger management and sex offenders. Develop employment programs for consumers to decrease their need to engage in crime to make a living, such as drug dealing and prostitution.

In addition to the listed key elements of service delivery, the following additional recommendations are made:

- Obtain support from the Department of Developmental Services with identification of key players to build and maintain cross-systems coordination.
- Create a standing ARCA Committee to focus on forensic issues, to support regional centers in implementing recommendations and to serve as a contact group for interagency coordination and statewide advocacy.
- Clarify and amend, if necessary, confidentiality requirements to provide information sharing with police, jails or prison, in order to facilitate early identification of regional center consumers who become judicially involved.

Comprehensive Assessment and Evaluation

- Add to the core staffing formula a position description for a forensic liaison at each regional center. The description should state the responsibilities for the position, and skills and experience needed
- A multi-disciplinary team to assist service coordinators and court personnel with a more comprehensive understanding of the forensically involved consumer should be part of each regional center's staff. The team should include specialized experts, such as a forensic psychologist, forensic psychiatrist, clinical social worker, residential resource specialist, and legal advocacy specialist.
- Improve identification of persons with developmental disabilities in all incarceration settings (prisons, county and local jails, juvenile halls, youth camps, and California Youth Authority). There are several ways in which this may be approached:

- Direct Assessment. Regional center psychologists who give psychological evaluations to help determine regional center eligibility should be used in jail and prison settings to help determine regional center eligibility for prisoners who have been tentatively identified as having a developmental disability. For example, in Los Angeles County, several vendored psychologists do go into the County Jail to assess for eligibility and incarcerated juveniles are brought by sheriffs to regional centers for psychologists to perform eligibility evaluations.
- Regional center psychologists should be involved in making contributions to Individual Program Plans to help address forensic issues for consumers who are involved with the legal system. Regional center psychologists should also be trained to perform evaluations for competency to stand trial. This should help ensure that consumers are fairly and competently assessed.
- Computer Matching. Perhaps most important for reliably identifying those inmates who are already regional center consumers, a system of computer matching, using data bases from regional centers and law enforcement must be established. Welfare and Institutions Code 4514 requires that identification of persons as regional center consumers must be confidential. However, under paragraph 4514 (q), an exception is noted: "To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice." It may be argued that computerized database matching for the identification of regional center consumers in jail is, indeed, "necessary to the administration of justice."

Prevention and Recidivism

- Develop an assessment instrument for use by regional center staff and service providers that can be used for early identification of consumers at-risk for becoming forensically involved. Staff and service providers should be trained to utilize the instrument.
- Services should include early identification of consumers detained in juvenile detention and probation camps, jails or prisons and to assist with

development of specialized programs for these consumers during their incarceration and after their release to the community.

- Regional centers should collaborate with generic community agencies to develop programs and services to prevent consumers with developmental disabilities from becoming involved or re-involved in criminal activities. Technical assistance may be provided by regional centers to improve services provided by other agencies in order to help meet the special needs of persons with developmental disabilities. Partnerships with schools, the department of children and family services, probation department, CYA, department of corrections, including parole, and the department of mental health are particularly important for this effort.
- Training should also focus on prevention in high risk populations. These groups include people with mild mental retardation or borderline intellectual functioning, particularly those who will live in less structured, independent settings.
- Parole and probation departments should be encouraged to develop specialized caseloads for developmental disabilities. Officers in these departments typically have very high caseloads, so that the individual attention which is often needed both to make appropriate recommendations and to provide monitoring and follow-up services to help prevent recidivism for persons with mental retardation is not practical. Specialized caseloads would enable a small number of officers to gain knowledge of and experience with developmental disabilities. Smaller caseloads for these specialists should be part of this effort.
- Advocacy should be provided in court for at least monthly face-to-face contacts with probation officers, when consumers are placed on probation or on dual-agency (i.e. regional center and Probation Department) diversion. These reminders of consequences for non-cooperation with court-ordered terms may be helpful in preventing recidivism. Courts should be requested to make orders that require cooperation with regional center services, so that consumers may not simply refuse to participate in clinical treatment or moderately restrictive residential placement. “Scared straight” programs may also be helpful in teaching or reminding consumers about consequences for illegal activities. Specialized forensic teams and/or

multidisciplinary teams located at regional centers should be available for at risk consumers.

Interagency Collaboration

- Interagency collaboration is necessary to address the multi-faceted issues facing the forensically involved population. Participating organizations and systems need to develop inter-agency agreements to share client data, resources, expertise; develop and expand resources; engage in advocacy and cross training. Possible participants include: mental health, public guardians, school districts, child protective services, substance abuse and other specialized treatment professionals, probation, parole, law enforcement, prosecutors, public defenders, and judges.
- Formation of a multi-agency advisory board, such as the one that meets regularly with the SCLARC Forensic Project, is one good way to begin to achieve these partnerships. Members of such boards may work together to identify and address gaps in the different service systems.

Program Planning and Resource Development

- Residential placements that are the least restrictive living environments for persons with developmental disabilities who are convicted of a crime or who are diverted from the court system because of likely criminal involvement should always be sought, consistent with public safety.
- Escape/Abscondence homes should be designed to meet the requirements of general forensic homes and to address the possibility that consumers may attempt to leave undetected and/or flee. Alarm systems, delayed egress systems, and staff trained in non-violent physical management procedures may be considered for these homes.
- In some cases, living environments need to be locked. Even when a more restrictive placement is not clinically recommended by specialized regional center assessment teams, it may be necessary to have somewhat restrictive residential options in order to give the court an alternative to even more restrictive placements (e.g. prisons).
- A continuum of adult and juvenile residential facilities is identified as the

most pressing need by regional centers. Each regional center should compile and maintain a listing of vendored residential facilities that are appropriate for various categories of offenders, such as drug offenders and those with a gang affiliation.

- Regional centers need to work together to develop and share specialized residential resources when appropriate (e.g., for some gang associate offenders). The statewide search procedure designed to locate residential services for hard-to-place consumers is time consuming and ineffective.
- Forensic homes should be capable of managing severe behavior problems (e.g. aggression toward others), provide intensive therapeutic milieu and treatment, and the home's staff must understand and cooperate with probation, parole, and court requirements.
- Homes for sex offenders must be able to comply with laws and court mandates for registration of sex offenders and must be able to ascertain the whereabouts of residents at all times. The homes must also have a working relationship with one or more sex therapy providers to ensure follow-up with treatment recommendations and to ensure transportation to and from any clinic appointments.
- Homes for drug offenders may be of two types. (1) Staff of residential treatment facilities, some of which are operated by County Departments of Mental Health, must be trained to improve services to persons with mental retardation. (2) Some drug offenders may need locked facilities, at least for a period of time. Persons convicted of drug offenses may also live in regional center vendored residential facilities and receive outpatient services. These homes must have a working relationship with one or more drug therapy providers to ensure follow-up with treatment recommendations and to ensure transportation to and from any clinic appointments.
- Homes for gang affiliation should be located in areas low in gang activity. Persons with developmental disabilities may be subject to social pressure from gang members and may not have the psychological resources to resist enticements or threats to engage in criminal activity. For these persons, it is mandatory that they live in areas away from gang influence, at least away from gangs with which they have previously been associated. These homes must also meet the requirements of general forensic homes.

Services and Supports

Regional centers should develop effective services and support for consumers in need of specialized treatment related to their involvement with the criminal justice system.

- Employment and other day programs that have expertise in working with this population should be developed. Advocacy should be provided in court to request that court-monitored terms of alternative placement such as diversion or probation are selected as options and that a requirement that the consumer participate in a structured employment or other day program is included. For school-aged consumers, regular attendance at school may be ordered by the court. AB 3632 and the Hughes Bill should be used, when appropriate to ensure effective mental health and behavioral treatment is provided in school.
- Anger management, drug treatment, sex therapy and other clinical treatment programs should be identified and developed. These programs may be particularly useful in addressing underlying causes of behavior that places the consumer at risk of re-arrest.

Legislation

The following legislation is recommended:

- Funding for regional centers to establish effective forensic programs that address the issues and have the components that have been outlined in this report.
- Require an annual report from the Department of Developmental Services to the California Legislature regarding community-based offenders and use of PC 2684.
- Establish funding and timelines for development of residential alternatives to prison and developmental centers for mentally retarded offenders.
- Mandate or clarify existing law to allow that regional centers may share databases in order to identify prisoners with developmental disabilities in county jails.

- Expand the diversion statute (PC 1001.20) to include, at the discretion of the judge, non-violent felonies.
- Seek legislation that requires that an advocate or other person who knows the developmentally disabled criminal suspect and/or is experienced in communicating with persons with mental retardation be present during any interrogation by law enforcement. England and Australia now have such laws (and the Missouri legislature has drafted one) to exclude confession evidence obtained during police interrogations without the presence of a qualified support person for the developmentally disabled criminal suspect. At a minimum, legislation should be passed which requires that custodial interrogations be audio-taped or videotaped to help reduce the harm caused by false confessions; two states--Minnesota and Alaska--currently have such law. Persons with mental retardation do not understand Miranda warnings or other statements and their rights are particularly susceptible to being coerced or otherwise influenced to give false confessions.
- Establish specialized caseloads for both Parole and Probation departments to ensure that adequate services are provided to persons with mental retardation by these departments.
- Introduce legislation to require that peace officer training provided by POST (Commission on Peace Officer Standards Training) be expanded so that it goes beyond the basic training course which is currently offered, and all peace officers receive ongoing training in developmental disabilities.

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