



Justice Services Policy

Version 1.0

**Office of the Senior Practitioner
NSW Department of Ageing, Disability and Home Care
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Document approval

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1 Background

1.1 People with an intellectual disability in, or at risk of, contact with the criminal justice system

The Justice Services Policy has been developed in response to the over-representation of children, young people and adults with an intellectual disability¹ in the criminal justice system as both offenders and victims.

People with intellectual disability comprise between 1% and 3% of the NSW population² and while research figures are often debated, there is general agreement that a significant proportion of adults in prison have an intellectual disability. Recent studies focusing on young people in NSW indicate that approximately 13% of those in custody³ and 11% on community orders⁴ could have an intellectual disability.

According to the 1996 NSW Law Reform Commission Report 80⁵, offenders with an intellectual disability are treated differently to non-disabled offenders in the criminal justice system. They are more likely to:

- Be arrested, questioned and detained for minor infringements
- Come before the Courts due to Police prosecuting cases where the offender appears 'abnormal or possibly dangerous'
- Confess to a crime they have not committed
- Not understand the meaning of their right to silence
- Confess rather than plea-bargain
- Be refused bail
- Receive custodial sentences due to the lack of alternative placements in the community
- Serve longer sentences or a greater percentage of their sentence before being released on parole
- Be vulnerable in the main gaol population and therefore be more likely to be housed in maximum security facilities for 'protection'.

People with an intellectual disability are also over-represented as victims of crime, particularly sexual assault⁶. In addition, they are in varying degrees vulnerable to fraud, abuse, discrimination, and social marginalisation. This vulnerability can mean that they are less able to protect themselves from crime, physically remove themselves from it, or minimise any impact.

1 In recognising intellectual disability for eligibility purposes DADHC uses the international definition of intellectual disability as an IQ of two standard deviations below the mean with significant deficits in adaptive behaviour skills; and as manifest in the developmental period prior to 18 years. This includes those with Acquired Brain Injury (ABI).

2 Simpson, J., Martin, M., Green, J. *The Framework Report* (2001) section 2.3, page 8

3 NSW Department of Juvenile Justice (2003), *NSW Young People in Custody Health Survey. Key Findings Report*

4 Kenny, D.T., Nelson, P., Butler, T., Lennings, C., Allerton, M., and Champion, U. (2006). *NSW Young People on Community Orders Health Survey 2003-2006: Key Findings Report*. The University of Sydney.

5 *NSW Law Reform Commission, Report 80 (1996) – People With an Intellectual Disability in the Criminal Justice System*

6 Ibid

The Law Reform Commission report also recognised that people with an intellectual disability who come into contact with the criminal justice system are at an increased risk of further contact due to the lack of:

- Early intervention and prevention programs
- Adequate access to support mechanisms
- Appropriate responses to their specific needs
- Systemic and coordinated approaches to assessment and the provision of community support services.

As the primary provider of services to people with an intellectual disability in NSW, the Department of Ageing Disability and Home Care (DADHC) has developed the *Justice Services Policy* to guide service delivery to Service Users who are in, or at risk of⁷, contact with the criminal justice system as victims, witnesses or alleged offenders.

1.2 NSW Interagency Service Principles and Protocols

Led by DADHC, the Senior Officers' Group on People with an Intellectual Disability and the Criminal Justice System (SOG) was established to improve the whole-of-government coordination of services provided by NSW government agencies for people with an intellectual disability in, or at risk of, contact with the criminal justice system.

The SOG developed the *NSW Interagency Service Principles and Protocols* that aimed to 'improve the planning, coordination and delivery of services to people with an intellectual disability and to improve the operation and responsiveness of the criminal justice system to the circumstances of people with an intellectual disability.'

The *NSW Interagency Service Principles and Protocols* identify the commitments, roles, and responsibilities of the various agencies in relation to key points in the criminal justice system. Agencies are required to report annually on their progress as part of their Disability Action Plans.

NSW Interagency Service Principles and Protocols have been agreed to between the following Government Departments:

- NSW Attorney-General's Department (AGD)
- NSW Department of Ageing, Disability and Home Care (DADHC)
- NSW Department of Corrective Services (DCS)
- NSW Department of Education and Training (DET)
- Housing NSW
- NSW Health (including Justice Health)
- NSW Department of Juvenile Justice (DJJ)
- NSW Police Force.

⁷ 'At risk' of contact or involvement with the criminal justice system can range from behaviour that has escalated from challenging to potentially offending i.e. if reported, could result in charges being laid; to being at risk of further involvement in the criminal justice system through repeated offending behaviour. Being 'at risk' could also apply to people whose behaviour puts them at risk of becoming a victim of crime.

2 Statement of Purpose

The *Justice Services Policy* has been developed to:

1. Provide a framework for disability service providers that will build workforce capacity and guide responsive and appropriate service provision to Service Users who are children, young people or adults with an intellectual disability in, or at risk of, contact with the criminal justice system whether they are victims, witnesses or alleged offenders.
2. Improve the development of, and access to, programs and services for Aboriginal and culturally and linguistically diverse (CALD) children, young people and adults with an intellectual disability in, or at risk of, contact with the criminal justice system whether they are victims, witnesses or alleged offenders.
3. Provide a policy context for the Criminal Justice Resource Manual (2009)
4. Implement DADHC responsibilities under the NSW Interagency Service Principles and Protocols.

3 Position Statement

Service providers have a responsibility to ensure that people who receive disability services (Service Users) are protected from exploitation, abuse, neglect and unlawful and degrading treatment. This policy recognises that many disability Service Users require service provision that will support them to traverse the various stages of the justice system whether they are a victim, witness or alleged offender.

This Service provision will include:

1. The timely provision of information and support that will enable the Service User to exercise their rights under law, including those who are in, or at risk of, contact with the criminal justice system as victims, witnesses or alleged offenders.
2. Respect for the individual needs, strengths and goals of the Service User as identified through the individual planning/case management process and based on a current and comprehensive assessment.
3. Responsive assessment and planning for all Service Users. This includes recognising the specific needs of children and young people; the cultural and community needs of Aboriginal Service Users and the needs of Service Users from CALD backgrounds.
4. Recognising and addressing the needs of Service Users who have dual or multiple diagnoses such as intellectual disability and mental health and/or problematic drug and alcohol issues.
5. Developing strategies to promote the acceptance of services and maintain the engagement of Service Users in order to support them to learn new skills and establish more positive interactions in the community.
6. Providing information and training on intellectual disability to government departments, funded services and other agencies who are involved with the Service User as required.

4 Target Group and Scope

The target groups for this policy are all children, young people and adults with an intellectual disability in NSW including those with dual or multiple diagnoses, who require disability services and who are:

- In, or at risk of, contact with the criminal justice system as victims, witnesses or alleged offenders
- In the process of making a *Service Request* to DADHC
- Referred to DADHC by their family/carer or other Government department, agency or service provider
- A child or young person with an intellectual disability who is in, entering or leaving an out of home care placement and is identified as being in, or at risk of, contact with the criminal justice system as either a victim or an alleged offender.

The key points identified for contact with the criminal justice system are when a Service User:

- Has an identified need for early intervention that will help minimise the risks of potentially offending behaviour
- Has become, or risks becoming, a victim of crime
- Has dealings with the Police (warnings, cautions or arrest)
- Is involved in Court processes as a victim, witness or offender
- Is held on remand or is given/completed a custodial sentence
- Is issued with a community based order or Section 32 Orders under the *Mental Health (Forensic Provisions) Act 1990* (NSW)
- Has an identified need for support to integrate/re-integrate into the community on release from a correctional or detention centre.

Identification and referral for disability services for a Service User who is in, or at risk of, contact with the criminal justice system may come from:

- DADHC
- Family/Carers of the person involved
- Advocates
- Police
- Courts
- Legal Aid or other legal representatives
- Department of Juvenile Justice
- NSW Health (Justice Health)
- Mental Health Review Tribunal
- Department of Corrective Services (Statewide Disability Services or Community Offender Services)
- Department of Community Services

- Intellectual Disability Rights Service or the Criminal Justice Support Network
- Funded Disability Services.

The *Justice Services Policy* applies to all aspects of the planning, administration and delivery of DADHC operated services and is also provided to support the work practices of DADHC funded services.

The *Justice Services Policy* is supported by the *Criminal Justice Resource Manual (CJRM)*. The CJRM is a practice guide for DADHC staff, which is also provided as a resource for DADHC funded services.

5 Policy Objectives

The objectives of this policy are that children, young people and adults with an intellectual disability in, or at risk of, contact with the criminal justice system are supported to:

1. Reduce their contact with the criminal justice system through improved identification, assessment and earlier intervention.
2. Access representation and/or support services that will ensure they are treated fairly and justly when they come in contact with the criminal justice system as a victim, witness or alleged offender.
3. Obtain appropriate recognition and response to their intellectual disability and any cultural or linguistic needs in all stages of the criminal justice process.
4. Access available and culturally appropriate diversionary options away from detention or custody and into more appropriate support and treatment options.
5. Integrate/Re-integrate into the community on release from custody by being able to access case management support, suitable accommodation and culturally appropriate services that will help minimise the risk of re-offending.
6. Access services and support that will recognise their strengths and meet their individual needs and goals, including their community and cultural needs.

6 Principles

The Justice Services Policy is guided by the following principles:

1. Rights for people with an intellectual disability

Recognise that all Service Users have the same fundamental human rights as other people and will be supported to understand and exercise their rights under law whether they are a victim of a crime, a witness or an alleged offender.

2. Prevention and early intervention

Undertake a needs assessment and develop services for the person with an intellectual disability at the earliest possible time in order to minimise potentially risky

or offending behaviour. This includes working with other agencies to identify children, young people or adults who might benefit from disability services. These may be potential victims of crime or those who display behaviours that could develop into offending behaviour.

3. Recognition of the specific needs of children and young people

Ensure that the specific needs, safety, welfare and wellbeing of children and young people are prioritised in the provision of support and services and apply this principle in any interagency collaboration.

4. Strengths-based practice

Work with the individual, their families and/or carers in a way that acknowledges and incorporates their intrinsic capacity and resources, and builds upon these strengths to change or improve their situation.

5. Person-centred planning and family focused approach

Identify the goals and aspirations that are most important to the individual, their family and carers and ensure that these are included in the support planning process to guide the most appropriate service provision.

6. Fair access and equity

Ensure that all people have the same access to services and that service provision is responsive to the particular needs and circumstances of Aboriginal people and those from CALD backgrounds.

7. Flexibility

Provide services in a way that best meets the needs of the individual child, young person or adult and their families and/or carers. Lasting behaviour change for people with a history of offending behaviour will require a commitment to regular reviews of the Service User's needs and is likely to involve flexible service delivery over a sustained and lengthy period.

8. Collaborative working relationships

Work in partnership with non-government service providers and other government departments and agencies to coordinate appropriate responses across the service system in order to better meet the needs of all people with an intellectual disability, including those with dual or multiple diagnoses who are in, or at risk of, contact with the criminal justice system.

7 Legislative, Policy and Operating Contexts

7.1 Legislative Context

The *Disability Services Act 1993* (NSW) provides for the funding and provision of disability services and sets out the standards which must be applied in the design, administration and delivery of services. This legislation supports the equal rights of people with disabilities and provides a basis for ensuring that their specific needs are met.

The legislation requires that services must be provided in a way that meets the individual's needs and personal goals (Standard 2); that the right to privacy, dignity and confidentiality is respected (Standard 4); and that each person with a disability is supported to participate in the life of the community (Standard 5).

Relevant Commonwealth and NSW legislation that may also impact on a Service User who is in, or at risk of, contact with the criminal justice system, can include:

- *Anti-Discrimination Act 1977*
- *Bail Act 1978*
- *Child Protection (Offenders Registration) Act 2000*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Children (Community Service Orders) Act 1987*
- *Children (Criminal Proceedings) Act 1987*
- *Children (Detention Centres) Act 1987*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993*
- *Crimes Act 1914 (Cth.)*
- *Crimes Act 1990*
- *Crimes (Administration of Sentences) Act 1999*
- *Crimes (Forensic Procedures) Act 2000*
- *Crimes (Sentencing Procedure) Act 1999*
- *Criminal Procedure Act 1986*
- *Criminal Records Act 1991*
- *Disability Discrimination Act 1992 (Cth.)*
- *Disability Services Act 1986 (Cth.)*
- *Disability Services Act 1993*
- *Disability Service Standards*
- *Freedom of Information Act 1989*
- *Guardianship Act 1987*
- *Health Records and Information Privacy Act 2002*
- *Human Rights and Equal Opportunity Commission Act 1986 (Cth.) Schedules 4 & 5*
- *Law Enforcement (Powers and Responsibilities) Act 2002*
- *Mental Health Act 2007*
- *Mental Health (Forensic Provisions) Act 1990*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Protected Estates Act 1983*
- *Residential Tenancies Act 1987*
- *Summary Offences Act 1998*
- *Victims Rights Act 1996*
- *Victims Support and Rehabilitation Act 1996*
- *Young Offenders Act 1997.*

7.2 Policy Context

7.2.1 New South Wales

A New Direction for NSW: State Plan 2006 - 2016

The New South Wales Government State Plan outlines the objectives for NSW public sector agencies until 2016. Priorities established in the plan that are relevant to this policy include:

R1 - Reduced rates of crime

R2 - Reducing re-offending

F2 - Increased employment and community participation for people with disabilities

F4 - Embedding prevention and early intervention into government service delivery

Stronger Together: A new direction for disability services in NSW 2006-2016

Stronger Together is a ten-year plan to provide greater assistance and long-term practical solutions for people with a disability and their families. Stronger Together provides a significant increase in funding for disability services. Objectives include:

- Making access to disability services fairer and more transparent
- Helping people remain in their own home, linking services to need
- Creating more options for people living in specialist support services
- Ensuring the system is sustainable.

Better Together: A new direction to make NSW Government services work better for people with a disability and their families 2007-2011

This whole-of-government strategy aims to improve coordination, planning and delivery of agency services for people with a disability and their families in NSW. The strategy identifies eight priority areas for improvement, including:

- Early intervention
- Making it easier for people to get the therapeutic services they need
- Strengthening services and support for people with autism and their families
- Improving access to community support and specialist accommodation
- Supporting and recognising carers
- Working with Aboriginal families and communities.

7.2.2 DADHC Policies and Procedures

The *Justice Services Policy* operates in the context of other DADHC policies and procedures which can be found on the DADHC staff Intranet and public website: <http://www.dadhc.nsw.gov.au>

7.2.3 Interagency Agreements

The *Justice Services Policy* for DADHC operates in the context of the following interagency agreements:

- *Memorandum of Understanding between the Department of Community Services and the Department of Ageing, Disability and Home Care on Children and Young Persons with a Disability* (2003 – Under review)
- *NSW Housing and Human Services Accord (the Accord) - Between the Department of Housing and NSW Human Service Agencies* (2007)
- *Agreement on the Interagency Care and Support Pathway for People With Acquired Brain Injury* (2008)
- *Senior Officers Group on Intellectual Disability and the Criminal Justice System – NSW Interagency Service Principles and Protocols* (2008).

7.3 Operating Context

DADHC funds and directly provides a wide range of programs and services that enable people with a disability to have the opportunity to participate in community life. Many of these services, such as behaviour support and case management, assist people who are in, or at risk of, contact with the criminal justice system whether they are involved as victims, witnesses or alleged offenders.

Services that are delivered directly by DADHC:

Primary services include respite, accommodation and living skills development; case management and coordination, referral to other disability and generic services; counselling, therapeutic and behaviour support services delivered through Community Support Teams (CST).

Secondary services are provided by the Regional Behaviour Intervention Teams (RBIT). They involve the provision of behaviour support to people with more complex needs who are likely to require services for a period greater than six months.

Tertiary services are provided by the Statewide Behaviour Intervention Service to government and non-government agencies requiring consultation, assessment, program development and training rather than direct clinical intervention.

In addition, DADHC provides a range of specialised accommodation and support models through the Community Justice Program for people with an intellectual disability who are exiting correctional and juvenile detention centres.

7.3.1 Office of the Senior Practitioner

The Office of the Senior Practitioner (OSP) has been established under the DADHC Stronger Together to provide leadership and the coordination of services to clients with complex needs and challenging behaviour.

The OSP:

- Establishes and reviews policy and practice guidelines relating to the provision of support to adults, children and young people with challenging behaviour

- Identifies training and professional development requirements for behaviour support and criminal justice practitioners in the sector
- Ensures appropriate supervision and leadership are provided to psychologists working within DADHC
- Establishes and reviews policy and develops best practice guidelines for working with people who have patterns of offending behaviour
- Establishes and monitors the use of restricted practice approval mechanisms by DADHC and the application of such mechanisms across the disability sector
- Establishes close links and working relationships with stakeholders relevant to the specialist support of challenging behaviour and offending behaviour.

The OSP also oversees three specialised units that work with Service Users with complex needs and challenging/offending behaviour. These include:

Statewide Behaviour Intervention Service

The Statewide Behaviour Intervention Service (SBIS) is a tertiary level service which provides clinical consultation to government and non-government agencies working with people who have an intellectual disability and significant challenging or offending behaviour.

NSW Integrated Services Project for Clients with Challenging Behaviour

The Integrated Services Project (ISP) is a project administered by DADHC in partnership with NSW Departments of Health and Housing.

The ISP coordinates cross-agency responses for approximately 24 adult clients a year who have been identified from across the service system as having complex needs and challenging behaviour.

The project provides a range of additional time-limited services to clients and their support network including comprehensive assessment, behaviour support, supervision, case coordination and accommodation. All services provided by the project will be progressively phased out as local service responses are established.

Community Justice Program

The Community Justice Program (CJP), formerly known as the Criminal Justice Program, provides specialised accommodation along with pre- and post-release clinical and case management services to people with an intellectual disability exiting custody.

A person who is referred to the CJP must be eligible to receive DADHC services prior to being considered under the specific eligibility criteria of the CJP. This includes ongoing contact with the criminal justice system that results in time spent in custody; risk of re-offending; and a lack of service availability.

8 Service Framework

8.1 Early Intervention and Prevention

Intervention to prevent early contact with the criminal justice system reduces the risk of a person with an intellectual disability developing more entrenched patterns of offending behaviour. Early intervention can also strengthen protective behaviours that may help reduce the risks of becoming a victim of crime.

While prevention and early intervention services are applicable across the life span, they are particularly important for children and young people as a means of diverting them from the juvenile justice system and reducing the likelihood of eventual involvement in the adult correctional system.

The early identification of those children and young people at risk of contact with the juvenile justice system, and the facilitation and provision of timely and appropriate services to meet their and their families/carers needs, will have a greater impact on minimising re-offending in the longer term.

Embedding a prevention and early intervention approach within DADHC work practices requires a clear understanding of the risk factors associated with offending behaviour. While risk factors alone do not always lead to involvement with the criminal justice system, the likelihood of contact increases with the greater number of risk factors that apply.

Current research identifies eight central factors for risk of offending.⁸ These include:

- A history of offending
- Anti-social attitudes
- Anti-social personality features (such as impulsivity)
- Anti-social peers
- Anti-social and negative family/marital relations
- Substance abuse
- A lack of educational or employment opportunities
- A lack of leisure and recreational activities.

A meta-analysis⁹ exploring the risks of offending in young people¹⁰ also highlighted the following factors as having an impact on the likelihood of offending:

- Mental disorder
- A large number of out-of-home placements
- Low scores on measures of academic achievement
- Intellectual disability or history of special education
- A history of abuse

8 Andrews, D. A., & Bonta, J. L. (2006). *The Psychology of Criminal Conduct* (4th ed.). Cincinnati, Ohio: Anderson.

9 Definition of meta analysis: The process or technique of synthesising research results by using various statistical methods to retrieve, select, and combine results from previous separate but related studies

10 Cottle, C. C., Lee, R. J., & Heilbrun, K. (2001). *The prediction of criminal recidivism in juveniles: A meta-analysis*. *Criminal Justice and Behavior*, 28(3), 367-394.

- Having a single parent
- Poor school attendance
- Parental mental disorder.

At a State-wide level DADHC will:

1. Continue to identify the factors which have contributed to the involvement of people with an intellectual disability in the criminal justice system and develop the evidence base for appropriate service provision. This will include identifying and responding to the specific risk factors for children, young people and people from Aboriginal and CALD backgrounds.
2. As much as possible, provide information in ways that are culturally accessible and in appropriate formats and languages.
3. Provide information and training to other government departments and agencies to assist them to identify people with an intellectual disability and make appropriate service referrals to DADHC and other disability service providers.
4. Improve liaison and case coordination with the Departments of Community Services and Juvenile Justice in relation to children and young people who have an intellectual disability who are in, or at risk of, contact with the criminal justice system.
5. Collaborate with the Department of Education and Training to:
 - (i) Identify students with intellectual disability and make referrals to DADHC and other service providers.
 - (ii) Facilitate access for the student with intellectual disability to appropriate training and vocational programs.
6. Work with the Mental Health Review Tribunal to coordinate appropriate services for people with an intellectual disability who become 'Forensic Patients' under s 42 of the *Mental Health (Forensic Provisions) Act 1990* (NSW).
7. Provide training opportunities for DADHC staff on criminal justice issues and the risk factors leading to contact with the criminal justice system. Training will include appropriate prevention and early intervention responses.

At a Regional level DADHC will:

1. Provide a timely response to a Service Request from a potential or existing DADHC Service User who is in, or at risk of, contact with the criminal justice system. This includes providing information, support or further referral to the person with an intellectual disability, their families and/or carers that will assist them to access disability or other services.
2. Recognise that service provision to a person in the criminal justice system will require an immediate response. Shorter timeframes within all areas of the justice system often result in a Service User being without support or services that might prevent them from being disadvantaged.
3. Undertake timely needs assessment of children, young people and adult Service Users, including the consideration of the risk factors leading to contact with the criminal justice system.
4. Provide case management services to Service Users that have been identified as at risk of engaging in offending behaviour. Case management services will

include the coordination of required assessments, individual planning, implementation and review. Case management services will also include liaison and support for the Service User in relation to their involvement with the criminal justice system.

5. Recognise the need to promote and encourage the acceptance of services. This will involve developing strategies to overcome resistance and maintain engagement with Service Users who may have never previously received services or support.
6. Develop close working relationships at a local level with the Department of Education and Training to foster an improved and coordinated service delivery to students with an intellectual disability.
7. Establish collaborative working relationships at a local level with the Departments of Community Services, Juvenile Justice, Corrective Services (Community Offender Services) and NSW Police in relation to children and young people with an intellectual disability who are in, or at risk of, contact with the criminal justice system.
8. Where possible, include Aboriginal workers or culturally appropriate support people in planning and support for Aboriginal Service Users and Service Users from CALD communities.
9. Work collaboratively with government agencies and DADHC-funded service providers to coordinate responses and the provision of support services that will help prevent or limit progression through the criminal justice system by people with an intellectual disability.
10. Where there is a recognised need, make an application to the NSW Guardianship Tribunal for a Financial Management Order and/or the appointment of a Guardian to make decisions about accommodation and services for a Service User who is in, or at risk of, contact with the criminal justice system as a victim or an alleged offender.

8.2 Dealing with the Police

Children, young people and adults with an intellectual disability are particularly vulnerable when they come into contact with Police as victims, witnesses or alleged offenders. They may:

- Be less able to protect their interests
- Lack the resources to obtain the legal representation and support they may require
- Be considered an unreliable witness
- Be susceptible to leading questions during interviews
- Be unable to understand the legal implications of what they say to the Police
- Be less able to adequately respond to an allegation or understand a caution.

Consequently people with an intellectual disability who are alleged offenders may be more likely to be arrested, questioned and detained for minor public order offences and may be more likely to confess to an offence, regardless of whether they committed it.

Information and education about intellectual disability as well as interagency communication and collaboration at the local level is required to support the fair and

just treatment of people with an intellectual disability when they are in contact with the Police.

Improvements to Police identification, management processes and referrals of people with an intellectual disability will enable support to be arranged and will facilitate appropriate diversionary outcomes.

At a State-wide level DADHC will:

1. Develop training for DADHC staff about the legal rights of children, young people and adults with an intellectual disability when dealing with the NSW Police Force. This includes the roles and responsibilities of staff working with Service Users who come into contact with the Police.
2. Make this training package available to the disability sector.

DADHC will provide information and support the NSW Police Force to:

1. Develop and deliver disability awareness training for the Police operational and administrative staff.
2. Identify people with an intellectual disability and make appropriate service referrals.
3. Ensure that an appropriate support person is present in any Police interview of a child, young person or adult with an intellectual disability as required under the *Law Enforcement (Power and Responsibilities) Regulation 2005 (NSW)* in relation to 'vulnerable persons'.¹¹
4. Develop revised protocols for interacting with people with an intellectual disability, including making arrangements for a formal assessment of people considered to have an intellectual disability.
5. Participate in local area networks with other relevant agencies to coordinate timely and effective responses for people with an intellectual disability.

At a Regional level DADHC will:

1. Where the NSW Police Force refers a person to DADHC, enquiries should be made regarding services for which they may be eligible. These services may be provided by DADHC or by other disability or human service agencies.
2. Where appropriate, liaise with the NSW Police Force at the local level as part of the case management/individual planning process to identify and address the needs of particular Service Users that arise in relation to any behaviours of concern.
3. Develop local communication protocols with the relevant Local Area Command of the NSW Police Force in relation to Service Users that will both support DADHC case management services and facilitate appropriate responses by the NSW Police Force.
4. Provide information and support for Service Users about how to understand their legal rights and responsibilities and interact appropriately with the Police.

¹¹ See also: NSW Police Force, (February 2008), *Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence)*

8.3 Legal Representation and Support

Children, young people and adults with an intellectual disability who are involved in the criminal justice system have a right to legal representation in the same way that people without a disability do. Many Service Users who are interviewed by Police or go to Court may be disadvantaged in ways that people without a disability are not. They may not be able to:

- Follow what is being said by the Police or participate fully in court proceedings
- Know what 'right to silence' means in a Police interview
- Understand the importance of seeking advice from a Solicitor prior to being interviewed by Police or going to Court
- Understand their right to have an independent support person present in a Police interview and at Court.

At a State-wide level DADHC will:

1. Provide information about intellectual disability and the process of accessing DADHC Services for potential or existing DADHC Services Users to the NSW Judiciary, Attorney General's Department, Office of the Department of Public Prosecutions, Legal Aid and other legal representatives and Court services.
2. Provide information and training to staff about their roles and responsibilities in relation to supporting the Service User to obtain legal representation and a support person in a Police interview and/or Court appearance.

At a Regional level DADHC Staff will:

1. Provide information and support to the Service User to obtain legal representation and arrange a support person when they are being interviewed by Police or going to Court.
2. Provide written information to the Service User's Solicitor that will enable the Court to understand the impact of intellectual disability on the Service User's day to day life and the types of services that may be put in place to address the behaviour/s of concern.
3. With the Service User's permission, provide information about disability services and support to their Solicitor that will inform any proposal for diversionary options that may help secure fair and appropriate outcomes for the Service User.

8.4 Bail

If a child, young person or adult with an intellectual disability is charged with a crime it is essential that they are able to exercise the same rights as the rest of the community. This includes being able to apply for bail so that they can be released from custody as soon as possible.

At a Regional level DADHC Staff will:

1. Identify, and where appropriate, provide information and arrange services for Service Users that may enable them to be granted bail.
2. Support the Service User to meet their bail conditions.
3. Where appropriate, support the Service User to arrange with their Solicitor to make an application to change the bail conditions so that they are able to successfully comply.

8.5 Court Processes

Communication barriers and difficulty understanding Court proceedings can disadvantage people with an intellectual disability at Court.

This disadvantage is particularly significant for children and young people in the Children's Court and for Aboriginal people and people from CALD backgrounds with an intellectual disability across all Court (and Tribunal) jurisdictions.

DADHC is well placed to provide information and education to the criminal justice system, and Courts in particular, about the needs of people with an intellectual disability including the impact this may have on an individual's day to day life and behaviour.

Ensuring that legal practitioners and the Court are aware of the support and services available to a person with an intellectual disability will enable fairer and more appropriate outcomes for a person with an intellectual disability at Court.

At a State-wide level DADHC will:

1. Provide training and ongoing support to DADHC staff on the requirements of providing information to the Court that will ensure that the Service User is able to exercise their rights within the Court system.
2. Collaborate with the various stakeholders in the Court system to provide training and information to their staff about working with people with an intellectual disability and accessing disability services.
3. Work with Government departments, funded services and other relevant agencies to ensure that appropriately trained support persons are available for children, young people and adults with an intellectual disability in all Courts in NSW.

At a Regional level the designated DADHC officer will:

1. Provide information and support to Service Users who come before the courts about the legal system and proceedings and help them to prepare for Court.
2. Assist Service Users to obtain legal representation and arrange a support person to attend Court with them.
3. Provide relevant information to the court to support the fair and appropriate treatment of the Service User during proceedings. The information provided will include relevant factual information about the Service User, the day to day impact of their disability, their communication needs, service history, and services that are available to them should they be diverted from conviction and sentencing.
4. Work collaboratively with existing services at court such as Justice Health Community Liaison Officers, to ensure that people with an intellectual disability are identified and where appropriate are able to obtain access to disability services in a timely way.

8.6 Diversionary Options

DADHC service provision involves supporting Service Users to participate fully in the community. This participation includes being able to exercise their rights under law whether they are a victim, witness or alleged offender.

Supporting the Service User with offending behaviour to access culturally appropriate diversionary options (see Explanation of Terms) and alternative placements in the community can play an important role in determining whether they receive a custodial sentence or a diversion to more appropriate support and/or supervision in the community. This is particularly relevant for Service Users who are designated 'Forensic Patients' and who are going through Mental Health Review Tribunal (MHRT) processes.

In the local Court diversionary options such as that provided under Section 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) can assist those Service Users whose offending behaviour may be minimised by the provision of services and support.

At a Regional level the designated DADHC officer will:

1. Support the Service User to access services or representation that will provide them with the opportunity to secure a diversionary option from conviction and sentence.
2. Provide written information that will enable the Court to take into account the impact of a Service User's disability on their day to day life and the types of services and support that can realistically be put in place to minimise the behaviour/s of concern.
3. Work with relevant government agencies and DADHC-funded service providers at the local level to co-ordinate and deliver appropriate services. These services will aim to meet the needs of the Service User and provide possible alternatives to offending behaviour. Service provision will also help support a bail application and increase the likelihood of a non-custodial sentence for less serious criminal offences.

8.7 The Service User in Custody

Protection and support are needed to ensure that a child, young person or adult with an intellectual disability who receives a custodial sentence is treated fairly; provided with the services they require; protected from victimisation and is not placed at an undue risk of extended detention.

It is recognised that a Service User who is serving a custodial sentence in a correctional or detention centre will eventually return to their previous DADHC Region or access services in another DADHC Region post-release. For this reason, case coordination and pre-release planning in collaboration with relevant staff from the Departments of Juvenile Justice or Corrective Services, and Community Services (where they have involvement with a child or young person), will help ensure that the Service User is less likely to re-offend on exit from custody (See 8.9 - Reintegration into the community).

At a State-wide level DADHC will:

1. Provide DADHC staff with training and practice guidance in providing appropriate support to Service Users who are in detention or Gaol.
2. Establish and maintain working relationships with the relevant sections of the Departments of Community Services, Juvenile Justice or Corrective Services, NSW Health (Justice Health) and the Mental Health Review Tribunal to help facilitate effective support and pre-release planning to Service Users in detention or custody.
3. Collaborate with Corrective Services and Juvenile Justice staff on issues associated with supporting and accessing services for a person with an intellectual disability who is a potential or existing Service User. This may include providing information and/or training.

At a Regional level DADHC will:

1. Provide information and assistance to staff from the Departments of Community Services and Juvenile Justice or Corrective Services and NSW Health (Justice Health) about accessing disability services for a child, young person or adult with an intellectual disability.
2. Establish and maintain contact with the relevant staff from Corrective Services/Juvenile Justice and Justice Health in relation to the status and well-being of the Service User who is in custody or detention.
3. With consent and in accordance with NSW privacy laws and protocols,¹² provide relevant information about Service Users entering custody to the relevant sections of the custodial agency, including details of assessments, medical reports, treatment plans and services.
4. Work with the relevant staff of the Departments of Community Services, Juvenile Justice or Corrective Services, and NSW Health (Justice Health) to provide coordinated services and pre-release planning for a Service User prior to a parole hearing or prior to exiting custody.

¹² *Privacy and Personal Information Protection Act 1998 (NSW) and NSW Human Services CEO's Forum (1996): Information sharing for effective human service delivery – A Guide for Practitioners*

8.8 Community Based Orders

Services and support are required for children, young people and adults with an intellectual disability who receive community based orders, such as good behaviour bonds, community service orders or orders issued as a result of a successful application under section 32 of the *Mental Health (Forensic Provisions) Act 1990*.

This support should aim to assist the Service User to fulfil the terms of their order and minimise further contact with the criminal justice system.

At a State-wide level DADHC will:

1. Provide DADHC staff with training and practice guidance in providing appropriate support to Service Users who are required to comply with conditions of bonds or community service orders.
2. Establish and maintain working relationships with relevant staff from the relevant sections of the NSW Departments of:
3. Juvenile Justice and Community Services in relation to children and young people with an intellectual disability
4. Health (including Justice Health)
5. Corrective Services, particularly the Statewide Disability Service and Community Offender Services in relation to adults with an intellectual disability.
6. Working collaboratively will provide greater support and appropriate services for Service Users and will help them to comply with the conditions of their community based orders.

At a Regional level DADHC will:

1. Work cooperatively with government agencies and funded service providers to ensure that individual Service Users under court ordered community supervision are supported. These services will support the individual to live successfully in the community, address the offending behaviour and meet the terms of their order.
2. Undertake coordinated case management with relevant staff from the NSW Departments of Community Services and/or Corrective Services (including Community Offender Services) and Juvenile Justice, for Service Users who have been issued with a community based order.
3. Support Service Users to understand and comply with the terms of their order as part of the Individual Planning (IP)/case management process.

8.9 Reintegration into the Community

On completion of a custodial sentence or release to parole, there is an expectation that the child, young person or adult with an intellectual disability will have the resources and ability to integrate back into the community. Some individuals may have strengths and experience, e.g. a work history that could be utilised to help with this process. Many others, particularly children or young people, may never have experienced a sense of being (or feeling) 'integrated' in the wider community.

A coordinated inter-agency approach to release planning that seeks to minimise the risk of recidivism and provide sustainable outcomes in both the immediate and

longer term, is essential for children, young people and adults with an intellectual disability who are exiting custody.

At a State-wide level DADHC will:

1. Collaborate with other government departments and funded agencies to exchange information, expertise and training in order to develop best practice in planning and procedures for post-custody re-integration for people with intellectual disability in NSW.

At a Regional level DADHC will:

1. Maximise the chances of a Service User being able to successfully 'integrate' into, or reintegrate back into, the community by working collaboratively with local services and stakeholders. This may involve working with government and non-government services, and where appropriate, the families/carers and/or advocates of the Service User to ensure that planning and implementation of services takes place in a timely way.

8.9.1 Coordinated case management

At a State-wide level DADHC will:

1. Work to develop best practice standards and training in interagency case coordination for Service Users who are in, or at risk of, contact with the criminal justice system including working with Aboriginal and CALD communities and agencies.

At a Regional level DADHC will:

1. Work in collaboration with relevant NSW Government Departments such as Community Services, Juvenile Justice, Corrective Services (including Community Offender Services), NSW Health (Justice Health) and funded service providers to establish coordinated pre- and post-release planning, case management and clinical/behaviour support for Service Users who are exiting custody.
2. Work with disability employment services and vocational training agencies to support the Service User to participate in the workforce.
3. Seek the participation of culturally appropriate service organisations or support workers during pre- and post-release planning and in the implementation of services.
4. Ensure appropriate options and opportunities are provided for people with an intellectual disability who are Aboriginal or from CALD backgrounds.
5. Prioritise timely service provision and support to children and young people, in particular those entering or exiting out of home care who are in, or at risk of, involvement in the criminal justice system as either victims or offenders.

8.9.2 Accommodation

A stable living arrangement is a key factor for an individual who is exiting custody to integrate/re-integrate back into the community. Pre-release planning and assistance to return to, or secure, suitable accommodation and associated support services should be provided where required.

At a State-wide level DADHC will:

1. Continue to develop working arrangements and links with service providers to improve access to housing and support options for Service Users who are in, or at risk of, contact with the criminal justice system.
2. Continue to develop appropriate accommodation models to meet the particular support needs of Service Users who are in, or at risk of, contact with the criminal justice system.

At a Regional level DADHC will:

1. Work with service providers and other government agencies to support Service Users to return to or establish housing or support options upon exiting custody (including remand).
2. Work with Housing NSW, NSW Health (Justice Health) and the NSW Departments of Corrective Services and Juvenile Justice to identify and implement flexible and appropriate accommodation options for people with an intellectual disability

8.9.3 Specialist support for people who are exiting custody

At a State-wide level DADHC will:

1. Subject to program eligibility criteria, provide case management, clinical services, behaviour support and tailored accommodation through the Community Justice Program for people with an intellectual disability exiting a juvenile or adult correctional facility.

9 Policy Review Update

This Justice Services Policy will be reviewed in a 3-5 year cycle, as outlined in Section 5.1 of DADHC's *Framework and Guidelines for the Development and Review of Client Policies* (Community Participation Directorate - February 2004) or whenever changes to relevant legislation occur.

Under the Senior Officers Group on Intellectual Disability and the Criminal Justice System, NSW Interagency Service Principles and Protocols, participating agencies are required to report annually on the implementation of their responsibilities (see section 1.2).

DADHC has responsibility for reporting on its own activities under this Agreement and monitoring and reporting on the progress of the other agencies' responsibilities.

DADHC is also responsible for implementing an annual review of the Agreement for the first three years and biannual reviews thereafter.

Progress in relation to the aims, outcomes and principles set out in the Agreement and this Policy will be regularly monitored.

10 Explanation of Terms

Term	Explanation
<p>Behaviour Assessment</p>	<p>Behaviour assessment and analysis is the process of systematically gathering information which clearly identifies and defines each presenting-behaviour within the context of the whole-of-life of the Service User. This information is used to develop informed hypotheses which seek to explain the function the behaviour.</p> <p>A <i>Behaviour Assessment</i> seeks to understand the:</p> <ul style="list-style-type: none"> • Conditions under which an identified behaviour does or does not occur • Complexities of the support needs of the individual Service User across environmental contexts • Function of the behaviour for the individual Service User across environmental contexts • Actions that are likely to improve the quality and effectiveness of the behaviour support system
<p>Screening Assessment</p>	<p>A <i>Screening Assessment</i> is usually a short assessment or checklist which can be conducted to identify preliminary eligibility for service entry, and/or needs, preferences and risks. It can also identify if a more thorough assessment is required in a particular area.</p>
<p>Eligibility Assessment</p>	<p>An <i>Eligibility Assessment</i> is a formal process to determine whether a person meets DADHC's eligibility criteria for services. This involves gathering and analysing acceptable, recognised assessments and/or evidence of a person's cognitive and functional skills.</p>
<p>Needs Assessment</p>	<p>A <i>Needs Assessment</i> involves gathering, organising and analysing information to identify the level and extent of a person's functioning; determine their needs, preferences and risks; and identify intervention approaches and outcomes, in the context of their family and environment.</p>
<p>Risk Assessment</p>	<p>There is a fundamental distinction between:</p> <ul style="list-style-type: none"> • Assessment of risk/ management of risk • Assessment of behaviour/ provision of behaviour support. <p>Assessment of risk/ management of risk</p> <p>Service providers have a duty of care towards those who receive their service. Assessment of risk and risk management strategies should be in place to minimise or remove the risk of harm arising from activities or events across multiple domains in the Service</p>

Term	Explanation
	<p>User's life, e.g. health, nutrition, swallowing, mobility, transitioning etc.¹³</p> <p>Employers also must show reasonable care for the safety of workers. Risk management strategies are required in all designated workplaces under NSW Occupational Health and Safety legislation and guidelines.¹⁴ Additional DADHC Policies are relevant to the management of these risks.¹⁵</p> <p>Assessment of behaviour/ provision of behaviour support</p> <p>Risk evaluation and assessment should also be pivotal components of a comprehensive behaviour assessment. Risk management strategies associated with an identified behaviour should be included in a Behaviour Support Plan.</p> <p>Strategies developed only to manage an identified risk are not sufficient in themselves to fulfil all the requirements of behaviour support in the context of DADHC Policy.</p>
Bail	<p>The granting of temporary liberty to a person charged with a criminal offence. It may be granted by the police or by a court. Bail may have conditions attached to it, or may be unconditional. All decisions relating to the granting and conditions of bail are determined by the <i>Bail Act 1978</i> (NSW).</p>
Behaviour Support	<p>Behaviour support is a service delivered by a service provider, funded by DADHC, and which specifically addresses the behaviour support needs of the Service User or service system in accordance with relevant policies.</p> <p><i>A Behaviour Support Plan</i> (also referred to as a <i>Behaviour Management or Behaviour Intervention Plan</i>) outlines strategies designed to deliver a level of behaviour support appropriate to the needs of the Service User</p>
Case Management	<p>A collaborative process in which the person's needs are assessed and a plan is developed. Services and informal supports are agreed upon which are tailored to meet individual needs. Progress is monitored and reviewed. Case management is provided by professional staff with appropriate training, skills and experience.</p>
Community Based Sentences	<p>Sentences imposed by the court that are not primarily based in a prison setting but rather are carried out wholly, or to a large extent, in the community.</p> <p>Community based sentences are commonly divided into two main categories, custodial sentences that are alternatives to full time imprisonment, including periodic detention and home detention, and non-custodial sentences, such as good behaviour bonds and</p>

13 See: *Health Care Policy and Procedures* (March 2007).

14 *Occupational Health and Safety Act 2000; Occupational Health and Safety Regulation 2001.*

15 *Managing Client Risks* (January 2003); *Incident Management Policy* (June 2006, amended January 2007).

Term	Explanation
	<p>community service orders.</p> <p>Orders under section 32 of the <i>Mental Health (Forensic Procedures) Act 1990</i> are not considered a sentence as there is no conviction. It is considered a diversionary option (see below).</p>
<p>Community Offender Services</p>	<p>Community Offender Services (COS) was formerly known as the Probation and Parole Service.</p> <p>Offenders released to parole supervision are subject to conditions imposed by the State Parole Authority or other releasing bodies.</p> <p>Failure to abide by the parole conditions may result in revocation of the parole order and a return to gaol.</p> <p>Probation & Parole Officers are responsible for monitoring compliance with conditions of parole and those subject to supervised community orders.</p> <p>A case management plan is implemented which aims to address the offending behaviour and reduce the potential for re-offending.</p> <p>Probation & Parole Officers also provide assessments (<i>Pre-Sentence Reports</i>) to the Courts, as to the suitability of a person for community sentencing options.</p>
<p>Community Support Teams</p>	<p>DADHC delivers community based support to children, young people and adults with a disability through Community Support Teams. These teams are made up of professionals from various disciplines and are located across NSW in multiple locations.</p>
<p>Criminal Justice system</p>	<p>The criminal justice system is comprised of the Police, Courts, juvenile justice and correctional systems and all related agencies such as legal representatives and support services.</p>
<p>Culturally & Linguistically Diverse (CALD)</p>	<p>This term replaces 'Non English Speaking Background' (NESB) to refer to people whose first language and culture may not be that of the dominant language which in Australia is English.</p>
<p>Custodial Sentence</p>	<p>Sentences imposed by the court on a defendant restricting their liberty for a specific period of time through detainment at home or in an institution. This may include home detention, periodic detention and imprisonment in a correctional institution.</p>
<p>Diversionary Options</p>	<p>Diversion from the criminal justice system has a variety of meanings. From a prevention and early intervention perspective, diversion involves the provision of services and support to reduce the risk of the person with an intellectual disability coming into contact with the criminal justice system. For those people with an intellectual disability already in contact with the criminal justice system, diversion may include Police electing not to proceed with charges, local courts dismissing the offence due to the person's disability, or courts directing the person to participate in a program to address their offending behaviour prior or subsequent</p>

Term	Explanation
	to determination of guilt.
Independent Support Person	A person (ideally trained) who provides support to a person with intellectual or cognitive disabilities during legal processes such as Court, legal interviews or Police interviews. In NSW the Criminal Justice Support Network (CJSN) provides trained volunteers to act as independent support people. In some circumstances a friend or family member may act as a support person.
Individual Plan	The <i>Individual Plan</i> (IP) is a written agreement between the Service Provider and the Service User, their family, guardian, advocate and/or financial manager about the support services that will be funded or operated by DADHC to meet the identified goals of the Service User.
Intellectual Disability	DADHC uses the international definition of intellectual disability as an IQ of two standard deviations below the mean with significant deficits in adaptive behaviour skills; and as manifest in the developmental period prior to 18 years.
Local Area Command	A Local Area Command (LAC) consists of a number of Police Stations in a defined area where most officers work as general duties police, detectives, highway patrol officers and in traffic services. Each LAC is headed by a Local Area Commander.
Parole	<p>Parole is the discharge of a prisoner from custody and is granted once the prisoner has reached their earliest release date or parole is granted by the State Parole Authority.</p> <p>A <i>Parole Order</i> may be supervised by the Community Offender Services or Juvenile Justice Community Services. The offender may also be given an unsupervised Parole Order.</p> <p>There are usually conditions attached to the Parole Order, these conditions can include:</p> <ul style="list-style-type: none"> • Where the person lives • Who the person can associate with • Whether the person can drink alcohol • Which services the person must attend (e.g. mental health, substance abuse treatments etc.) • That the person must be of good behaviour and not re-offend. <p>If any of these conditions are breached the offender may be sent back to gaol for part of, or the remainder of, the sentence, or the offender may be sent a warning letter from the State Parole Authority.</p>
Pre-Release Planning	Pre-release planning is the case management process of needs assessment and service planning to prepare for the release of a Service User from custody.

Term	Explanation
	<p>Pre-release planning commences while the Service User is still completing their sentence. This process recognises that the period immediately following the release from gaol is the time when re-offending is most likely to occur.</p> <p>For DADHC Services Users who are adults exiting custody, pre-release planning will ideally take place in collaboration with the Department of Corrective Services, Statewide Disability Services team.</p>
Prevention and Early Intervention	<p>This involves action to prevent a problem emerging or to limit its impact by providing support at the earliest possible time. It is the key factor in supporting people with an intellectual disability to maximise their potential and can reduce the possibility of entrenched offending behaviour.</p>
Referral	<p>Referral is the process where-by a third-party recommends a person for service. The term used by DADHC is a Service Request.</p> <p>A person may be referred for DADHC services by contacting DADHC's Regional Intake points.</p> <p>DADHC provides referral services by giving information to people who contact Intake about accessing services external to DADHC, or making referrals to external services following the development of an Individual Plan.</p>
Regional Behaviour Intervention Teams	<p>RBIT's are secondary services located in DADHC Metro and Regional centres that provide behaviour support to people with more complex needs and who will require support longer than six months.</p>
Right to Silence	<p>The expression 'the right to silence' describes a group of rights which arise at different points in the criminal justice system. The right to silence covers the suspect's right to remain silent when questioned by police, in pre-trial and pre-hearing disclosures and where the accused person has a right to remain silent at the hearing or trial.</p> <p>In New South Wales, suspects cannot be compelled to answer police questions. At a hearing or trial, the judge or jury is prohibited from drawing adverse inferences where the accused has opted to remain silent during police questioning.¹⁶ This can be significant for people with an intellectual disability in situations where there is no legal representation or support person present when they are being questioned by Police.</p>
Service Users	<p>Children, young people and adults who are assessed as meeting the eligibility and prioritisation criteria for DADHC disability</p>

¹⁶ Law Reform Commission NSW, Report 95 (2000) - *The right to silence*

Term	Explanation
	services.
Statewide Disability Services (SDS)	<p>SDS comes under the Offender Services & Programs arm of the Department of Corrective Services and is the Department's primary strategy in addressing the additional support needs of offenders with disabilities held in custody or supervised in the community.</p> <p>SDS liaises with the Additional Support Units which are located in 5 Wing at Long Bay Correctional Complex and part of X wing (minimum security section) at Goulburn Correctional Centre.</p>
Supported Accommodation	<p>Community-based accommodation with daily living support based on assessed need, accessed by people with an intellectual disability who no longer live with their families and are unable to live independently.</p> <p>This can consist of Group Home models with 24-hour staffing or more independent models with drop in support based on need.</p>