
REPRESENTED AGENCIES

Division of Developmental Disabilities
Health & Recover Services Administration
Aging and Disability Services Administration
Department of Corrections, Washington TBI Strategic Partnership Advisory Council
Disability Rights Washington
Consumer advocates
Washington Association of Prosecuting Attorneys
Sheriff’s Offices from Benton, Clark, and Kitsap Counties
Washington State Criminal Justice Training Commission
Tri-Cities Chaplaincy
Superior Court Judges Association
Chelan County Regional Justice Center
Seattle Attorney's Office
Northwest Justice Center, Snohomish County Public Defender

Co-Chairs
Jo Arlow
Washington Association of Sheriffs and Police Chiefs
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WA State Developmental Disabilities Council

Produced Jointly by:
the Washington Association of Sheriffs and Police Chiefs
and
the Washington State Developmental Disabilities Council

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INTRODUCTION

E2SHB 2078 (2009) established a work group to address issues related to people with intellectual and developmental disabilities (I/DD) and survivors of traumatic brain injury (TBI) who are incarcerated in jails and prisons.¹

Like persons with mental illness, chemical dependency or co-occurring disorders, those with I/DD and TBI who come in contact with the criminal justice system may face significant difficulties. The population is diverse and particular challenges include a limited ability to understand the legal process and institutional rules, difficulty communicating, reluctance to seek assistance, and a vulnerability to exploitation.

The number of individuals with I/DD or TBI who are in the criminal justice system is not known. There are obstacles to obtaining an accurate estimate: (1) Washington does not currently employ a state-wide screening tool in the corrections system, or elsewhere, to identify people with I/DD or TBI; (2) there is often a reluctance to self-identify; (3) definitions of I/DD and TBI vary depending on when, how and why someone is identified; and (4) not all persons with an I/DD or TBI qualify for state or federally funded services and there is no coordinated service system for the excluded population.

Early identification of I/DD and TBI is essential in ensuring that an individual's rights and safety can be properly maintained, that opportunities for reasonable accommodation are addressed and public safety maximized. Additionally, early identification can assist in avoiding incarceration altogether when appropriate, through diversion and the concomitant attainment of needed community services and supports.

The creation of the workgroup reflects the Legislature’s continued interest in addressing special needs populations in the criminal justice system. In recent years the Legislature has vigorously engaged in efforts to address the needs of offenders with mental illness, chemical dependency or co-occurring disorders. This includes the comprehensive legislation E2SSB 5763 (2005)² and E2SHB 1290 (2005). The legislation directed the Department of Social and Health Services (DSHS) and others serving public clients to adopt a single screening tool to identify those with mental health, chemical dependency and co-occurring disorders. It also created a DSHS program to expedite the medical benefits application process for offenders with mental disorders prior to release from confinement, which continues to expand under the Post Institutional Medical Assistance project.³ Other recent legislation (SSB 5533 (2007)) established processes for diversion from jail for certain offenders with mental disorders.

The workgroup hopes to build on these recent Legislative efforts addressing special needs populations in order to improve outcomes for those with I/DD and TBI in the criminal justice system and increase public safety. It is a significant effort that will require the ongoing cooperation and fiscal resources of service providers, individuals and both state and local agencies.

¹ E2SHB 2078 addresses prisons and “jails” as defined in RCW 70.48.020. This does not include juvenile facilities. The Workgroup did not explicitly address issues related specifically to minors with I/DD or TBI, such as the role of DSHS’s Juvenile Rehabilitation Administration or local juvenile detention facilities. However, the current laws regarding alternative sentencing for juveniles was presented.

² E2SSB 5763 is referred to as the Omnibus treatment of mental and substance abuse disorders act of 2005.

³ The PIMA workgroup and project was directed to analyze capabilities for suspension of an offender’s benefit eligibility rather than termination during incarceration, and the reactivation of medical coverage immediately upon release from confinement.
E2SHB 2078

By December 1, 2009, the work group co-chaired by the Washington Association of Sheriffs and Police Chiefs and the Washington State Developmental Disabilities Council were responsible for developing recommendations and reporting to the Legislature on the issues.

By July 1, 2010, the work group is to recommend a simple screening tool, a model policy for implementing the tool and training materials for jails, including information on appropriate accommodations of people with intellectual or developmental disabilities during their confinement.

From July through October, the work group met monthly to consider the issues and make recommendations. A complete record of the work group’s agendas, handouts, presentations, and supporting documents are found at http://www.ddc.wa.gov/HB_2078_Work_Group.html.

In addition to the co-chairs, the work group is comprised of representatives from the Department of Social and Health Services, the Department of Corrections, the Washington TBI Strategic Partnership Advisory Council, Disability Rights Washington, consumer advocates. Other participating organizations include Prosecuting Attorneys, Sheriff’s Offices from Benton, Clark, and Kitsap Counties, Washington State Criminal Justice Training Commission, Tri-Cities Chaplaincy, Superior Court Judges Association, Chelan County Regional Justice Center, Seattle Attorney’s Office, Northwest Justice Center, and the Snohomish County Public Defender’s Office.

DIRECTIVE

E2SHB 2078 directed the workgroup to make recommendations regarding the following eight (8) topics:

1. Expeditiously reviewing and determining eligibility for developmental disabilities services provided through the Department of Social and Health Services prior to a person’s release from confinement from jail or confinement in the Department of Corrections.

2. Considering the appropriate role of the Department of Social and Health Services in providing potential alternatives to confinement and technical assistance to jails and the Department of Corrections in their efforts to provide reasonable accommodations for persons with developmental disabilities who are confined in their facilities.

3. Increasing the appropriate use of the authority granted the courts under current sentencing reform act provisions, chapter 9.94A RCW, to order alternatives to confinement prior to trial or following conviction in cases with a sentence of twelve months or less.

4. The establishment of new options under the sentencing reform act to divert persons with developmental disabilities from the criminal justice system while maintaining public safety;

5. The feasibility of developing and adopting law enforcement training for responding to persons with developmental disabilities that is analogous to the crisis intervention training currently provided to law enforcement officers for responding to alleged criminal behavior by persons with mental illness.
6. The feasibility of adopting standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medical assistance services by the division of developmental disabilities.

7. The need for and feasibility of developing a screening tool and training for corrections staff to be used to identify persons with developmental disabilities who are confined in prison with the Department of Corrections similar to the tool to be developed for jails under subsection (4) of this section:

8. The feasibility of developing a screening tool for traumatic brain injuries, and information on best practices and training regarding appropriate accommodations for persons with traumatic brain injuries.

RECOMMENDATIONS

The workgroup’s recommendations were made without analysis as to whether any necessary legislation or regulatory changes could readily be made. Nor do they reflect any practical consideration for the current economic circumstances of Washington’s state and local governments. However, the report does highlight, where appropriate, which recommendations likely require legislation, regulatory changes or additional funding for implementation.

The workgroup believes that important change can best be achieved by continuing the good work begun on the creation of a screening tool, and by building on current practices already in place under E2SHB 1290 and SSB 5533. It is in the larger areas of service creation and delivery, alternatives to incarceration and inter-system communication that the hardest work lies ahead.

Identification

The Workgroup reviewed several screening tools for both developmental disabilities and TBI. Consensus is that early screening is important. Screening can help identify the need for further assessment, assist in offender classification, and determine what reasonable accommodations may be needed by the offender.

1. A short, standardized screening tool should be created for use at all jails across the state to identify offenders who have a developmental disability or a traumatic brain injury. As required in E2SHB 2078, final recommendations regarding a screening tool and a model policy for use of the tool is due to the Legislature July 1, 2010.

2. The screening tools for both I/DD and TBI should be concise and contain questions that are easily incorporated into existing screening tools used by jails at booking/intake/classification. Every corrections officer conducting a screening tool should be appropriately trained. (Funding)

3. If screening indicates an offender has or may have I/DD or TBI it should be noted in the offender’s file. This will facilitate communication about the special needs of the offender to other staff.

4. Ideally, to ensure any screening tool has validity, it should be field tested and administered to individuals known to have I/DD or TBI who are incarcerated before it is adopted as a standardized tool. (Funding)

5. The workgroup supports the current work of the Department of Corrections to identify individuals with I/DD and TBI through the use of their current screening and assessment policies.
6. A jail should request DDD service eligibility/assessment if the screening tool indicates a person has an I/DD. (Funding)

7. Where an individual is identified by screening as an offender with I/DD or TBI, there should be a more comprehensive assessment of the individual’s adaptive functioning limitations wherever feasible. The assessment should be completed in the jail by a DDD case manager or other appropriate DDD or community based staff prior to release from jail whenever possible. (Funding, Legislation, WAC)

Consistent with the requirements of the E2SHB 2078 Sec. 2 (4), a subcommittee of the workgroup will continue to meet to develop the following by July 1, 2010:

(a) A simple screening tool that may be used by jails as part of a jail’s intake and/or classification process and which will assist in the identification of offenders with the most common types of developmental disabilities;

(b) A model policy for the use of the screening tool;

(c) A cost-effective means to provide concise training to jail staff on the use of the tool; and

(d) Information on best practices and training regarding appropriate accommodations for persons with developmental disabilities during their confinement.

Accommodations

1. Each DDD office should have at least one individual who is familiar with jail procedures and what constitutes reasonable accommodation in jails for those with I/DD. The person should be available to respond to inquiries from the jails regarding services for offenders and how best to provide appropriate accommodations. This DDD staffer and jail should establish a working relationship. Currently, DSHS sends out a letter to correctional facilities annually with a designated contact person, but there is not necessarily any other contact nor a Division expert in corrections matters. As a result, most jails do not have a relationship with their local DDD office. (Funding, Legislation)

2. Every jail and DOC should establish policies and procedures to address required reasonable accommodations for offenders with I/DD or TBI. Each facility should have policies regarding what constitutes reasonable accommodations under the requirements of the Americans with Disabilities Act. Other accommodations for the health and safety of the offender and security of the facility include appropriate housing, supervision level, assistance understanding rules, assistance in communicating with staff, and assistance accessing medical care and other programming available in the jail. DOC’s current policy on reasonable accommodations may be useful as a model that can be modified and adapted for a jail setting. (Funding)

3. DSHS should work with jails and DOC to establish agreements whereby staff from DDD are available to consult on accommodation issues as needed. (Funding, WAC)
4. DOC should utilize correctional staff with specific training to address the special needs and accommodations of those with I/DD or TBI. These staff could assist those offenders who may have difficulty understanding prison rules and regulations, navigating the process for requesting medical care, and using the grievance process. Specialized staff might include case managers assigned to work with special needs populations. (Funding, WAC)

Eligibility

1. DDD should establish and implement a process for responding to a jail’s notification of an offender with I/DD and the request for an eligibility determination/assessment. It should be recognized that an eligibility determination does not necessarily equate with an offender being able to access or receive services. (Funding; WAC)

2. The expedited Medicaid eligibility determination process established by E2SHB 1290 should be expanded to include offenders with I/DD or TBI. An offender with I/DD or TBI who has been determined eligible for Medicaid or was receiving Medicaid services prior to being booked into jail or prison, should have an expedited application process completed, as is the current practice for those with mental disorders. This will require expanding the scope of the expedited medical assistance reinstatement and eligibility determination process established under RCW 74.09.555.

3. Additionally, those with I/DD should be added as a target population in DSHS’s PIMA (Post Institutional Medical Assistance) project and the tool that is being developed. This might enable suspension rather than termination of eligibility and identification of those who may be eligible for benefits upon release but who are not currently enrolled. (Funding, Legislation)

4. A process similar to that designed in ESHB 1290 (2005) regarding Medicaid benefits should be employed for those with I/DD regarding non-Medicaid benefits. If a person is over 18 years old and was determined eligible for services through the Division of Developmental Disability (DDD) under RCW 71A prior to being booked into jail or prison, or commitment to a mental health hospital, the person should be presumed eligible for these services under RCW 71A upon release. (Funding, Legislation)

5. Funding should be considered to establish a DDD case manager to work with and in each jail as needed to facilitate eligibility determinations and other services for those with I/DD. Although the population is far smaller, the Legislature currently allocates $5 million/year to RSNs for delivery of mental health services and Medicaid evaluations in jails. A similar approach to those inter-system pilot programs is needed for those with I/DD. (Funding)

6. Further study is needed regarding appropriate follow-up services for those presenting with an IQ and adaptive functioning deficits but who do not meet the I/DD definition of DDD and are not eligible for DDD services. There is no current system to serve this population. (Funding, Legislation)

Information Sharing/Communication

1. The Legislature should consider a study to determine the feasibility of enabling jails, prisons and DDD to share database information in order to identify individuals who are currently both incarcerated and eligible for or receiving DDD services. (Funding, Legislation)
2. An alternative to broad-based data systems sharing is to build on the PIMA program. DSHS and the PIMA project should expand to enable DDD clients to be incorporated into the current PIMA tool project so that DOC, jails and state hospitals can use the web-based tool to verify whether an offender with I/DD is a client of the DDD. Other alternatives include providing each DDD region with a designated person who can review jail booking records on a regular basis to determine whether any offenders are clients of the Division. (Funding, Legislation, WAC).

3. Regional DDD offices should enter into information sharing agreements with jails in their region to share information to the extent permitted by law to assist offenders in accessing services. Care will need to be taken to maintain compliance with all state and federal privacy laws. (Legislation, WAC)

4. Jails should establish policies and procedures for notifying the local DDD office or appropriate community services when an offender is identified through the jail's screening process as having a developmental disability. This policy should include current contact information for the appropriate staff at DDD or local community service agency or organization, and may include printing the information on the screening tool or otherwise making the information readily available and known to the jail staff. (Funding)

5. It was widely discussed that even if someone is determined eligible for DDD services, eligibility does not guarantee services. If DDD determines an offender is eligible for services from the Division, DDD should assist the jail in linking the offender with those services to the extent they are available. Similarly, if an offender is determined to have an I/DD but not be eligible for services through the DDD, DDD should assist the jail in linking the offender with other community supports, services or benefits. (Funding)

6. Every jail and DOC should have a policy and procedure for requesting a release of information from an offender identified as having an I/DD or TBI for the purposes of sharing information with DSHS, RSNs or other medical or care providers. The Legislature should build on the work of HB 1300 (2009) and consider any other statutory changes needed to permit such information sharing between correctional staff and service providers. (Funding, Legislation)

7. DDD should establish a website for prison and jail corrections officers that provides information, guidelines and other resources for working with offenders with developmental disabilities or traumatic brain injury. (Funding, Legislation, WAC)

8. A statewide toll-free system staffed by a DD specialist at DSHS could assist law enforcement and corrections staff in diverting those with I/DD by answering questions or checking on the client status of an offender. (Funding, Legislation, WAC)

Transfer/Release Planning

1. Information gathered by jail staff regarding the status of an offender as having an I/DD or TBI and any accommodations needed should be communicated to the Department of Corrections when an inmate is transferred to DOC custody or another facility.
2. For offenders with I/DD or TBI who are incarcerated in prison, DOC should implement a process to assist the offender in developing a plan for supports to be utilized upon release, including housing, DDD services, Medicaid, and other entitlement or community based services. This process should be commenced several months before release wherever possible. (Funding, Legislation, WAC)

3. Local community resources, including community-based agencies and programs for offenders with I/DD or TBI released from jail or prison should be developed and supported. This need is especially acute for those offenders who do not qualify for DDD services. Such resources may include housing, employment and mentoring. (Funding)

Training

1. The creation of mutual training opportunities or forums for community service providers and jails should be supported. Such events would provide corrections staff an opportunity to learn about community resources and about persons with I/DD in the community, and for community service providers to learn about jail processes and services and the needs of offenders. (Funding)

2. Funding for Crisis Intervention Training currently provided through the Criminal Justice Training Commission should be restored to pre-2009-011 budget levels and, if possible, substantially increased. (Funding)

3. If funding is available, the CJTC and DDD should partner to develop CIT training on responding to person with I/DD and TBI. The CJTC has suggested a 40 hour training segment for law enforcement and corrections personnel. The training can be made available to a core group of officers who can then train others, known as “train the trainer.” Supplemental DVDs can provide additional assistance in the field and in jails. (Funding)

4. Interactive web-based training modules and other technologies should be used to facilitate training when and where officers are available. Distance learning classes can be developed for engaging on-line training. Providing multiple methods will help accommodate the needs of jails and correctional officers throughout the state. (Funding)

5. Judges, public defenders and prosecutors should receive information and training to expand their knowledge regarding those with I/DD and TBI. This training will improve effectiveness of representation and case disposition. Public defenders should receive training regarding the special issues related to representing clients with I/DD and TBI, including training on a simple screening tool such as the one being developed for jails. (Funding)

Alternatives to Incarceration & the Court System

1. Expand the use of DDD funded crisis beds at (e.g. Cascade Hall) as an appropriate placement of an offender who is given a diversion from jail or for an appropriate offender upon release. This placement may be appropriate if the client is amenable and mental health and substance abuse treatment and residential supports are available. Issues relating to federal vs. state funding rules will need to be taken into consideration (e.g. federal funding cannot be used for certain facilities, facilities over certain number of beds). (Funding)
2. E2SSB 5763 authorized the establishment of Enhanced Services Facilities for persons with mental disorders, including organic or traumatic brain disorders, and combinations of mental disorders with other medical conditions or behavior histories. The target population was to be those with conditions and behavioral issues that make them ineligible for or unsuccessful in existing types of licensed facilities (adult residential rehabilitation centers, boarding homes, adult family homes, group homes, and skilled nursing facilities). It was acknowledged in 2005 that this population presents complex safety and treatment issues that require security measures that cannot be instituted under most facility licenses or supported housing programs. The Legislature should consider the resources needed to establish the regulations regarding Enhanced Services Facilities and the facilities themselves and their potential application for those with I/DD or TBI. (Funding, WAC)

3. Both the prosecutor and defense counsel, if known, should be informed when an offender has been screened by the jail and identified as potentially having a I/DD or TBI. This may be accomplished by the jail informing both the local prosecutor office and public defense office if the information is known.

4. Current law does not prohibit courts from applying sentencing alternatives to those with I/DD or TBI (see RCW 9.94A.680 (3), RCW 9.94A.535 (1)(e)). However, it may be useful to clarify the current statutory language governing sentencing alternatives, such as Mental Health Courts in RCW 2.28.180, to explicitly incorporate people with I/DD or TBI. (Legislation)

5. Specialized processes for pre-booking diversion of offenders with I/DD and TBI should be identified and implemented if appropriate resources and services are available in the community. This may take the form of a model akin to that enacted in SSB 5533 (2007) for misdemeanor offenders with mental illness. Diversion programs will need to be evaluated for effect on public safety and the offender. (Funding, Legislation)

6. Design a post-booking but pre-charging diversion program for diverting offenders from jails to be implemented if appropriate services are available in the community. Use an appropriate risk assessment tool or bright-line selection tool that would only permit participation by offenders with a certain criminal history and certain types of current charges. This type of diversion program would require a prosecutor to screen for the type of charge and criminal history (i.e., the public safety risk), and a DD specialist to screen for the defendant’s appropriateness for the program. (Funding, Legislation)

7. The role of the voluntary Community Protection Program as a sentencing alternative should explored for offenders with sentences of twelve months or less. Issues relating to federal vs. state funding rules will need to be taken into consideration if the CPP program is to be used in this manner (e.g. federal funding cannot be used for certain facilities or programs that require involuntary commitment). In developing any such alternatives, it should be noted that all DDD services are currently voluntary and the DDD has no legal authority to detain an individual. (Funding, Legislation, WAC)
### Appendix
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