

COMMUNITY LIVING disABILITY SERVICES

Subject: **Individuals with a Mental Disability in
Contact with the Criminal Justice System**

ADULT DISABILITY SERVICES

PURPOSE

This policy is intended to provide Community Service Workers with consistent guidelines for when an individual with a mental disability comes into conflict or contact with the law as a result of his/her own actions.

STATEMENT OF PRINCIPLES

1. Every individual has the right to equal protection and equal benefit both before and under the law.
2. Every individual has the right to fundamental justice in all matters affecting their rights, including access to information, the right to a mode of communication appropriate to their needs, the right to be heard, to be informed of the right to contact and consult a lawyer to obtain legal advice, and the right to receive reasons for all decisions made.

OBJECTIVES

1. To ensure that the rights of an individual with a mental disability are protected and upheld.
2. To ensure that the criminal justice system is aware of and sensitive to the special needs of an individual with a mental disability.
3. To ensure that an individual with a mental disability has access to legal advice and representation.
4. To ensure that an individual with a mental disability receives the appropriate supports throughout and following his/her involvement with the criminal justice system.

DEFINITION

“**Support Network**” means a person or persons well-known and trusted by the individual with a mental disability and may include family, friends, advocates and service providers employed by the individual, community residence, institution or government. Support network members may assist by providing personal and emotional support and in many cases assistance in communicating.

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PROCESS

Throughout this process, the Community Service Worker is responsible for updating and working with the individual's support network, Regional Program Manager, and, if applicable, Public Guardian and Trustee, committee, or substitute decision maker (SDM) in supporting the individual.

WHEN AN INDIVIDUAL WITH A MENTAL DISABILITY BREAKS THE LAW

1. The Community Service Worker will be required to exercise professional judgement in determining the most appropriate method of handling an individual who has come into conflict with the law. In making such a determination, the Community Service Worker shall take the following steps:
 - Gather information from the information source (e.g., agency, support network, etc.), then individual to contact the police (if this has not happened already). Alternatively, the Community Service Worker may contact the police directly. *The primary role of the Community Service Worker will be to support and protect the rights of the individual throughout and following his/her involvement with the criminal justice system.*
 - With the consent of the individual, notify and consult with a minimum of one of the persons in the individual's support network. *The Community Service Worker will have an ongoing responsibility to keep this support person apprised of developments in the individual's situation.*
 - Notify and consult with the Regional Program Manager and, if necessary, the Community Living disABILITY Services Program Specialist. *The Regional Program Manager must be kept abreast of developments in the individual's situation and may serve as an important resource in handling individual cases.*
 - If the individual's substitute decision maker or the committee is the Public Guardian and Trustee, notify the Public Guardian and Trustee. *The Public Guardian and Trustee is responsible for ensuring that the individual has legal advice and representation; however, the Public Guardian and Trustee may delegate this responsibility to the Community Service Worker. Therefore, it is important for the Community Service Worker to communicate with the Public Guardian and Trustee to ensure the coordination of legal advice and representation.*
 - If the individual has a SDM or committee for personal care and/or property, the Community Service Worker must notify those persons.
2. If it is determined that an offense must be reported to the police or allegations have already been made against an individual, the Community Service Worker shall contact the local police, identify

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himself/herself as the individual's case coordinator and ensure that the police are aware of the individual's disability.

3. When an individual is being held for questioning, and where it has not occurred previously, the Community Service Worker shall take the following action:
 - Contact the police. *The Community Service Worker must identify himself/herself as the individual's case coordinator, ensure that the police are aware of the individual's disability, and inquire about the nature of the offense and whether charges are being laid.*
 - With the consent of the individual, notify and consult with a minimum of one of the persons in the individual's support network.
 - Notify and consult with the Regional Program Manager.
 - If the individual's SDM or committee is the Public Guardian and Trustee, notify the Public Guardian and Trustee.
 - If the individual has a SDM or committee, notify those persons.
 - Where these steps have already been taken, the Community Service Worker shall support the individual in the following ways:
 - Ensure that the individual has legal advice and representation and assist the legal counsel in working with the individual.
 - Offer to be present for police questioning, or arrange for the individual's service provider agency (if applicable) to be present for police questioning.
4. When an individual has been ordered to appear in court, the Community Service Worker shall support the individual in the following ways:
 - Assist the individual in understanding the legal process and possible outcomes.
 - Ensure that the defence counsel is aware of the individual's disability and is aware of any unique support needs or specific assistance required.
 - Accompany the individual to court and other necessary appointments, or ensure that an alternate person (e.g., service provider agency, person(s) from the individual's support network, etc.) accompanies the individual for support.
5. When an individual is convicted of a crime and remanded for sentencing, the Community Service Worker shall support the individual in the following ways:

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- Fully cooperate and communicate with the defence counsel, crown counsel and probation officer in preparing any court related materials (e.g., a pre-sentencing report that suggests the most appropriate sentence for the individual, the proposed community-based placement plan or options, and/or recommended probation conditions for the court's consideration).
 - Assist the individual in understanding the verdict and resulting action.
6. When an individual has been sentenced to a correctional facility or detained in custody, the Community Service Worker shall support the individual in the following ways:
- Ensure that the correctional facility staff are aware of the individual's disability and special needs, including advising correctional facility staff of any medications that the individual requires.
 - Immediately begin to develop a plan for the individual's release to the community, including ensuring the maintenance of appropriate supports and funding and recommending measures to prevent further criminal behaviour.
 - For sentences under two years, maintain contact with the individual to provide advocacy and monitor how the individual is functioning throughout his/her incarceration and/or ensure that an alternate person (e.g., service provider agency) maintains contact with the individual. For sentences over two years, the Community Service Worker may deactivate the case file.
 - Confirm the conditions of the individual's release with the correctional facility or the probation/parole officer and ensure that the plan for community re-entrance considers the conditions. If the conditions cannot be met, ensure that this information is communicated with the appropriate criminal justice officials (i.e., probation/parole officer, lawyer, etc.).
7. When the individual is released to the community after serving a sentence in a correctional facility, the Community Service Worker shall support the individual in the following ways:
- Determine the conditions of the individual's release from the correctional facility and ensure that the plan for community re-entrance takes these conditions into account. If these conditions cannot be met, ensure that alternative conditions are negotiated with the appropriate criminal justice officials.
 - Meet with the individual's Probation Officer to discuss the individual's release to and placement in the community.
 - Ensure that the supports and funding arranged for during the individual's incarceration are in place upon his/her release to the community.

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