

# I. CIVIL RIGHTS & JUSTICE

The Disability Policy Consortium believes that the civil rights of people with disabilities must be honored, protected, and enforced. Historically, the rights of people with disabilities have been unjustifiably limited or denied based on a lack of understanding of their disability, support needs, or even their humanity. These rights include the right to autonomy, dignity, family, justice, liberty, equality, self-determination, community participation, health, access to voting, freedom from unwarranted and unjustifiably extensive guardianship, and other rights recognized by federal or state law.

Despite significant progress, many individuals, businesses, federal, state, and local government agencies and other entities remain unaware of or ignore the civil rights of people with disabilities. As a result, many individuals with disabilities face unique challenges, including discrimination and exclusion from meaningful choice and participation in employment, housing, voting, transportation, and other programs, activities, and services provided by the public and private sectors of society.

Additionally, when individuals with disabilities, especially individuals with intellectual and developmental disabilities (IDD), become involved in the criminal justice system as victims, witnesses, suspects, defendants, or incarcerated individuals, they face fear, prejudice, and lack of understanding. Criminal justice professionals, first responders, victim advocates, criminal justice policy-makers, jurors, and others may lack accurate and appropriate knowledge to apply standards of due process in a manner that provides justice for individuals with disabilities.

The following recommendations from the Disability Policy Consortium encourage policy makers to continue to advance the protection, enforcement, and awareness of the civil and legal rights of Texans with disabilities.

## Key Policies That Impact Civil Rights & Justice

- The National Voter Registration Act (NVRA) of 1993
- The Help America Vote Act
- The Crime Victims with Disabilities Awareness Act of 1998
- The Developmental Disabilities Assistance and Bill of Rights Act of 2000
- Rosa's Law of 2010
- The Americans with Disabilities Act (ADA)
- Senate Bill 1881 (84R) (Supported Decision-Making Agreement Act)

# ALTERNATIVES TO GUARDIANSHIP

Support changes to the guardianship system in Texas that promote the self-determination, well-being, and rights of individuals with disabilities.

## RECOMMENDATIONS

- Require that a person should not be presumed to need a guardian because of advanced age or the presence of a physical or mental disability.
  - Revise the definition of incapacity in state law to consider the person’s everyday functioning, values, preferences and cognition rather than their medical diagnosis.
  - Require that the physical examination and documentation for incapacity be based on functional abilities with or without services and supports.
- Prohibit guardianship based solely on the diagnosis of intellectual disability.
- Require courts to explain the bill of rights for persons under guardianship in a manner accessible to the individual.
- Change the term “ward” to “individual under guardianship.”
- Require guardians to meet with the person and their physician before consenting to the administration of psychoactive medication for that individual except in a medication-related emergency as defined by the Texas Health and Safety Code.
- Implement and develop statewide monitoring and accessible and useable information, training and technical assistance provided to individuals with disabilities, families, courts, attorneys, guardians, educators, medical providers and state and local providers of services and supports.

## BACKGROUND

Guardianship is a legal proceeding that removes the civil rights and privileges of a person by assigning control of his or her life to someone else. The broad definition of incapacity in the Texas Estates Code has a discriminatory impact by enabling a court to appoint a guardian if an adult has a physical or mental condition and is substantially unable to provide food, clothing, or shelter, to care for their physical health, or manage their own financial affairs.

Recent legislative changes promoting alternatives to guardianship, including supported decision-making and a bill of rights for individuals under guardianship, provide the opportunity to significantly advance the rights and protections for individuals with disabilities.

## CONCLUSION

The vast majority of people with disabilities, including those with intellectual and developmental disabilities, are able to make important decisions independently or with support, without the need for a guardian. Even though individuals with a disability may need supports and services or assistance from others to provide for such needs, they should still be able to maintain the right to make choices about these aspects of their lives.

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# CRIMINAL JUSTICE

Ensure that people with intellectual, developmental, and/or mental/behavioral health disabilities who are victims, suspects, or witnesses of a crime have the right to impartial justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations.

## RECOMMENDATIONS

- Require comprehensive officer training in booking and intake procedures of individuals with intellectual, developmental, and/or mental/behavioral health disabilities.
- Require prompt intervention and provide a valid and clinically appropriate disability screening prior to, during, and following arrest.
- Ensure that competency restoration is provided in appropriate therapeutic settings that facilitate recovery.
- Require entities to reduce reliance on non-medically necessary outpatient treatment.
- Reduce the amount of time the criminal court retains jurisdiction over an alleged offender.
- Require ongoing training of criminal justice professionals on Code of Criminal Procedure, Article 46B, with special emphasis on post-incompetency legal requirements.
- Ensure reasonable accommodations are provided at all stages of criminal proceedings to assist the individual in understanding and participating in the proceedings and their defense.

## BACKGROUND

While people with intellectual disabilities comprise 2% to 3% of the total population, they make up 4% to 10% of people in prison, with even more in juvenile facilities and jails. They also make up a significant portion of State Supported Living Center (SSLC) admissions as “alleged offenders”.<sup>i</sup> An “alleged offender resident” of an SSLC is a “person with an intellectual disability who (a) was committed to or transferred to an SSLC under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or (b) is a child committed to or transferred to an SSLC under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.”<sup>ii</sup>

Having a disability does not necessarily mean a person is incompetent to stand trial; however, it is the responsibility of counsel and the court to raise competency as an issue in appropriate cases and at any point in the proceedings when the defendant’s competency is in question. Attorneys and judges often lack adequate knowledge of due process protections available for people with disabilities prior to, during, and after being found incompetent to stand trial. Additionally, with increased pressure to privatize services, there is a need to ensure that the individual’s competency is assessed and access to needed mental/behavioral health treatment is not compromised at any point in the criminal justice process.

## The Competency Assessment Process

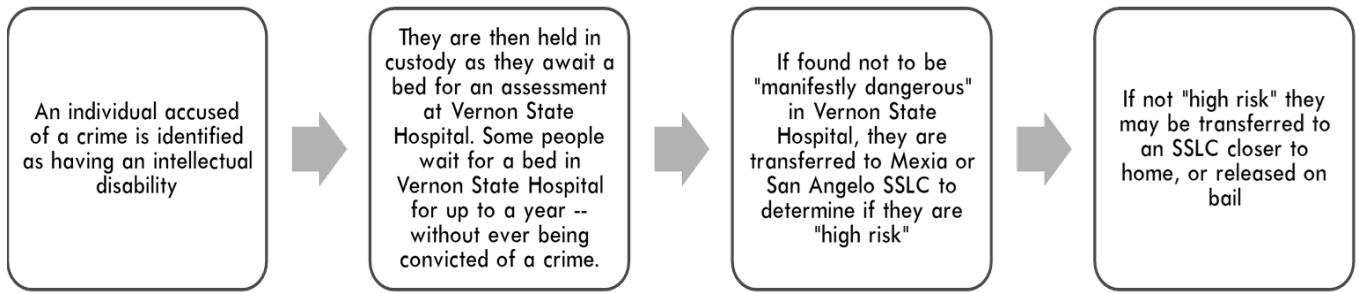


Figure 1: The Competency Assessment Process

## CONCLUSION

Early intervention, due process protections, and assistance and reasonable accommodations to participate in legal proceedings are necessary overlapping components of a system responsive to the needs of people with disabilities. These components must be available to victims, suspects, or witnesses at all stages of the individual's involvement in the criminal justice system.

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# SURVIVORS OF SEXUAL ASSAULT UNDER GUARDIANSHIP

Given that medical and forensic evidence collection and release is paramount in the prosecution of sexual assault cases, especially in cases involving victims with intellectual disabilities, legal consent for medical and forensic evidence collection and release given by adult survivors of sexual assault under guardianship should be accepted.

## RECOMMENDATIONS

- Provide that “protective services” furnished by Adult Protective Services (APS) explicitly include forensic medical examination and treatment.
- Clarify that a person, including a guardian and notwithstanding Section 1151.001, Estates Code, may not interfere with consent for forensic medical examination and treatment if the person under guardianship consents.
- Allow a confidential communication, a record, or evidence to remain undisclosed to a legal guardian of an adult survivor under guardianship if an advocate or a sexual assault program knows or has reason to believe that the legal guardian of the survivor is a suspect in the sexual assault of the survivor.
- Allow consent for the release of confidential information other than evidence contained in an evidence collection kit to be signed by the adult survivor, regardless of whether the survivor is under guardianship.

## BACKGROUND

People with intellectual disabilities are sexually assaulted at a rate seven times higher than those without disabilities. It is estimated that 97 percent to 99 percent of perpetrators are known to the victim. Most of these crimes rarely result in prosecution. Victims may face challenges in accessing services and supports to make a report. They may also be concerned about losing their independence if they do report.

The Adult Protective Services (APS) division, within the Department of Family and Protective Services (DFPS), is responsible for protecting people with disabilities from abuse, neglect, and exploitation. When a sexual abuse report is made, APS notifies local law enforcement immediately and begins their own investigation. Data published by DFPS reveals that while sexual abuse is more frequently reported in provider settings, reports of sexual abuse in provider settings are rarely confirmed.<sup>iii</sup> Confirmed and/or validated means that, based on a preponderance of the evidence, it is more likely than not that abuse, neglect, or exploitation occurred.

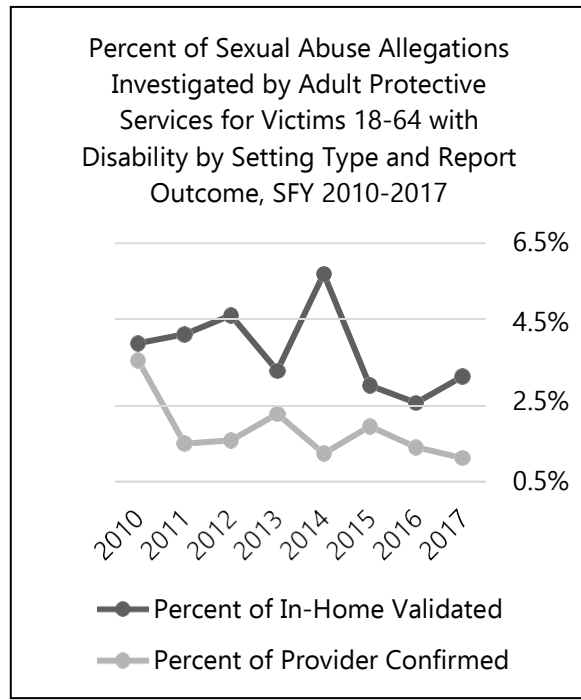
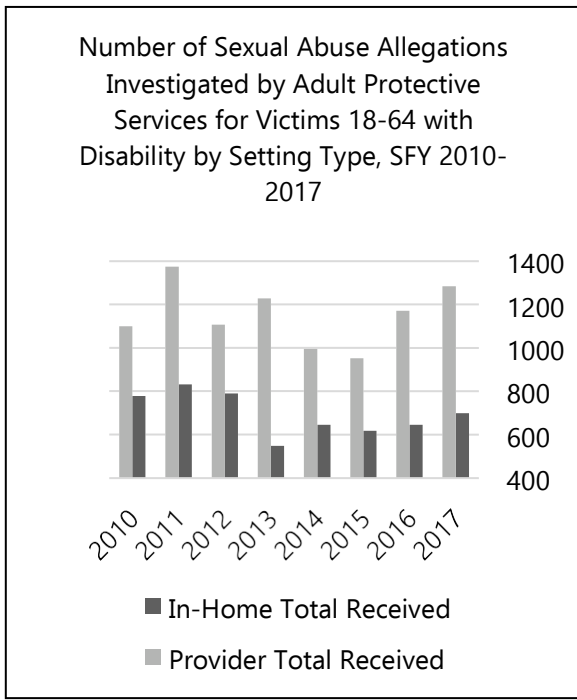


Figure 2: Number of Sexual Abuse Allegations Investigated by Adult Protective Services for Victims 18-64 with Disability by Setting Type, SFY 2010-2017

Figure 3: Percent of Sexual Abuse Allegations Investigated by Adult Protective Services for Victims 18-64 with Disability by Setting Type and Report Outcome, SFY 2010-2017

## CONCLUSION

It is time for Texas to be aware of, and to take action against, the sexual assault epidemic impacting the disability community. We should develop new expectations that Texans with intellectual and developmental disabilities have the same right as any other population to justice and fair treatment. Accepting consent for medical and forensic evidence collection and release given by adult survivors of sexual assault under guardianship is one way to begin shifting the scales of justice.

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# VOTING IN ELECTIONS

All eligible voters in Texas should be able to fully participate in the electoral process, from registering to vote, accessing polling places, and casting votes privately and independently.

## RECOMMENDATIONS

- Ensure that all required state agencies comply with the National Voter Registration Act.
- Continue to ensure the availability of proper poll worker training and accessible voting machines at each polling place, including those in small counties and jurisdictions.
- Protect the right of voters with disabilities to receive assistance by the person of their choice.
- Prevent more onerous voter ID requirements.

## BACKGROUND

Although the Help America Vote Act (HAVA) of 2002 has greatly increased access to voting for people with disabilities in federal elections, there are still substantial obstacles in registering to vote and applying for absentee ballots in Texas. While state agencies are obligated to assist eligible individuals with disabilities in registering to vote, many who receive state services are not registered or are wrongfully denied because of a lack of compliance with the National Voter Registration Act.

Counties have made progress with respect to the accessibility of polling locations and voting systems. However, there are questions as to the reliability of voting machines that are used to satisfy the accessible voting system requirement. Texas needs to ensure that all voting systems used by counties comply with federal and state requirements regarding accessible voting machines. Additionally, counties need to ensure that poll workers are trained to operate the accessible machines and to appropriately assist voters with disabilities. In an attempt to prevent individuals from wrongfully influencing voters' choices at the polls, some groups want to restrict how many people a person can assist in casting a ballot, an important right for individuals who need help voting. The right to assistance must not be further restricted in state law.

Texas currently does not count the selections of registered voters who inadvertently cast ballots at the wrong precinct. Because many people with disabilities can encounter difficulty utilizing accessible transportation to go to a





second polling place, it is especially important that they be able to have their vote counted when a polling place error occurs.

Fewer people with disabilities currently possess driver's licenses or state identification cards. Additionally, many people with disabilities have limited resources and access to transportation, so requiring special IDs for voting is, therefore, burdensome.

## CONCLUSION

Continued reforms to improve access to the electoral process for people with disabilities matters to all Texans because public confidence in our system of democracy is based on knowing that all eligible voters are able to participate and have their vote count.

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