

House Judiciary Committee

House Bill 1263 – January 24, 2023

Testimony of Daniel Gulya, North Dakota Protection and Advocacy Project (P&A)

Greetings, Chair Klemin and members of the House Judiciary Committee. My name is Dan Gulya and I'm an attorney with the North Dakota Protection and Advocacy Project (P&A). P&A protects the human, civil and legal rights of people with disabilities. The agency's programs and services seek to make positive changes for people with disabilities where we live, learn, work and play.

I am here to testify about our request to include the Individual Justice Plan process, or the IJP (as we call it), in the Juvenile Court Act. The IJP is a voluntary, collaborative tool to create a plan to address the behaviors of persons with cognitive or functional disabilities, when their disabilities manifest in a way that might lead or has lead to involvement with the justice system. Over the past two years, P&A has modernized our informational manual and gave over 20 presentations statewide to raise awareness of the IJP process, and we urge you to support this bill to give it a continuing presence in the justice system beyond constant involvement from P&A.

The IJP is used for juveniles with cognitive disabilities. The youth's disability(ies) must be tied to the at-risk behavior or behavior presenting as delinquent (criminal) or identifying

the youth as a Child in Need of Services (CHINS). Eligibility for an IJP is based upon a mental/cognitive impairment presenting in a youth with a:

- Developmental disability
- Brain injury
- Neurodevelopmental disorder that affects brain function
- Mental illness

The IJP planning process brings together a team of individuals involved in a juvenile's life. Depending on circumstances and need, this may be family, the educational system, social services, or law enforcement. The planning process starts by identifying and assessing the root of behavior, then creates recommendations utilizing the least restrictive, most effective alternative, with an identifiable outcome and review process.

For the past biennium, P&A has been involved in an effort to modernize our IJP materials and raise awareness. The IJP was developed in the developmental disability community in the 1980s to address the behaviors of persons with disabilities, when their disabilities manifest in a way that might lead to involvement with the justice system. In 2004, ND P&A initiated a collaborative effort to revise the manual with a statewide group including DHS, DOCR, the AG's office, and the State Bar. In 2021, P&A revised the informational manual, and did a series of presentations to groups that reached 514 individuals in the broad spectrum of parties interested in juvenile justice, from education

and social services into the justice system, including to the 2021-2023 Interim Judiciary Committee in March 2022.

P&A believes that the IJP process adds value at the intersection of the educational and human services systems with the justice system, by tying together services and outlining a proactive path for the diversion of individuals with disabilities who manifest disruptive behaviors due to that disability.

I can give you concrete examples of how this process helps people.

a) One of our juvenile clients with Disruptive Mood Dysregulation Disorder and ADHD was charged with a C felony for assaulting emergency personnel at an emergency room. The client was referred to Protection and Advocacy for assistance with an Individual Justice Plan (IJP). When the client appeared in court, the attorney informed the court that the client was working with Protection and Advocacy on developing an Individual Justice Plan. The client agreed to work with an agency to monitor the IJP, which will be in effect for a year, and the charge was modified to a misdemeanor. As a result of the IJP, the client has an individualized plan of action, court fees were waived, the charge was reduced, and consequences resulted for the crime that are in alignment with the mental health condition and the client's abilities. In addition, the client will have access to supports and services to meet their mental health needs and assist them in avoiding further engagement in criminal activity.

b) P&A received a referral regarding a Native American juvenile who had become involved in the juvenile justice system as a result of disability-related behavior. The juvenile has a neurological impairment related to a brain tumor. Services were provided to the juvenile to address behavioral support needs that were primarily stemming from challenges at school. P&A supported the juvenile's team to complete an IJP assessment, which identified that additional support would be helpful to the juvenile, along with the formal development of an individual justice plan (IJP). The juvenile's IJP was accepted by the court as an appropriate remedy and the formal charges were dismissed. Juvenile court staff did identify a need for the child to remain engaged with services as a condition of the dismissal.

These results may not occur without the IJP as a roadmap to suggest how and who to coordinate services. This bill aims to find a permanent home for this concept and to express its potential importance in helping to plan the diversion of juveniles from justice services to social services. My previous job as a public defender for the State of North Dakota opened my eyes to the number of persons with cognitive disabilities that become justice-involved, and how that system is often challenged to figure out how to appropriately divert them. During five years of working indigent public defense and three years of prosecuting, I never heard of the IJP process.

Despite P&A's efforts to raise awareness, the utilization of IJPs in many cases depends on the individual actors in systems that often are somewhat siloed. Over the past year,

P&A has worked on over 90 adult and juvenile requests for assistance on IJPs. While that is a tremendous step forward, the statistics on juvenile referrals from the Department of Public Instruction indicate that on average 30% of juveniles referred are SPED students or have IEPs. From your other testimony you know that the CHINS and delinquency referral numbers are thousands per year, which tells us there is a population that might benefit from increased awareness of this process. This bill, in conjunction with our prior efforts, will hopefully give the IJP process a lasting presence in your efforts to properly address some of the behavior of youth with cognitive disabilities.

I respectfully request the Committee support HB 1263. Thank you for your time and I'd be happy to address any questions.

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