

House Judiciary Committee

House Bill 1264 – 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 memorialize the Individual Justice Plan process, or the IJP (as we call it), in statute in chapter 12-44.1. 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 to, or has lead to, involvement with the justice system.

The IJP is used for individuals with cognitive disability(ies) tied to at-risk behavior or behavior presenting as criminal. Eligibility for an IJP is based upon a mental/cognitive impairment presenting in an individual with a:

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

The IJP planning process brings together a team of individuals involved in an individual'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. 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 this informational manual, and did a series of over 20 presentations statewide that reached 514 individuals in the broad spectrum of parties interested in individual justice (including to the 2021-2023 Interim Judiciary Committee in March 2022), from education and social services into the justice system. P&A hopes you will support this bill to give this concept a continuing presence in the justice system beyond the instances that come to P&A.

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.

Here are some examples of how this process has helped P&A clients.

A) P&A was contacted by a client and defense attorney to request advocacy services to write and submit an Individual Justice Plan to the court for charges of resisting arrest and disorderly conduct. The client has a primary diagnosis of an intellectual disability, traumatic brain injury, and mental illness. The client receives residential services through a DD provider and lives in an apartment with a parent as their full legal guardian.

Both charges were compounded by the client's language barriers and inability to engage with others due to the disability. P&A was able to assist the client's team with conducting a comprehensive assessment and development of an IJP. This was presented to the court by the client's defense attorney, with a request to dismiss the charges with an understanding that the client will continue to meet with the IJP team and follow the IJP recommendations. The judge accepted the client's IJP and agreed to a deferred sentence for six months; the client's charges were dismissed at that time. The client and guardian determined to continue with the service plans in the IJP, which will hopefully prevent any future involvement in the legal system.

B) Another client was referred to Protection and Advocacy for technical assistance with an Individual Justice Plan. The client resides in a rural area, and has a primary diagnosis of Traumatic Brain Injury, ADHD, PTSD, and Oppositional Defiant Disorder. The

client was charged with a felony related to an assault. The client had several past offenses; it is believed that the criminal behavior is a manifestation of the primary diagnosis of Traumatic Brain Injury, as there was no prior criminal activity before the injury occurred in 2001.

P&A worked with the client and the coordinator from the Brain Injury Network to apply for Community Connect services. A team met and reviewed the client's needs and their role in the Individual Justice Plan. The IJP recommendations included that the Care Coordinator will assist with scheduling medical appointments, explore services through the Aging and Disability division and assist in connecting to medical care and trauma-informed care, and apply for social security benefits. After further consultation with the prosecutor, the client's charges were dismissed.

As a result of the IJP process, the client's needs were identified, connections were made to enroll in the proper supports, with clear assistance to access the services and supports the client needs to be successful in the community.

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 individuals from justice services to social services.

My previous jobs as a prosecutor and public defender in 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 individual requests for assistance on IJPs. While that is a tremendous step forward, the statistics on individual referrals from the Department of Public Instruction indicate that on average 30% of individuals 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 efforts, will hopefully give other actors that much more awareness of the IJP process and they can proactively start down this path to address some of the behavior of individual 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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