



## Individual Justice Planning in North Dakota

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## History of the IJP in North Dakota

- First IJP manual developed in 1988 by a group of professionals in Fargo
- Vision: process would result in a consistent person-centered approach across the state
- Result:
  - Dissemination of the manual
  - Use of the IJP process was sporadic over the next 17 years
  - Used only within the Developmental Disabilities system
- Many people with other disabilities become involved in the Criminal Justice (CJ) system.

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## The Revision of the IJP

- In 2004 ND P&A obtained a grant to revise the manual to re-invigorate the process
- P&A sponsored the project and gathered a group of stakeholders from around the state
- Goals:
  - Build and update the 1988 IJP process
  - Expand usability to people with whose disability limits their ability to adequately interact with the CJ system.

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## Steering Committee

- From the stakeholder group, Steering Committee formed to draft an IJP manual
- Key Agency Group identified to solidify agency commitment
- Technical consultants were identified and utilized by the steering committee.
  - Defense attorneys
  - State Court Administrator
  - State Representatives and Senators
  - Assistant Attorney General
  - Psychologists

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## Implementation Team/Key Agency Group

- P&A
- Attorney General's office
- Department of Corrections & Rehabilitation
- Mental Health America of ND
- State Court Administrator
- Department of Human Services
- Indigent Defense Commission

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## Steps in Developing the IJP Process in North Dakota

- Initial and follow-up meetings of stakeholders
- Several steering committee meetings
- Review of drafts and implementation plan with key agency group
- Development of marketing strategy

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## Components of the IJP Process (Table of Contents)

- Vision, scope and purpose
- Eligibility for an IJP/case examples
- Criminal Justice System: points of contact
- IJP Concepts
- Writing an IJP
- Explanation of the legal system in ND

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## Components of the IJP Process (Manual Appendices)

- History of the IJP
- Terms and definitions/acronyms
- Regional resource directory
- IJP Worksheets
- Case examples
- Sample forms
- Disability awareness information
- Law enforcement and legal system flowcharts

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## Vision & Purpose of the IJP

- Vision:
  - Tailoring society's response to criminal behavior for people with disabilities.
- Purpose:
  - Presents alternatives for the CJ system to consider, as well as the resources, contacts, and tools needed to follow through with the process.
  - Provides a framework for education of and cooperation between the disability service system and the CJ system.

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Chapter 1



## Scope of the IJP Manual

- Integration of issues from the human service & CJ systems
- Designed as a TOOL to be used by people in these systems
- NOT intended:
  - as a safe-harbor from all consequences or
  - as a shortcut to negate civil rights – both of which can occur.
- The safety of the public is a priority in development of an IJP
- The IJP process
  - is voluntary,
  - provides a framework for services, and
  - does not carry any legal authority to mandate or require services.
- For the process to be effective, all people involved must share a common understanding and philosophy of how the process can be used and what can be accomplished with the use of an IJP.

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Chapter 1



## IJP Eligibility

- Eligibility for an IJP is based upon a mental/cognitive impairment that may be found among:
  - A person with a developmental disability
  - An individual with an identified brain injury that has resulted in a severe cognitive impairment.
  - An individual with a major mental illness and significant impairment.

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Chapter 2



## IJP Case Example

- Joe is an 18 year old man with a developmental disability. Joe is currently his own legal decision-maker.
- He is dating a young woman and the two decided to become sexually active.
- Joe is questioned by the police about the relationship and he admits to the intimacy stressing that “she is my girlfriend”.
- He was arrested and charged with Gross Sexual Imposition of a Minor – his girlfriend is 16. Joe doesn’t understand the charge or why what he has done with his girlfriend is wrong.
- An IJP helped to establish training along with service and supervision needs for Joe.

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Chapter 2



## IJP Case example

- Jim is a 38 year old male
  - with moderate mental retardation and a diagnosed impulse control disorder.
- Many failed placements due to physical aggression
  - relates to his lack of understanding in social situations and his impulse control disorder.
- Behavioral supports focus on maintaining an environment where he maintains control.
  - His sister is currently his guardian.
- During times of medications adjustments Jim has “struck” staff members who work with him,
  - typically when they have made requests that he perceives as frustrating.
- The IJP identifies strategies and options for the provider to implement in an effort to prevent the behaviors from occurring and to keep Jim out of the CJ system.

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Chapter 2



## IJP Case Example

- Marie is a 24-year old female
  - who recently sustained a closed head injury from a motorcycle accident.
- Marie’s husband is currently her legal guardian.
- Marie has experienced a great deal of difficulty with impulse control since the accident.
- She has also experienced difficulties with memory recall.
  - This affects her ability to take her medications, attend appointments as required and maintain her services.
  - Marie has assaulted people within her home and community, and law enforcement personnel.
- The IJP identifies services and supports that address Marie’s service needs and hopefully will prevent involvement in the CJ system.

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Chapter 2



## IJP Case Example

- Mike has Paranoid Schizophrenia.
  - This developed up out of Obsessive-Compulsive Disorder and he still has marked obsessions.
  - Complicated by strongly anti-capitalist views and a deep abhorrence of "status ranking by and of humans".
  - He values violent self-defense, death by violence, and is frequently despairing and self loathing. He has no friends.
- Over the course of his short life, Mike has abandoned all recreations save for listening to music and watching movies.
  - He would like friends but finds the social interactions far too painful.
  - Legally he is prone to fights but the only people he has assaulted that weren't actively castigating him are police officers or his own parents.
- Mike is currently facing charged of reckless endangerment, terrorizing, criminal mischief, and fleeing a police officer.
  - Past offenses include school fights, striking his mother, and several assaults while at the hospital.
- Mike's IJP has been developed to
  - ensure that he complies with his medication regimen and also
  - so people working with him are aware of the structure needed to maintain Mike in the community and prevent involvement in the CJ system.

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Chapter 2



## How an IJP can be used within the CJ system

- Intervention can occur at the earliest point of contact by any agency working with the individual.
- A clear understanding can be established that the individual's disability, as defined in Chapter 2, is related to their potential involvement in the CJ system.
- Steps can be taken to identify that an individual is at-risk of becoming involved in the CJ system.
- Recommendations can be provided for a treatment plan, crisis plan, behavior support plan, medication management plan, aftercare plan and/or similar service delivery documents.

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Chapter 3



## When to develop an IJP

Once involved in the CJ system, there are various points that development of an IJP can be considered or can be referenced if an IJP already exists:

- Upon initial contact with law enforcement personnel.
- Upon arrest and intake assessment by jail personnel.
- When the case is sent to the municipal prosecutor/States Attorney's office for initial review.
- If not identified by a prosecutor or State Attorney, a judge does have the option to question whether an IJP would be appropriate for an individual with a disability.

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Chapter 3



## When to develop an IJP

(continued)

- When a defense attorney becomes involved.
- During or after an order for examination of competency and/or fitness to proceed or criminal responsibility.
- During the Pre-Sentence Investigation (PSI) process.
- Reduction of Sentencing (Rule 35).
- During re-entry/aftercare planning.
- Once involved in the CJ system has ended as an attempt to prevent future involvement.

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Chapter 3



## Understanding concepts included in an IJP

- **Accountability:** The IJP must be planned to ensure that the individual is accountable for his/her behavior, just as an every day citizen would be.
- **Competency:** The individual is presumed competent, unless otherwise established by the court.
- **Least Restrictive Alternative:** The IJP recommendations should be based on an approach that represents the least restrictive, effective alternative for the individual. This may mean the least restrictive alternative within a particular situation.
- **Control vs. Incarceration:** There may be other, less restrictive and more appropriate methods to ensure positive behavior support rather than incarceration. Incarceration is not only the most restrictive alternative but a costly one as well.

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Chapter 4



## Understanding concepts included in an IJP continued....

- **Due Process:** The IJP should ensure that due process is followed, and that the case can be handled in a timely and meaningful manner.
  - Does the individual have access to an attorney?
  - Has the individual been informed of his/her rights?
  - Does he/she understand them?
  - Has the individual given informed consent for the IJP?
- **Normalization:** Natural consequences should be utilized in an effort to provide a normalized lifestyle for the individual.

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Chapter 4



## Writing the IJP

### I. **Presenting Problems**

The specific behaviors that brought the individual into the CJ system should be described including how often, how severe, history of past offenses, and the likelihood of reoccurrence.

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Chapter 5



## Writing the IJP

### II. **Assessment**

- Evaluate the motivation or cause for the presenting problem.
- Outlines areas/domains of the person's life that should be considered.
  - Residential
  - Education/Training
  - Vocational
  - Medical
  - Mental/Behavioral Health
  - Financial
  - Social/Recreational
  - Family
  - Cultural Background
  - Transportation
  - Advocacy

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Chapter 5



## Writing the IJP

### III. Recommendations

- Identify resources/services that may be available.
- Involve an integration of the CJ system and community-based services.
- Least-restrictive, most effective services should be recommended.
- Service providers/responsible parties should be identified for each recommendation.

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Chapter 5



## Writing the IJP

### III. Recommendations continued...

- Positive Behavior Supports
- Counseling
- Supervision and/or case management
- Community service
- Hospitalization
- Agency transfer
- Other treatment/training
- Psychotropic medication management
- Restitution
- Fine
- Probation
- Incarceration

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Chapter 5



## Writing the IJP

### **IV. Other Recommendations**

- The team may also develop individual specific recommendations.

### **V. Anticipated Outcome**

- Identify the desired outcomes of the IJP.
- Should take into account the possible reoccurrence of the target behaviors and should include strategies to address them.

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Chapter 5



## Writing the IJP

### **VI. Integration**

- If an individual has an existing plan, the IJP should be integrated into this plan so that a single plan encompasses all services.

### **VII. Review of the IJP**

- A review process should be outlined.
- A responsible person should also be identified within the plan. This person will provide the oversight and implementation of the IJP.

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Chapter 5



## Writing the IJP

### **VIII. Consent**

- Involve the individual and/or their legal decision maker.
- Once developed, the individual and/or legal guardian should be fully informed of all components.
- Written consent should be documented on the IJP document.

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Chapter 5



## Writing the IJP

### **IX. Confidentiality**

- An IJP is considered to be part of an individual's record and should not be disclosed without proper authorization.
- See Appendix 6 for a sample authorization to disclose information.

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Chapter 5



## ND Legal System

Things to consider when a person with a disability becomes involved in the CJ system.

- Rights protection
- Limited capacity
- Ability to understand the process
- Difficulties with communication
- Awareness of their responsibilities
- Ensure their right to due process—they may need assistance with this

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Chapter 6



## ND Legal System

### Roles

A number of people may be involved during various points of the process.

- Law Enforcement/Jail Personnel
  - If disability is identified at this point, note in documentation.
  - Consider referral to the regional human service center or advocacy agency
  - May use IJP referral form (Appendix 6)

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Chapter 6



## ND Legal System

### Roles continued....

- States Attorney/Prosecuting Attorney
  - May need to ensure that the individual understands their right to seek counsel.
  - May make referral to HSC or advocacy agency for support of the individual.
- Defense Attorney
  - Individual may need assistance with applying for court appointed counsel.
  - Often an important person to identify the potential use of an IJP to present to the court.
  - May identify the need for a fitness/competency evaluation if a disability is present.

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Chapter 6



## ND Legal System

### Roles continued.....

- Judge
  - If recognition that a disability is present, the Judge may ask for an evaluation of fitness/competency or provide other direction to the attorney, including the consideration of an IJP.
- Parole/Probation
  - Often has a role in the development and implementation of an IJP.
  - May occur during a pre-sentence investigation, a period of parole or probation, or following completion of a sentence.

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Chapter 6



## Other Considerations when the Legal System is Involved

- Fitness to Proceed (Competence)
- Culpability & Criminal Responsibility

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Chapter 6



## Conclusions

- The Ind. Justice Plan is a PROCESS
- Long history (now 20 years) with mixed uses and results
- It is an option when CJ and Human Service system are able to coordinate
- Does NOT
  - 'let people off' or
  - 'force people into treatment' –
  - but can guide people into safe, satisfactory solutions

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## Conclusions (continued)

- Used with
  - DD population
  - Not yet with MI/TBI
- Training started in Grand Forks Region
  - Planned for two more regions this spring
  - Whole state by 2009
- Those who have used it over the years have:
  - consistently found it useful and
  - asked for more support to using it

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## Identified North Dakota Stakeholders

- Protection & Advocacy Project
- ND Center for Persons with Disabilities, Minot State University
- Police departments
- Department of Corrections – adult and juvenile services
- Sheriffs and Deputies Association
- State Legislators
- State Court System

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## Identified North Dakota Stakeholders

- DHS – Developmental Disabilities
- DHS - Mental Health
- DHS - ND Developmental Center
- DHS - ND State Hospital
- Independent Living Centers

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## Identified North Dakota Stakeholders

- Private attorneys
- Indigent Defense Commission
- States Attorneys Association
- Mental Health America of ND
- Governor's office
- Guardianship workers
- Disability service providers
- Consumers, parents, guardians

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## Appendix 2 Terms and Definitions

Appendix 2 was developed to create an understanding of terms and definitions that often arise when working within the Criminal Justice System.

Pairing this system with Human Service Systems also creates another layer of terms and definitions.

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## Appendix 3 Regional Resource Lists

Regional Resource Lists were developed to assist with potential referral sources.

Organized by Human Service Center Regions and then by County.

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## Appendix 4 IJP Worksheets

### o Individual Justice Plan Form

- Headings to assist an individual's team with development of the plan.
- Headings can be added or deleted as appropriate for each individual situation.
- Team member involvement varies from situation and does not require any designated entities.

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## Appendix 5 IJP Examples

- o A number of examples were provided in the IJP manual.
- o Can be used as a guide for teams when developing plans.
- o Cover a number of different disability areas.
  - Scenario #1-Person with Developmental Disability.
  - Scenario #2-Person with Developmental Disability and Mental Illness.
  - Scenario #3-Person with a Traumatic Brain Injury.
  - Scenario #4-Person with a Mental Illness.

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## Appendix 6 Authorization to Disclose Information

- With FERPA and HIPAA, we all have a heightened awareness of disclosing information to other entities.
- Appendix 6 includes a sample Authorization to Disclose Information that is FERPA and HIPAA compliant and can be used in any situation.

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## Appendix 7 Disability Awareness

- Characteristics of Mental Retardation or a Developmental Disability.
- Tips on how to interact with a person who has Mental Retardation.
- Identifying the Presence of Mental Illness and characteristics that may be included.
- Tips on how to interact with a person who has a Mental Illness.
- Distinguishing Mental Retardation from Mental Illness.

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## Appendix 8 Flowcharts

- ND Law Enforcement Investigatory Flowchart
  - Note areas in which the presence of a disability may be identified through actions or behaviors.
- ND Criminal Prosecution Flow Chart
  - Note areas where an IJP may be introduced