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Equal Justice Talks Webinar: Providing Advocacy for People with I/DD in the Criminal Justice System

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www.advocacy-partners.com

Equal Justice Talks Series for The Arc of New Jersey



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My Background

- Attorney licensed in NY and MD
- Practices as an Advocate in Virginia
- Former Executive Director of The Arc of Loudoun, and Director of ALLY Advocacy Center
- Launched Advocacy Partners in 2020



Introduction to Advocacy Partners

www.advocacy-partners.com

Mission: To advocate for individuals with disabilities and help navigate the unique challenges they face

Focus Areas:

- General Advocacy
- Criminal Justice Advocacy
- Lifetime Planning
- Training/Community Outreach
- Public Policy



Realizing the Need

- Troy's case: victim AND defendant
- People with disabilities are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences than those without disabilities
- Once entangled in the system, this population faces very unique challenges



Our Role

- Advocate and support throughout entire process
- Liaison between client and attorney
- Ensure that all parties understand the client's disability and how it affected the behavior at issue
- Assess client service and support needs
- Develop Individualized Accountability Plan
- Refer to services, monitor progress, and report to court
- Training, outreach and policy development



Legislation in Virginia

- **VA Code Section 19.2-303.6** (effective July 2020)
- Deferred disposition in a criminal case; persons with autism or intellectual disabilities
 - Upon finding of guilt, upon plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt,
 - If the defendant has been **diagnosed** by a psychiatrist or clinical psychologist with autism or an intellectual disability,
 - And the court finds by **clear and convincing evidence** that the criminal conduct was **caused by or had a direct and substantial relationship** to the person's disorder or disability,
 - The court **may** (without entering a judgement of guilt) defer further proceedings and place the accused on probation.



- **SB 1315 (effective July 2021)**
- **Criminal proceedings; consideration of mental condition and intellectual and developmental disabilities.**
- Permits the admission of evidence offered by the defendant concerning a defendant's mental condition at the time of an alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, if such evidence (i) tends to show the defendant did or did not have the specific mental state required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence.
- The bill also clarifies that a diagnosis of an intellectual or developmental disability shall be considered by a judicial officer for the purpose of rebuttal of a presumption against bail and that a court may order that a sentencing report prepared by a probation officer contain any diagnoses of an intellectual or developmental disability.
- Lastly, the bill adds to the requirements to be met for qualification as a court-appointed attorney two hours of continuing legal education, which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities.



- **HB 659 Workgroup (in progress)**
- Directs the Department of Corrections to create a workgroup to review current guidelines and develop recommendations that recognize and make accommodations for people with developmental disabilities



- **HB 5043 (Marcus Alert)**
- Creates a mental health awareness and community understanding
 - Directs DBHDS, in conjunction with DCJS to submit a plan for the establishment of a Marcus Alert System no later than July 1, 2021
 - Stakeholder work group created



Case Study

- Ray's Case
- Childhood/background
- Arrested and charged with possession and distribution of child pornography
- Procedural history (30 days in jail, house arrest, and plea)
- Support for mother
- Development of IAP
- New law and letters from legislators
- Negotiations with Prosecutors (reconciling audio of interrogation with psychologist's report)
- Sentencing hearing and deferral plan (no internet, no contact with minors, continued work with Advocacy Partners)



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Thank you for your time!

Feel free to contact me with questions or comments:

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