

Criminal Justice Resource Manual



Document approval

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Foreword

Over the past twenty five years disability, law and justice research has recognised that people with an intellectual disability have been disadvantaged within the criminal justice system.

During this period, various systemic changes have taken place across legislative, administrative and procedural practices that have served to better protect the basic human rights of people with an intellectual disability. However, there is still a long way to go.

In New South Wales, the Human Services and Justice Chief Executives Officers Forum have agreed to the Intellectual Disability and the Criminal Justice System - NSW Interagency Service Principles and Protocols (2008). These provide an overarching framework for collaboration that will achieve better outcomes in relation to criminal justice, for people with an intellectual disability; a group of people who it is acknowledged, remain both disadvantaged and over represented in the criminal justice system.

As a party to this agreement, the NSW Department of Ageing Disability and Home Care (DADHC), has an important role in ensuring that the human rights of people with an intellectual disability are applied at every level of daily life and this includes the right to exercise individual rights and protections under law.

The Criminal Justice Resource Manual is a practical, in-depth resource provided to disability staff who seek additional information and guidance in the provision of support to people with an intellectual disability. It accompanies the Justice Services Policy (June 2009) and is part of DADHC's commitment to improving services and promoting the rights of people with an intellectual disability in, or at risk of, contact with the criminal justice system.

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Department of Ageing Disability and Home Care**

June 2009

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- Intellectual Disability Rights Service
- NSW Department of Corrective Services
- NSW Department of Juvenile Justice
- NSW Mental Health Review Tribunal

The authors wish to thank and acknowledge the information provided by the following organisations and government departments through their online and printed information:

- NSW Attorney General's Department
- Australian Bureau of Statistics
- Australian Legal Information Institute
- Criminal Justice Research Network
- NSW Department of Corrective Services
- NSW Department of Health
- NSW Department of Juvenile Justice
- Judicial Commission of NSW
- Legal Aid (NSW)
- Legal Information Access Centre
- Macquarie Legal Centre
- NSW Mental Health Review Tribunal
- NSW Law Reform Commission
- NSW Law Society
- NSW Police Force
- NSW Young Lawyers
- Redfern Legal Centre Publishing

How to Use this Manual

The Criminal Justice Resource Manual (CJRM) has been developed to provide guidance and information to Departmental staff in the provision of services to people with an intellectual disability who are in, or at risk of, contact with the criminal justice system.

The Contents Table lists a number of subsections that will cover the most useful information required for providing support to the Department of Ageing Disability and Home Care (DADHC) Service User during their encounters with the Police, Court and the various custodial situations.

The CJRM is divided into tabbed sections that follow the path through the criminal justice system for victims of crime, witnesses and offenders (see the flow chart *Adult Alleged Offender – Contact with Police to Court outcome*). The manual begins at the initial contact with Police and follows through to a Court appearance and outcome. In some cases the outcome might include a custodial sentence for an offender.

While the emphasis of this manual tends to centre on the adult offender this *is* the group that is most represented across the criminal justice system and may require the most extensive disability support from DADHC. Sections 1.5 – 1.8 and Sections 5 - *Going to Court* provide specific information regarding victims of crime. Section 6 - Court and other outcomes and Sections 8.1 – 8.3 have information that relates to young people.

Guidance on working with Service Users who are in custody or detention is provided in *Section 8 – Working with a Service User who has been sentenced*.

The Glossary at the end of the manual provides a quick reference to the most common terms and concepts used in relation to the criminal justice system and the Resources and Contacts section provides further sources of referral, advice and information.

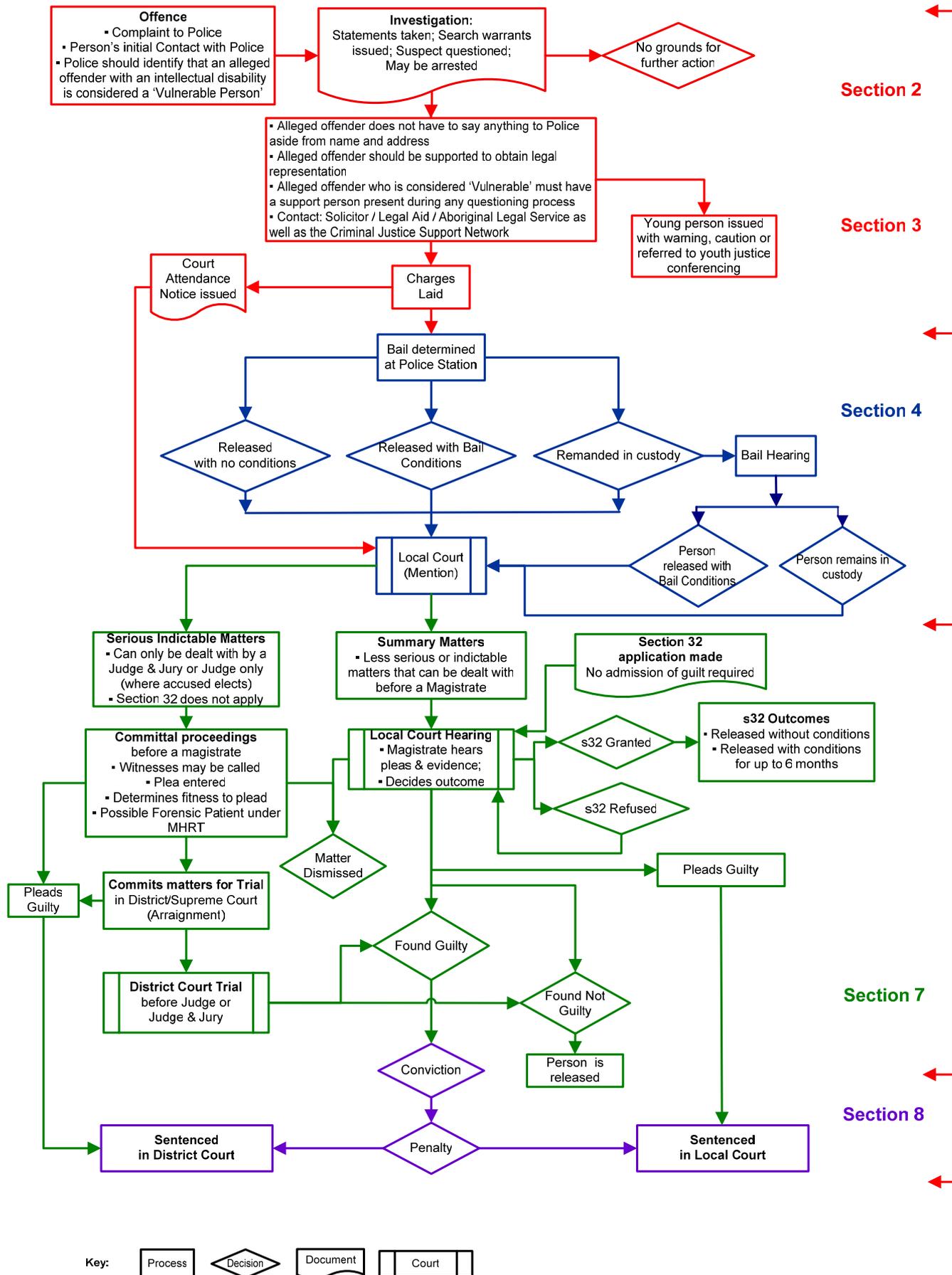
In Section 11 the list of various Commonwealth and State Acts and Regulations provides an introduction to the way legislation is set out and the wide range of laws and regulations that can impact on DADHC Service Users in contact with the criminal justice system.

The Appendices consist of various templates and background information that can assist DADHC staff in the provision of support to a DADHC Service User. The Commonwealth and NSW State Legislation section provides an overview of the various laws that can impact on this target group.

The CJRM is intended to be used as a guide for providing support to people with an intellectual disability in order that they are better able to exercise their rights under law. It should be read in conjunction with the *Justice Services Policy (June 2009)* and other relevant DADHC policies.

It is intended that the information in the CJRM be inserted into a tabbed binder enabling any changes and amendments to pages to be easily replaced. This binder will also enable staff to insert relevant resources and information from their work and from other agencies that will add to the quality and usefulness of the information provided.

Adult Alleged Offender - Contact with Police to Court outcome



1. Contact with the criminal justice system

DADHC staff may begin working with an individual with an intellectual disability who is in contact with the criminal justice system at any stage of that contact. They may be a child, young person or adult who is:

- a person for whom a *Service Request* to DADHC has been made and who has had minor contact with the criminal justice system
- a potential or existing Service User who is going through Court as an alleged offender or victim of crime
- a potential or existing Service User who has been sentenced to a community based order
- a potential or existing Service User with a previous history of offending who may or may not have spent time in Gaol or a Juvenile Justice Centre
- a potential or existing Service User who is about to be, or has recently been, released from Gaol or a Juvenile Justice Centre.

A Service User may also be considered 'at risk' of involvement in the criminal justice system through:

- the presentation of behaviour that might result in charges if the Police were involved e.g. assault or malicious damage
- receiving a Police caution after a minor infringement
- being identified as an actual, or potential, victim of crime.

A *Service Request* may be made to DADHC when it is thought a person has an intellectual disability and their offending behaviour might be linked to the need for support services. This may occur when a person is already in Gaol; is being represented by a Solicitor who suspects they may have an intellectual disability; or where they have been identified through the Juvenile Justice system as a young person who might have an intellectual disability.

1.1 Service Requests to DADHC

Service Requests to DADHC for people who are in, or at risk of, contact with the criminal justice system may come from:

- DADHC
- Family/Carer or Guardian of the person involved
- Advocates
- Police
- Courts
- Legal Aid
- Department of Juvenile Justice
- NSW Health (Justice Health)
- Department of Corrective Services (Statewide Disability Services or Community Offender Services)
- Department of Community Services (DoCs)
- Intellectual Disability Rights Service or the Criminal Justice Support Network

- Funded Disability Services
- Health/Mental health professionals or services.

It is important that the agency or individual making the *Service Request* is made aware that providing appropriate supporting documentation to confirm eligibility for DADHC services will help ensure the intake process takes place in a timely way. If there are reports or documentation that the referrer can provide this will help the intake process to proceed.

Time frames are critical to being able to provide appropriate support to a person who has to go to Court or who is required to meet conditions of parole or community based orders. Timeframes are also critical for the Service User who is due to exit custody or a young person who is involved with Juvenile Justice. Children and young people move through this system more rapidly than adults.

1.2 Determining eligibility and prioritisation

DADHC eligibility criteria requires an assessment that results in an IQ of 70 or below, plus at least two deficits in adaptive functioning *and* any onset taking place prior to 18 years old. Details of the intake process can be found in the DADHC *Intake Policy*.

Section 2 of the DADHC Intake Policy 'Providing an Immediate Response' requires a *Service Request* to be escalated if there is an immediate threat to the health and safety of the person with an intellectual disability, their carers and/or the community. Urgency indicators in the *Intake – Request for Service form (IF 3)* list 'involvement in the criminal justice system' and 'imminent institutionalisation' as grounds for an immediate response.

In the *DADHC Prioritisation and Allocation Policy*, 'Operational guidelines in relation to Immediate Response', the criteria for determining how resources are allocated in the provision of interventions to eligible Service Users include:

- 1R a Violence or abuse resulting in the Client, family or carer or member of the community being at risk of injury.
- IR b Homelessness – as soon as it is determined that the Client currently has no where to live (could be blocking a respite bed, or delaying parole/release).
- IR c Client displaying challenging behaviour such that they are at risk of becoming involved in the Juvenile or Criminal Justice System or who have already been involved with the Juvenile or Criminal Justice System and are at risk of re-offending.
- IR d Client whose continued living in the community is contingent on receiving services as a condition of bail, bond, or parole etc.
- IR e A Client who is at imminent risk of entering a more restrictive option and/or, whose carer is likely to be at risk unless entry into the service is facilitated. This may include Clients who are at risk of incarceration or re-incarceration. It may also apply to young people who have been or are at risk of being inappropriately placed in an aged care nursing home.'

The circular *Assessing eligibility for service of people in custody (2008/0037)* provides additional direction for DADHC staff in regards to the determination of eligibility for people in custody, though DADHC service provision will still be dependent on the Service User being deemed eligible for services.

It is important in circumstances where eligibility is still being determined that correspondence and discussion with the Service User, Carer, Police, Courts and other professionals reflect that should the Service User be deemed *ineligible* for DADHC services, they will be directed back to the DADHC Information, Referral and Intake (IRI) section for referral to the most appropriate service. These services may include funded services in the community.

See: Appendix 11 - Assessing eligibility for service of people in custody (Circular)

1.3 Consent to exchange information

In order to assist DADHC to plan and provide effective services and support to the Service User involved in the criminal justice system, information may be sought and exchanged from various Departments or agencies. For example, when liaising with the Statewide Disability Services (SDS) at the Department of Corrective Services (DCS) or with a Probation and Parole Officer at Community Offender Services at DCS. Information sought may include:

- assessments and reports undertaken by Psychologists, Psychiatrists and/or staff at Corrective Services (including Probation & Probation and Parole Officers etc.)
- reports or information that a Solicitor has on file
- offence history
- Police 'Facts' on the matter involving the Service User
- historical information held by other agencies.

As well as informing the provision of support to the Service User, such as case management, service planning and clinical support. Information sought will also enable DADHC to:

- identify any Occupational Health and Safety (OH & S) implications for staff who work with the Service User
- inform an initial *Service User Risk Profile*
- provide information for case coordination and clinical service provision
- prepare (where required) information for the Court (See: *Section 6 – Providing Information to Court*).

Staff should ensure that they take the time to explain to the Service User why particular information is needed and what information may be provided. Service Users who have an appointed Guardian cannot provide signed consent. Consent must be obtained from the relevant Guardian who will need to know the reasons why the information is being sought and what it will be used for.

The Service User must agree to provide consent in order for DADHC staff to obtain information from other Departments or agencies. The Service User (or their Guardian) may refuse consent or refuse consent for access to particular information. The Service User/Guardian is also able to withdraw consent at any time.

DADHC staff will need to provide a copy of the signed consent form to the Department or agency they are seeking information from. The Department of Community Services has a specific form that must be completed in order to obtain information about a current or former DoCs client such as those who were once State Wards.

To obtain information about a Service User who is also under the care of DoCs or who is a former State Ward contact:

DoCS Information Exchange Unit

 02 9716 2939 **Fax:** 02 9716 2126

DADHC staff should:

1. Explain the *Consent to Exchange Information Form* to the Service User (and check their understanding). He/She will need to know:
 - what consent to exchange information means
 - who DADHC may seek information from, the reasons why the information is required, who DADHC may provide information to and the type of information that will be exchanged
 - that they may withdraw permission at any time

- that the consent will remain valid for 12 months.
2. Obtain a signed and dated *Consent to Exchange Information Form* from the Service User, their parent/Guardian or person responsible.
 3. Check that any existing *Consent to Exchange Information Form* is current. Signed consent must be obtained every twelve months.
 4. Appreciate that any delay in obtaining consent can have a significant impact on service provision for a person who is involved in the criminal justice system where timeframes can be critical.

See: Appendix 1 - Consent to Exchange Information form

1.4 Supporting the Service User who is involved with the criminal justice system

Supporting the Service User to negotiate the criminal justice system is part of DADHC service provision whether the person is an alleged offender, a witness or a victim of crime and whether they are a child, young person or adult.

This support may involve:

1. Assisting the Service User to understand the processes at the various stages of their involvement in the criminal justice system while supporting them to exercise their rights and understand their responsibilities.
2. Assisting the Service User to access legal representation (See *Section 3 – Legal Representation and Support*).
3. Providing relevant information to the Court (through the Service User's Solicitor) about the impact of the Service User's intellectual disability on their day to day life (See *Section 6 – Providing Information to Court*).
4. Organising a support person of the Service Users choice to attend a Police interview and/or Court with the Service User.
5. Liaising with the Solicitor regarding DADHC services and the provision of information to the Court (See *Section 6 – Providing Information to Court*).
6. Coordinating services and liaising with the Service User, their family or carers, DADHC Regions, funded services and other Departments or agencies e.g. Department of Community Services (DoCS) or the Intellectual Disability Rights Service (IDRS).
7. Seeking information or services from specialist community sector organisations.
8. Arranging an advocate when it is identified that the person has no informal advocacy supports (family relationships or friends).
9. Working with the Departments of Corrective Services (Statewide Disability Services and/or Community Offender Services) and Juvenile Justice – See *Section 8 - Working with a Service User who is in Custody*.

1.5 The Service User as a victim of crime

People with an intellectual disability are over-represented as victims of crime, and are particularly vulnerable to sexual assault and fraud¹. They are also less likely to report the crime to the Police because they may:

- not understand that a crime has been committed
- have limited ability to communicate
- not know where to seek help, particularly where past responses involved no action being taken
- fear the consequences of speaking out such as when the perpetrator has a supportive/caring role in relation to them
- fear the Police or those in authority
- not be accepted as reliable witnesses when they do report the crime
- fear that they will not be believed
- experience feelings of shame and guilt
- be concerned about the cultural implications of reporting a particular crime
- face inaccessible procedures to lodge complaints and give up.

Charter of Victims Rights

Victims of crime in New South Wales have a Charter to protect and promote their rights. The *Charter of Victims Rights*, set out in the *Victims Rights Act 1996* (NSW) establishes standards for the appropriate treatment of victims of crime and is overseen by the Victims of Crime Bureau. The charter can be viewed through the Lawlink website:

http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_voc.nsf/pages/voc_victims_rightscharter

DADHC staff should:

1. Comply with DADHC *Abuse and Neglect Policy and Procedures (May 2007)*. In particular Section 4 - *Response Procedures For DADHC Operated Services*
2. Encourage the Service User to receive appropriate medical attention and notify the Police when they have been a victim of crime such as assault or sexual assault.
3. With the Service User's consent arrange support for them to make a report to Police if they are a victim of crime. Where appropriate, assist the Service User to obtain support and advice from specialised sexual assault services.
4. Ensure that staff (and others) interaction and questioning about the incident is minimised until the Service User has been able to make a statement to Police. If the Service User has to repeat what has occurred too often, crucial information may be omitted during the formal interview by Police.

A full listing of sexual assault services in all regions of NSW

can be found through the *NSW Health Services Directory* at the NSW Health website:

<http://www.health.nsw.gov.au/services/>

¹ Committee on Intellectual Disability and the Criminal Justice System (June 2000)

1.6 Children as victims of crime

In the case of children where there is suspected or detected physical or sexual assault, DADHC staff should be aware of their responsibilities as mandatory reporters.

See DADHC policy: [Responding to Risk of Harm to Children and Young People \(2007\)](#)

Section 3.1 'Requirements when making a child protection report'

 **DoCS Helpline on 132 111**

1.7 Support for victims

DADHC staff should:

1. Consider the DADHC [Abuse and Neglect Policy and Procedures \(May 2007\)](#), in particular Section 4.9 – *Support for Clients*
2. With their consent assist the Service User who has been the victim of crime to make a statement to Police and to attend Court to give evidence if required. This assistance includes arranging an independent support person to sit in on a Police interview or attend Court.
3. If both the alleged victim and the alleged offender are DADHC Service Users it is preferable that an independent support person rather than a DADHC Staff member provides support to a Service User to attend a Police interview or Court.

See: **Section 3 - Legal representation and support for the Service User**

Section 10 – Resources and Contacts: Attorney General's Department - Victims Services

4. Assist the Service User to contact the Victims Support Line for support or information.

Victims Support Line

 02 8688 5400

Free call: 1800 633 063

TTY: 02 8688 5575

Web: Look under **Victims Services** on the **Lawlink** website

<http://www.lawlink.nsw.gov.au>

The *Victims Support Line* provides 24-hour information, referral and support to victims of crime. It can provide practical information for victims of crime and service providers who are assisting victims about:

- counselling and support services
- Police investigations and Court processes
- obtaining compensation
- domestic violence and sexual assault
- victim's rights.

1.8 Compensation for victims

If a Service User has been a victim of crime in New South Wales and the crime involved violence they may be eligible to claim Victims Compensation.

The Victims Compensation Scheme was established to assist victims of violent crime. The scheme is run by Victims Services, who also help victims in other ways, such as providing counselling, support and information.

Eligibility for compensation

A Service User who is a victim of crime is eligible to claim compensation if they are:

- the victim of an act of violence and are injured as a result (a 'primary victim')
- the member of the immediate family of a homicide victim (a 'family victim')
- injured as a result of witnessing an act of violence (a 'secondary victim')
- the parent or Guardian of a primary victim of an act of violence who was under the age of 18 years at the time of the act and who is injured as a result of learning of the act of violence (a 'secondary victim').

A Service User who is a victim of crime is also eligible for compensation if they are injured while trying to:

- prevent someone from committing an act of violence
- arrest someone who is committing an act of violence
- help or rescue someone against whom an act of violence is being committed (a 'primary victim').

Claims for victim's compensation are heard in the Victims Compensation Tribunal. Fees related to solicitor services will be reimbursed by the Tribunal, whether the compensation is granted or not, and will not be deducted from any money the Service User might be awarded.

DADHC staff should:

1. Assist the Service User to seek help to lodge an application for compensation. An application will need to be lodged with Victims Services. There are time limits for lodging a claim.
2. Encourage and assist Service Users to seek legal advice before they claim compensation. This is likely to increase the Service User's chances of compensation.
3. Be aware that a Victims Compensation payment may impact on a Service User's Centrelink payments.
4. Find out more information about Victims Compensation - Visit the [Victims Services website](#) - information and application forms are available on the website:

http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_index

Contact Victims Services



02 8688 5511

1800 069 054 (toll free)

02 8688 5575 (TTY - for callers with a hearing impairment) Email: vct@agd.nsw.gov.au

1.9 The Service User with offending behaviour

People with intellectual disability comprise between 1% and 3% of the NSW population² and despite continuing debate about research figures in relation to IQ scores and percentages there is general agreement that there are a significant proportion of adults in prison who have an intellectual disability. Recent studies focusing on young people in NSW reveal that approximately 13% of those in custody³ and 11% on community orders⁴ could have an intellectual disability.

According to the 1996 *NSW Law Reform Commission Report 80*⁵, offenders with an intellectual disability are treated differently to non-disabled offenders in the criminal justice system. They are more likely to:

- be arrested, questioned and detained for minor infringements
- come before the Courts due to Police prosecuting cases where the offender appears 'abnormal or possibly dangerous'
- confess to a crime they have not committed
- not understand the meaning of their right to silence
- be convicted as they tend to confess rather than plea-bargain
- be refused bail
- receive custodial sentences due to the lack of alternative placements in the community
- serve longer sentences or a greater percentage of their sentence before being released on parole
- be vulnerable in the main Gaol population so are more likely to be housed in maximum security facilities for 'protection'.

DADHC and the Service User with offending behaviour

When providing services to a Service User who has offending behaviour(s) it is important to understand their vulnerability within the criminal justice system. This vulnerability might seem obvious in relation to children and young people with intellectual disability however, adults with intellectual disability, especially those with multiple disabilities are also vulnerable to unfair treatment or outcomes within this system.

Regardless of whether the Service User is considered to be guilty or not guilty of a crime, the role of the service provider is to help that person access the information and support required to exercise their rights under the law.

It is also important that the Service User who is involved in the criminal justice system is not defined by the offences that they have committed or are alleged to have committed. Recognising and addressing their unmet needs and supporting their strengths and protective behaviours will help to minimise or offset any identified risks or offending behaviour.

Many people with an intellectual disability who have had regular contact with the criminal justice system or repeated periods in Gaol have never received support or services and may be adept at hiding their disability. Person centred service provision that utilises the Service User's strengths and helps them to reach their personal goals will increase their motivation to engage with DADHC.

The personal values and attitudes of a DADHC staff member can be challenged when working with some Service Users with offending behaviour(s), particularly in relation to particular offence types. In these instances it is important that any issues and concerns are raised with the relevant Line

² Simpson, J., Martin, M., Green, J. *The Framework Report* (2001) section 2.3, page 8

³ NSW Department of Juvenile Justice 2003, *NSW Young People in Custody Health Survey*. Key Findings Report.

⁴ Kenny, D.T., Nelson, P., Butler, T., Lennings, C., Allerton, M., and Champion, U. (2006). *NSW Young People on Community Orders Health Survey 2003-2006: Key Findings Report*. The University of Sydney.

⁵ NSW Law Reform Commission Report 80 (1996) – People With an Intellectual Disability in the Criminal Justice System

Manager. DADHC has specialist practitioners that can provide support and guidance to staff who work with Service Users with more complex or controversial offending behaviour(s).

The role of DADHC is to provide disability services and support to the Service User that will enable them to live in the community. DADHC does not have a mandate to protect the community or manage offenders. In NSW this is the responsibility of NSW Police, Corrective Services, Community Offender Services (COS) and Juvenile Justice.

Providing support to a person in contact with the criminal justice system will usually require immediate action such as contacting Legal Aid or the Intellectual Disability Rights Service (IDRS) to assist the Service User to obtain legal advice and/or the Criminal Justice Support Network (CJSN) to arrange a support person (see Section 3).

Further planning and case management will also be required, for example, to prepare a Service User for release from custody (Section 8) or to assist a Service User to prepare for Court (Sections 5 & 6).

What do you need to know about the Service User's criminal justice matter?

Immediate Response Checklist

Further Information

Ensure you have an up to date copy of the Service User's Consent to Exchange Information form

Appendix 1 – Consent to Exchange Information Form

Contact the Service User's family and/or Guardian to notify them of the situation

Section 10 – Resources & Contacts

Is the Service User under arrest?

- has the Service User been charged?
- what are the charges?
- is the other party to the matter also a DADHC Service User?
- obtain a copy of the Police Facts and charges documentation (through the Service User or their Solicitor with the Service User's permission).

Appendix 2 – Under Arrest? Fact sheet

Section 2.5 – When the Service User has been charged

Has the Service User been interviewed or will they be interviewed by the Police?

- what is the location of Police Station?
- obtain name & contact details of Police Officer/s involved
- remind the Police that the Service User has a disability and should be considered a vulnerable person
- encourage and assist the Service User to speak to a Solicitor before they agree to be interviewed by Police
- if the Service User is an Aboriginal person, contact the Aboriginal Legal Service if they agree
- help the Service User to arrange a suitable support person to attend the Police Station
- where relevant, remind the Police an interpreter is required.

Section 2 - Dealing with the Police

Section 10 – Resources and Contacts

Section 3 – Legal Representation and Support

Is the Service User in custody?

- verify the location of where they are being held
- if an adult is held on remand in a Correctional Centre (Gaol) or Kariong Juvenile CC, inform the Dept. Corrective Services, Statewide Disability Service
- if a young person is being held at a Juvenile Justice Centre immediately contact the Assistant Manager Client Services to inform them of DADHC involvement and to arrange

Section 10 - Resources & Contacts

Section 8 – Working with a Service User who is in custody

Immediate Response Checklist

collaborative case management.

- if sentenced, verify the earliest and latest release dates
- begin preparing a release plan
- work with the Service User's family to maintain contact while the Service User is in custody.

Further Information

Is the Service User a victim of crime?

- are medical/sexual assault or other support services required?
- determine the circumstances and what support will be required
- is the other party to the matter also a DADHC Service User?
- has the Service User been interviewed by Police?
- arrange a support person to be present at the interview
- assist the Service User to obtain Legal Advice where required
- if they are a victim of a violent crime they may have rights under the Charter of Victims Rights and may be entitled to victims' compensation.

Section 1.5 - The Service User as a Victim of Crime

Section 3 - Legal Representation and Support

Help the Service User to obtain legal representation

- obtain name and contact number of any existing Solicitor
- help the Service User to obtain Legal advice and/or engage a Solicitor. This may be through: Legal Aid, Aboriginal Legal Service, the Intellectual Disability Rights Service or the Women's Legal Services (which has a Domestic Violence Advocacy Service)
- where required provide information to the Solicitor about working effectively with people with an intellectual disability
- liaise with the Solicitor about information that will be required from DADHC if there is an intention to make an application under s32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW).

Section 3 – Legal Representation and Support

Section 10 - Resources and Contacts

Section 6 – Providing Information to the Court

Help the Service User to obtain bail

- determine grounds for any bail refusal
- help the Service User to negotiate bail where possible e.g. identify to the Police any bail conditions that will be too difficult for the Service User to comply with
- was the Service User released on bail with conditions?
- explain the bail conditions to the Service User and help them to plan how to keep to the conditions
- if you consider the bail conditions to be too difficult for the Service User to comply with successfully, help them to liaise with a Solicitor to make an application to have the conditions amended.

Section 2 - Dealing with the Police

Section 4 - Bail

Section 3 - Legal Representation and Support

Where Community Offender Services are involved

- find out the name and contact details of the relevant Probation and Parole Officer to establish a collaborative working relationship for the benefit of the Service User
- determine what immediate obligations the Service User must comply with in relation to any legal order.

Section 10 - Resources & Contacts

<p>□ Going to Court</p> <ul style="list-style-type: none"> ▪ does the Service User have a Court Attendance Notice? ▪ what is the Court location? ▪ will there be a mention or hearing on this date? (Discuss with Solicitor) ▪ does the Service User require assistance at Court for access or any communication aids? 	<p>Section 5 - Going to Court</p> <p>Appendix 10 - Request for Court Assistance</p>
<p>□ Determine arrangements that will be needed to ensure the Service User attends Court</p> <ul style="list-style-type: none"> ▪ has the Service User been to Court before? ▪ where? Under what circumstances? 	<p>Section 4 - Legal Representation & Support</p>
<p>□ Where possible, arrange an independent support person to support the Service User at Court</p>	<p>Section 10 - Resources & Contacts</p>
<p>□ Is the opposing party in the Court matter also a DADHC Service User?</p>	
<p>□ Begin preparation of the <i>Information to the Court Report and Support Plan</i></p>	<p>Section 6 - Providing Information to the Court</p>

Gathering further information for planning and case management

Information that can assist with medium to longer term case management and clinical services as well as to inform the preparation of documentation for Court can be sought from a number of sources:

DADHC

- Service User files and the Client Information System (CIS). Files may be held in other Regional offices with historical information, for example some DADHC Psychologists keep separate files that may have historical reports
- check CIS for previous DADHC tertiary services involvement. Has the Statewide Behaviour Intervention Service or the Criminal Justice Program had previous involvement?

Legal Representative (including Legal Aid)

- if there is a current Court matter, file information can be obtained from the Service User's Solicitor
- the Solicitor can also provide copies of the Police Facts relating to a Service User's alleged offence
- the Solicitor can also obtain a full offence history for use in longer term therapeutic planning.

Judiciary

- a copy of sentencing remarks and transcripts of a Judge's decision on any current or previous matter can be obtained through an application to the Registrar at the relevant Court. There is usually a fee charged to obtain this information.

Department of Corrective Services (DCS)

- if the Service User has previously been in Gaol contact the DCS Statewide Disability Services (SDS) to request any information from their files that would be of benefit to DADHC service provision
- request that SDS obtain any records from the Adult Vocational Education & Training Institute (AVETI - part of DET within DCS) to obtain information about courses and training that a Service User may have completed in custody
- Community Offender Services (Probation and Parole) is part of DCS. If there has been COS involvement there may be case management records and pre-sentence reports available. (See Section 10 – Resources & Contacts).

NSW Health (including Justice Health)

- if the Service User has been in Gaol Justice Health may have general health, medication and mental health information
- a copy of a Justice Health *Consent to Exchange Information Form* will be needed to obtain information from Justice Health.

Juvenile Justice

- if a person has a juvenile offence history this can be obtained through Juvenile Justice or through their Solicitor if there is a current Court matter.

Department of Community Services (DoCs)

- historical information can be obtained from DoCs with the Service User's written permission (using a DoCs Consent form).

Other Service Providers

- if these are not apparent there may be references in reports you have obtained. Follow up with the listed service or agency to locate any other background information.

Psychiatrists / Psychologists

- references to previous reports may be contained in information gathered. Where possible follow up to obtain copies.

Service User, family/other significant relationships

- may have documents or copies of reports
- up to date or historical information can be provided that may not be recorded in written documentation
- may often provide more current information.

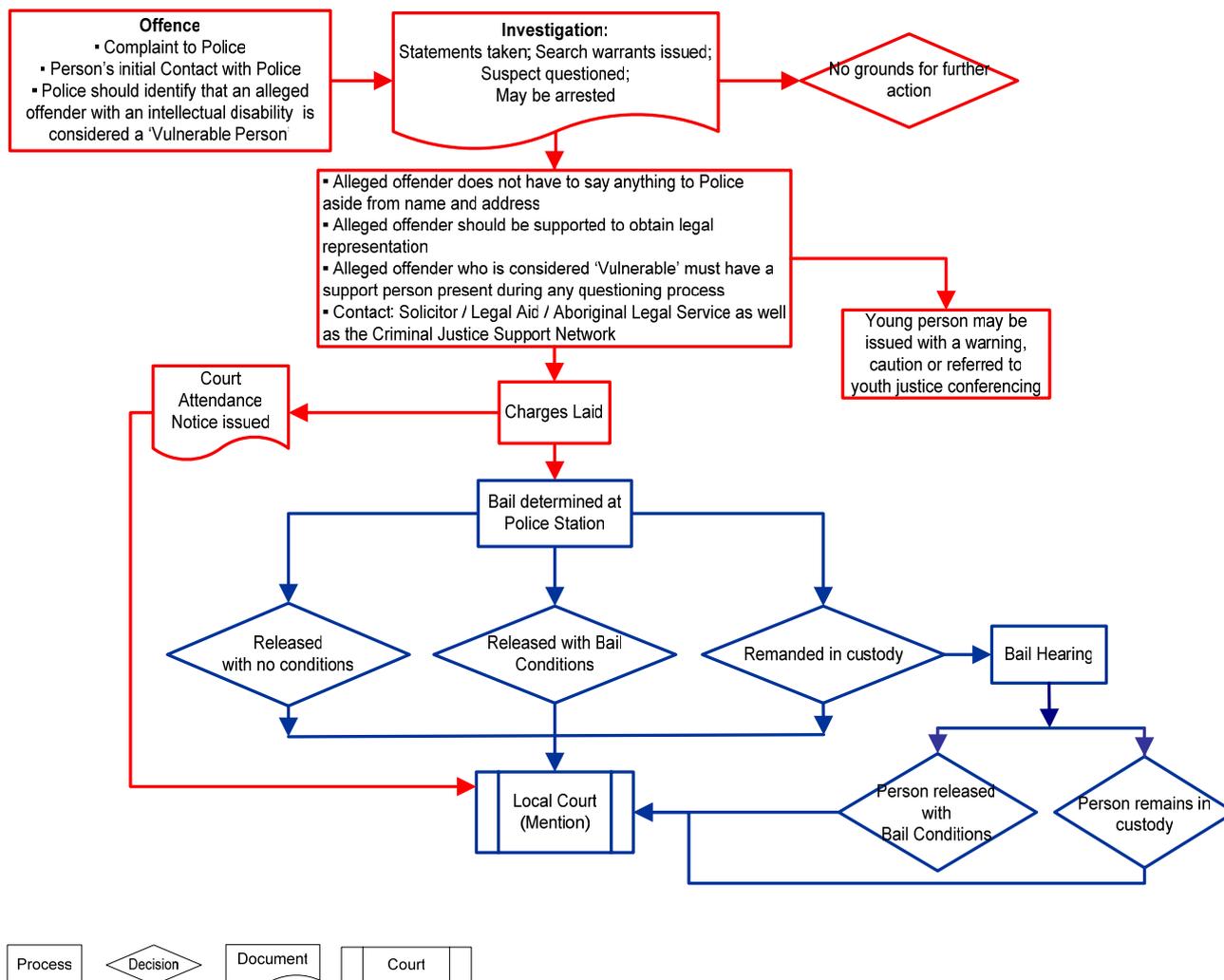
Department of Education & Training (DET)

- school or TAFE history
- see DCS above re AVETI undertaken inside or outside of custody.

Guardianship Tribunal (where relevant)

- history of orders to appoint a private Guardian and/or the Public Guardian (OPG)
- history of orders to appoint a private financial manager and/or the Protective Commissioner (OPC)
- any current orders in place.

2. Dealing with the Police



A DADHC Service User's contact with the Police may occur in a number of ways:

- the Police question them as a witness, victim or suspect in relation to a crime
- they are to be charged with an offence
- there is a warrant for their arrest
- the Police issue them with a warning (not an arrest) for summary offences (i.e. those offences dealt with in a Local Court)
- a child or young person is issued with a caution or warning under the Young Offenders Act 1997 (NSW).

See: Appendix 2 – Law Society 'Under Arrest' fact sheet

2.1 DADHC staff providing information to the Police

DADHC staff should:

1. When requested by the Police, provide confirmation of whether or not the person concerned is a DADHC Service User.
2. Inform the Police of the Service User's whereabouts (if they know this information) when there is a warrant for their arrest.
3. Explain to the Police that they are unable to provide any other information about a Service User without a written request or subpoena. If necessary refer them to your Line Manager and/or consult DADHC Legal Services.
4. Remind the Police that the Service User should be considered a vulnerable person under the *Police Code of Practice* and that they are obliged to arrange for a support person to be present when any Police interview takes place. Do not be pressured into assisting Police by standing in as the support person. It is not the role of DADHC staff to help the Police in this situation; for example, to meet time limits on holding someone without charge.

See: Section 3 - Legal representation and support for the Service User

Appendix 3 - Extract from 'Police Code of Practice for 'CRIME' (Custody, Rights, Investigation, Management and Evidence)

5. Note that this obligation also applies if the Service User is a person from a culturally and linguistically diverse (CALD) background or is an Aboriginal person.
6. If the person's first language is not English or they use an augmentative communication system the Police should be reminded that an interpreter may be needed as well as a support person. Check with the Police that they have arranged for an interpreter to attend Court where required.
7. Record police event numbers and obtain the relevant police contact details (Officers name / Phone / Id number).
8. Find out whether there is a Disability Liaison Officer in the Police Station's local area command. It can be beneficial to meet with this Officer and/or the Local Area Commander to establish local interagency protocols relating to known DADHC Service Users who are in contact with Criminal Justice System.
9. DADHC staff should take care when engaging in conversation with the Police as any information that is revealed inadvertently, could be collected as part of an investigation and used against the Service User. This may also result in the DADHC staff member being called as a witness.
10. Where a DADHC staff member is present when a Service User is being questioned or spoken to informally by the Police, they should not give legal advice to the Service User and under no circumstances should they ask or answer questions of the Service User on behalf of the Police.

See: Section 3 - Legal representation and support for the Service User

11. Should the Police wish to request DADHC services for a person who is not currently a DADHC Service User, DADHC staff should explain that the person will need to be assessed for eligibility as per the DADHC *Intake Policy*. DADHC staff should provide Police with the relevant Information Referral & Intake contact details.

2.2 Supporting a Service User who is being questioned by Police

DADHC staff should avoid being perceived by Police as a support person for a Service User in a Police interview. Along with legal representation an appropriate independent support person should be arranged, particularly when the Service User is being interviewed about a serious crime.

The role of the DADHC staff member when a Service User is to be questioned by Police is to arrange support, assist the Service User to obtain legal advice and remind the Police of their obligations toward a 'vulnerable person' under clause 24 of Law Enforcement (Power and Responsibilities) Regulation 2005.

See: Appendix 3 - Extract from '*Police Code of Practice for 'CRIME' (Custody, Rights, Investigation, Management and Evidence)*

Section 3 – Legal Representation and Support

DADHC staff should:

1. With the adult Service User's permission, contact their family/carer to notify them of the situation. If the Service User has an appointed Guardian they should be notified.
2. Verify with Police that a child or young person's family/carer or Guardian has been contacted.
3. Support the Service User to obtain legal advice.
4. Assist the Service User to arrange an independent support person to be present at the Police interview.
5. Explain to the Service User that they do not have to say anything to the Police and that they should speak to a Solicitor first.
6. Provide information about DADHC services and the Service User to the Solicitor in order that appropriate bail may be obtained from the Police.
7. Notify their line manager of the situation.

See: Section 3 - Legal representation and support for the Service User
Section 4 - Bail

2.3 The DADHC staff member as a witness

DADHC staff should be mindful of the potential for conflict of interest when asked by Police to provide a statement about an alleged incident involving a DADHC Service User. This is particularly relevant when both parties are DADHC Service Users.

In this situation a DADHC staff member cannot provide support to both Service Users. Independent support people should be arranged, or at the very least, other DADHC staff members who were not present at the alleged incident can support the Service User's.

DADHC staff should:

1. Alert their DADHC Line Manager when Police wish to question them about a Service User. This may occur when they are a witness to an alleged offence.
2. Assist the Police with their investigation by providing factual information about the alleged incident. This should only occur if the DADHC staff member was actually present at the incident.

3. Not provide Police with personal opinions, hearsay or speculation regarding an alleged incident or any alleged involvement by a Service User.
4. Where required, complete an *Incident Report* for all encounters with the Police in relation to a Service User. See the DADHC *Incident Management* policy.

2.4 Police request to see a Service User's file

DADHC staff should:

1. Refer the Police to their Line Manager. The Manager will only provide information in accordance with the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Health Records and Information Privacy Act 2002 (NSW)* along with advice from the Legal Services branch of DADHC.
2. Should DADHC staff receive or be served with a written request or subpoena to produce documents or files about a DADHC Service User, they should contact the Freedom of Information (FOI)/Subpoena Officer within DADHC Legal Services branch immediately (See DADHC Intranet).

2.5 When a Service User has been charged

Once charges have been laid a Service User may or may not be released. They may be:

- released with no conditions other than to appear in Court on a set date
- granted bail with conditions attached, for example the person may need to report to the Police daily
- refused bail and held in custody until they appear at a Bail Court either on the same day or the next day depending on the time of arrest. In some areas of NSW Bail Court is held on the weekend.

See: Section 4 - Bail

When a Service User had been charged, DADHC staff should:

1. Where required complete an *Incident Report* when the DADHC staff member becomes aware that a Service User has been charged with an offence.
2. With an adult Service User's permission, contact the Service User's family/carer to notify them of the situation. If the Service User has an appointed Guardian they should be notified.
3. Ensure that the Service User is supported to obtain Legal Representation.
4. Support the Service User to understand the charge sheet and Court Attendance Notice (if relevant) that will be issued by the Police.
5. Arrange for an independent support person to attend Bail Court if required and/or Court on the date specified on the Court Attendance Notice.
6. Take a proactive role in discussing with the Service User and their Solicitor the kinds of services and support that might facilitate bail being obtained.

See: Section 3 - Legal representation and support for the Service User

Section 5 – Going to Court

2.6 When a Service User is released on bail

DADHC staff should:

1. Ensure that the Service User has all relevant documentation such as the *Charge Sheet* (with any Bail conditions attached) and the *Court Attendance Notice (CAN)* where the Service User is released on bail with or without any conditions.
2. Advise the Service User to keep the papers in a safe place. With the Service User's permission DADHC staff should keep a copy of this documentation to use when following up arrangements to attend Court (subject to consent from the Service User) and when supporting the Service User to adhere to their bail conditions. If the Service User does not wish DADHC staff to have a copy of these documents then relevant information and dates and times should be noted for follow up and support by DADHC staff.
3. Copies of these documents may be obtained from Police if the Service User has misplaced them though they may be reluctant to provide them. DADHC Staff can support the Service User to obtain copies by reminding the Police that the Service User is considered a vulnerable person under the Police code of conduct.

See: Section 5 - Going to Court

2.7 When a Service User is released on bail with 'conditions'

DADHC staff should:

1. Explain the conditions of bail to the Service User and check that they understand what they will need to do to meet them. It is important to stress to the Service User the importance of adhering to the conditions or they may risk being placed in Gaol until their Court appearance.
2. Develop a plan with the Service User about how they will meet the bail conditions. For example, check that a Service User understands what 'approaching' means in an *Apprehended Violence Order (AVO)* and work out a plan to avoid this.
3. Make an agreement with the Service User about how the DADHC staff member will support them to adhere to their Bail conditions and what is expected of them.
4. Develop a collaborative working relationship with the Juvenile Justice Officer or Probation and Parole Officer assigned to supervise a young person/adult Service User whilst on bail. This working relationship should aim to help the Service User successfully meet their bail conditions.

See: Section 4 – Bail

2.8 When a Service User is refused bail and held in custody

If the Service User is refused bail and held in custody it is likely that they will spend some time in a Police cell and then be transferred to a Juvenile Detention or Correctional Centre until they appear in Court. This is known as being placed, or held, on remand.

In some situations, depending on the charges a person can be held on remand from overnight to several months. In general a young person will not be held on remand for very long.

Guidelines for working with a Service User who has been 'bail refused'

1. In the case of a young person contact the Service User's family, carer or Guardian to advise them of the situation (if they do not already know). For adults ensure they give permission for their family or carer to be notified. A Guardian should be always be notified.
2. DADHC staff should notify their Line Manager of the situation.
3. Find out from the Service User or their Solicitor when a bail hearing may take place. Take a proactive role in discussing with the Service User and their Solicitor the kinds of services and support that might facilitate bail being obtained
4. Provide Police, Juvenile Justice or Corrective Services staff (including Corrective Services staff at Court) with information that will assist to manage the Service User while they are in custody. This would include relevant medical, behavioural, social or other information deemed important to the Service User's welfare (see point 9 below).
5. DADHC staff should pass on any immediate and relevant health information to Justice Health staff in either the Police cells or at the relevant correctional or Juvenile Justice Centre e.g. medication requirements.
6. With an adult Service User's permission, ensure the Police have contact details of the Service User's family/carers. Provide contact details if the Service User has an appointed Guardian. Also provide contact details for the relevant DADHC staff.
7. Be aware that if the Service User is being held in custody, their supervision becomes the responsibility of the Police, or Corrective Service/Juvenile Justice.
8. Where possible develop a collaborative case management relationship with the relevant Juvenile Justice Officer in relation to a young person who is refused bail and is held in custody.
9. Where the Service User is being transferred to a Correctional Centre, contact the Department of Corrective Services (DCS) Statewide Disability Services (SDS) or in the case of a young person (juvenile) the Assistant Manager Client Services at the Juvenile Justice Centre to advise them of:
 - the Service User's intellectual disability
 - any immediate and relevant medical, behavioural, social or personal needs e.g. medication, basic behavioural issues (triggers or fears etc.)
 - the contact details for the Service User's family; carer and/or Guardian; OPC
 - the contact details for DADHC staff who work with the Service User.

See: Section 8 – Working with a Service User who is in custody

10. Where the Service User is a Department of Housing tenant notify the relevant Housing office that the Service User is in custody (with the Service User's consent). This will enable them to maintain their tenancy for 3 months at a nominal amount of rent per week. After this time the tenancy may be terminated or market rent charged.
11. Where required, liaise with the Service User's family and/or Guardian and their landlord or co-tenants regarding arrangements to secure the Service User's personal belongings.
12. To ensure that the Service User does not incur a debt, notify Centrelink should a Service User be given a custodial sentence. Do not assume that the Juvenile Justice Centre or Correctional Centre staff will do this.

For adult Service Users in custody

Contact: Department of Corrective Services, Statewide Disability Services

Email: sds@dcs.nsw.gov.au ☎ 02 9289 2136 (Principal Officer Disabilities)

or 02 9289 2138 Fax: 02 9289 2134

For young people in custody

1. Contact the Assistant Manager Client Services at the relevant Juvenile Justice Centre in the first instance to provide information about a young person in detention who is also a DADHC Service User.
2. Ensure you obtain their direct line phone number as well as their mobile phone number and provide your details to them.
3. Follow up any phone call by faxing the information to the Juvenile Justice Centre. Address the fax to 'Assistant Manager Client Services', re: [Name of Service User].
4. Timeframes in a Juvenile Justice Centre are very short so contact should not be delayed.

Contact details for NSW Juvenile Justice Centres can be found at:

http://www.djj.nsw.gov.au/contactus_jjcentre.htm

or

General Enquiries  02 9219 9400

3. Legal Representation and Support

People with an intellectual disability who are involved in the criminal justice system have a right to legal representation in the same way that people without a disability do. Many Service Users who are in contact with the Police are disadvantaged in ways that people without a disability may not be.

These disadvantages can mean a person with intellectual disability is more likely to:

- be apprehended by the Police
- communicate and behave in ways that increase the likelihood of being charged
- conceal their disability so that they are not recognised as a ‘vulnerable person’⁶
- want to please authority figures such as the Police by admitting to a crime or providing a false confession by agreeing with suggestive questioning
- ‘take the rap’ for others
- be unable to follow what is being said by the Police
- not know what ‘right to silence’ means
- not know how to find a Solicitor
- not understand why they need a support person.

See: Section 9 - Resources and Contacts

Appendix 3 - Extract from ‘Police Code of Practice for ‘CRIME’ (Custody, Rights, Investigation, Management and Evidence)

Most people with an intellectual disability cannot afford private legal representation so they will need to apply for Legal Aid. They may also need some initial advice prior to obtaining Legal Aid.

The Intellectual Disability Rights Service (IDRS) provides legal advice to people with an intellectual disability. They can also give information and advice to the people who support them, provided the advice sought is for the benefit of the person with an intellectual disability.

To help a Service User to obtain legal information contact:

Intellectual Disability Rights Service

IDRS provides telephone advice from 2pm to 5pm Monday to Friday by appointment.

Advice line ☎ 02 9318 0144 Outside Sydney: ☎ 1800 666 611 (Free call)

or

Legal Aid ☎ 02 9219 5000 to obtain contact details of local Legal Aid or look in *White Pages* telephone directory

or

Law Access ☎ 1300 888 529 Provides legal information, referral & advice by phone
Law Access can also help complete a Legal Aid application

⁶ See Appendix 3 – Extract from *Police Code of Practice for ‘CRIME’ (Custody, Rights, Investigation, Management and Evidence)*

3.1 Supporting a Service User to obtain legal representation

When supporting a Service User to obtain legal representation, DADHC staff should:

1. Support the Service User by explaining the role of a Lawyer/Solicitor and provide general information to both the Service User and their family/carer.
2. Support the Service User to make the initial contact with Legal Aid or other legal representatives.
3. Help the Service User complete and submit a Legal Aid application (See *Section 3.3 - Legal Aid*).
4. Be aware that many Service Users do not have the resources to arrange legal representation prior to their Court date. While it may be ideal to meet the Legal Aid Solicitor prior to the Court appearance, in practice it can be very difficult to see a Legal Aid Solicitor prior to the day of Court. DADHC staff can help a Service User to see the Legal Aid Duty Solicitor on the day of Court by ensuring that they arrive early (prior to 9.30 am).
5. Obtain the name and contact details of the Duty Solicitor that the Service User sees at Court. The Duty Solicitor is on a roster and there may be further contact and liaison with that Solicitor required, regarding the provision of information to the Court.
6. Be aware that where a Service User's matter is adjourned or where there are several Court dates, the Duty Solicitor involved in the matter may change. DADHC staff will need to support the Service User to manage the process of briefing each new Solicitor and keep track of the information and advice that is provided so that there is some continuity maintained for the Service User.

See: Section 6 – Providing Information to the Court

3.2 DADHC staff and the Service User's Solicitor

When working with the Service User's Solicitor, DADHC staff should be guided by the following:

1. Be aware that many Solicitors may not have worked with a person with an intellectual disability. DADHC staff can provide the Solicitor with information and guidance about the needs of a person with an intellectual disability such as the most effective communication strategies and the need for longer consultation times. DADHC staff can also inform the Solicitor about the services that DADHC and other disability organisations provide.
2. Never speak on behalf of the Service User to Police, Solicitors or the Courts.
3. Ensure there is a copy of a current signed *Consent to Exchange Information Form* available for Solicitors who may seek information held by DADHC.

See: Appendix 1 - Consent to Exchange Information form.

4. Do not give information to anyone regarding any previous charges or convictions that the Service User may have. This information is available to the Solicitor (and Magistrate) through the legal system.
5. Do not be involved in the negotiation of a plea for the Service User.
6. Provide relevant information to the Solicitor who is helping the Service User to obtain Bail.
7. Liaise with the Service User's Solicitor about the provision of information to the Court. Contact should be maintained around dates for Court or other deadlines.

See: Section 6 - Providing information to Court

8. Do not provide any file information to the prosecuting Solicitor in a Service User's matter. This information can be subpoenaed by the Court if required.
9. Refer any request for information about a Service User that comes from the Prosecuting Solicitor to your Line Manager. Complete an *Incident Report* and inform the Service User's Solicitor of the request.

See IDRS website: www.idrs.org.au

Fact sheet for Lawyers – Acting for Clients with an Intellectual Disability

3.3 Legal Aid

Applying for Legal Aid means that the Service User is asking the Legal Aid Commission to organise a Lawyer/Solicitor to represent them in Court. Legal Aid is available to children, young people and adults.

See Section 10 – Resources and Contacts

Legal advice can be obtained at no cost though some people will have to pay a contribution. A person in receipt of a disability pension can ask to have the contribution waived. The amount the Service User will be required to pay will depend on their financial situation and the area of law.

Some matters are not means tested, such as:

- family law duty solicitor matters where the applicant is in custody
- children and young persons for proceedings under the *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- children where an order for separate representation is made under section *68L of the Family Law Act 1975* (Cth)
- first appearance bail applications in Local Court criminal duty matters
- children in criminal matters in the Children's Court
- Drug Court matters
- most Mental Health matters under the *Mental Health (Forensic Provisions) Act 1990* (NSW) where the applicant is the subject of the proceedings
- children in proceedings in the Community Services Division of the Administrative Decisions Tribunal including appeals to the Supreme Court
- in proceedings before the Guardianship Tribunal and appeals to the Supreme Court where the applicant is the subject of the proceedings
- matters under Part II of the *Veterans' Entitlements Act 1986* (Cth) or under the *Military Rehabilitation and Compensation Act 2004* (Cth) to ex-service personnel and their dependants.

Applying for a grant of Legal Aid

The completion of a *Legal Aid Application form* is required when requesting a grant of Legal Aid. The form is used by the Legal Aid Commission to determine a person's eligibility for legal aid by assessing the following:

- the person's financial means

- the merits of the case
- whether the person meets Legal Aid policy guidelines.

Many Service Users will not be able to complete this form independently. DADHC staff can assist in completing the form or it can be completed with the help of Law Access (See: Section 10 Resources & Contacts). A Legal Aid form can be obtained from the Legal Aid office or can be found in most Local Courts. It can also be downloaded from the Legal Aid website.

A Legal Aid application form can be obtained from the Legal Aid Publications Unit:

☎ 9219 5028 or email: publications@legalaid.nsw.gov.au.

If a form is needed urgently, it can be faxed to you

Further information about Legal Aid can be found at: <http://www.legalaid.nsw.gov.au>

☎ 1300 888 529

In cases of emergency, a telephone grant may be made subject to an application being submitted as soon as possible.

In the case of an application being refused, there is a right of appeal to the Legal Aid Review Committee and the applicant may ask the court for an adjournment pending the appeal under section 57 of the Legal Aid Commission Act 1979 (NSW).

3.4 The Service User and legal representation checklist

Obtain a signed authority/consent form from the Service User so that you may provide information to the Solicitor

- Make sure the form is current. Out of date consent can cause delays. This is significant if the Service User is in custody
- Provide a copy to the Solicitor.

See: Appendix 1 - Consent to Exchange Information Form

Assist the Service User to see the Legal Aid Duty Solicitor at Court

- In situations where a Service User has not seen a Solicitor prior to their Court matter they may seek advice from a Duty Solicitor at some Courts. If there is no Duty Solicitor on site the Service User will need to seek advice from Legal Aid.
- To see the Duty Solicitor at Court, arrive early (before 9.30am). Ensure you obtain the Solicitor's name and who they work for (sometimes private Solicitors do Legal Aid work).
- Make sure you get all their contact details, particularly their mobile phone number and email.

See: Section 3 - Legal Representation and Support

Has the Solicitor worked with people with an intellectual disability before?

- Where required provide the Solicitor with a copy of the

IDRS website www.idrs.org.au
Fact sheet for Lawyers: *Acting for Clients with an intellectual disability*

IDRS Fact sheet for Lawyers (see details ⇨)

- Ensure the Solicitor is clear about the difference between mental illness and intellectual disability

Section 10 – Resources & Contacts

□ Discuss with the Solicitor:

- Issues that the Service User may have raised with you about their matter. It is best practice for you to encourage the Service User to ask the Solicitor directly
- The information DADHC will provide to the Court including timeframes and dates
- Arrangements regarding an independent support person being available to support the Service User
- Effective communication strategies and other relevant needs of the Service User (where required)
- The needs of the Service User if they are being held in custody.

Section 6 – Providing Information to the Court

IDRS website www.idrs.org.au
Fact sheet: *CJSN Support Workers at Court*

3.5 The role of the independent support person

The role of an independent support person in the criminal justice system is to help protect the rights and interests of people who may be disadvantaged by the effects of their disability.

A person with intellectual disability can be disadvantaged in their interactions within the criminal justice system because they can have difficulty:

- understanding complex ideas
- concentrating for a long time
- processing information quickly
- understanding their rights.

When a Service User is being interviewed by the Police as a victim, witness or alleged offender they should have an independent support person present. Preferably the Service User should have a person of their choice. The support person may be a family member or carer, though ideally they would be a trained person who is experienced in providing support to people with an intellectual disability when they are being interviewed by Police or attending Court.

It is not the role of the support person to translate for a Service User or speak on their behalf. They are not an advocate and they do not provide legal advice. Their role is to facilitate communication and ensure the Service User understands what is being said and done.

A person with an intellectual disability in NSW is considered a 'vulnerable person' and Police are required under their own code of conduct to ensure that a person with an intellectual disability has a support person present at an interview.

See: Appendix 3 – Extract from *Police Code of Practice for 'CRIME' relating to vulnerable persons*

It is not advisable for DADHC staff to act as a support person to a Service User due to the possibility that they and/or the individuals they work with could become opposing parties (or witnesses) at Court. This situation could create conflict in a Police interview or Court matter therefore no DADHC staff member can be considered an *independent* support person to a Service User in this context.

DADHC staff may be required to:

1. With the permission of the adult Service User, contact the Service User's family and/or the Criminal Justice Support Network to arrange a support person in a Police interview or for support at Court.
2. Help the Service User to speak to a Solicitor and/or support person over the phone.
3. Provide information to the support person to facilitate effective communication with the Service User. It is not appropriate or necessary for DADHC file information to be provided to a support person.
4. Where CJSN is not available, arrange support for witnesses at Court through the Office of the Department of Public Prosecutions (ODPP), Witness Assistance Services. See section 10 - Resources and Contacts.

The Criminal Justice Support Network (CJSN) has a 24 hour contact phone line and can provide volunteers at Police interviews, legal consultations and at Court in many areas of NSW. They also have a list of volunteer Solicitors that can provide after hours advice to someone who is to be interviewed by Police.

CJSN can also provide support and information over the phone to a family member, carer or suitable person who has agreed to be a support person for a Service User who is being interviewed by Police or has to attend Court.

Criminal Justice Support Network

 1300 665 908 (24 hours - Local call cost)

Website: <http://www.idrs.org.au/cjsn/index.html>

3.6 The support person at a Police interview

DADHC staff should:

1. Where possible, avoid acting as support person for a Service User who is to be interviewed by the Police. An independent support person or suitable family member is more appropriate. If there is no option DADHC staff should consult their Line Manager and seek guidance from the Service User's Solicitor. Consider contacting a local disability advocacy organisation.

See: Section 10 - Resources and Contacts

2. Remind the Police of their obligations to arrange a support person and insist that the interview be delayed until that person is present at the interview.
3. Urge Police to delay any interview or questioning until the Service User has spoken to a Solicitor.
4. If the person's first language is not English or they use an augmentative communication system the Police should be reminded that an interpreter may be needed as well as a support person.
5. Provide the following information to a potential support person about the responsibilities of that role in a Police interview. A support person should:
 - avoid providing any personal opinions about the Service User or the alleged incident
 - avoid asking the Service User questions on behalf of the Police
 - avoid interpreting the Service User's answers for the benefit the Police
 - assist the Service User to understand their rights

- advise the Police if the Service User does not understand their rights
- support the Service User to get legal advice
- alert the Police when the Service User is having difficulty understanding what the Police are saying
- suggest that a potential support person contact the Criminal Justice Support Network for advice.

4. Bail

People with an intellectual disability are often disadvantaged at all stages of the criminal justice process as they are more likely to be held on remand or given custodial sentences. Additional or separate units within Gaols have limited capacity which means the person with an intellectual disability can be extremely vulnerable when housed in the main Gaol population.

If a person with an intellectual disability is charged with a crime it is essential that they are able to obtain legal advice and support to exercise the same rights as the rest of the community in the same circumstances. This includes being able to apply for bail so that they can be released from custody as soon as possible.

4.1 Supporting the accused Service User to obtain bail

DADHC staff should:

1. Provide information and guidance on disability service provision to the Service User's Solicitor for the purpose of a bail hearing. This information will help them to put a case forward for the Service User to be released on bail until the matter is to be heard at Court.
2. Help the Service User to obtain bail and identify appropriate services or programs that are likely to decrease the risk of a Service User re-offending. These services or programs may be attached as 'conditions of bail'. Ensure that these are realistic and that the Service User will be able to comply.
3. Consult their line manager when identifying these programs or services.

4.2 Bail conditions

The purpose of bail conditions is to ensure the person appears on the appointed Court date. The Police or Magistrate can impose bail conditions such as:

- 'good behaviour' (this is always a condition of bail and means that the person must not commit any more criminal offences)
- a curfew restricting the hours that a person may be out in the community
- a ban on being in a particular location or associating with particular people.

People with an intellectual disability often have difficulties complying with conditions that require regular attendance, such as having to attend the Police station at specific times. Equally, imposing a bail condition that requires a particular behaviour to immediately cease can result in anxiety and an escalation of the offending behaviour.

If the bail conditions are considered too restrictive or unrealistic for the Service User to succeed, the Police or Court can be asked to alter the conditions when they are being set.

DADHC staff should:

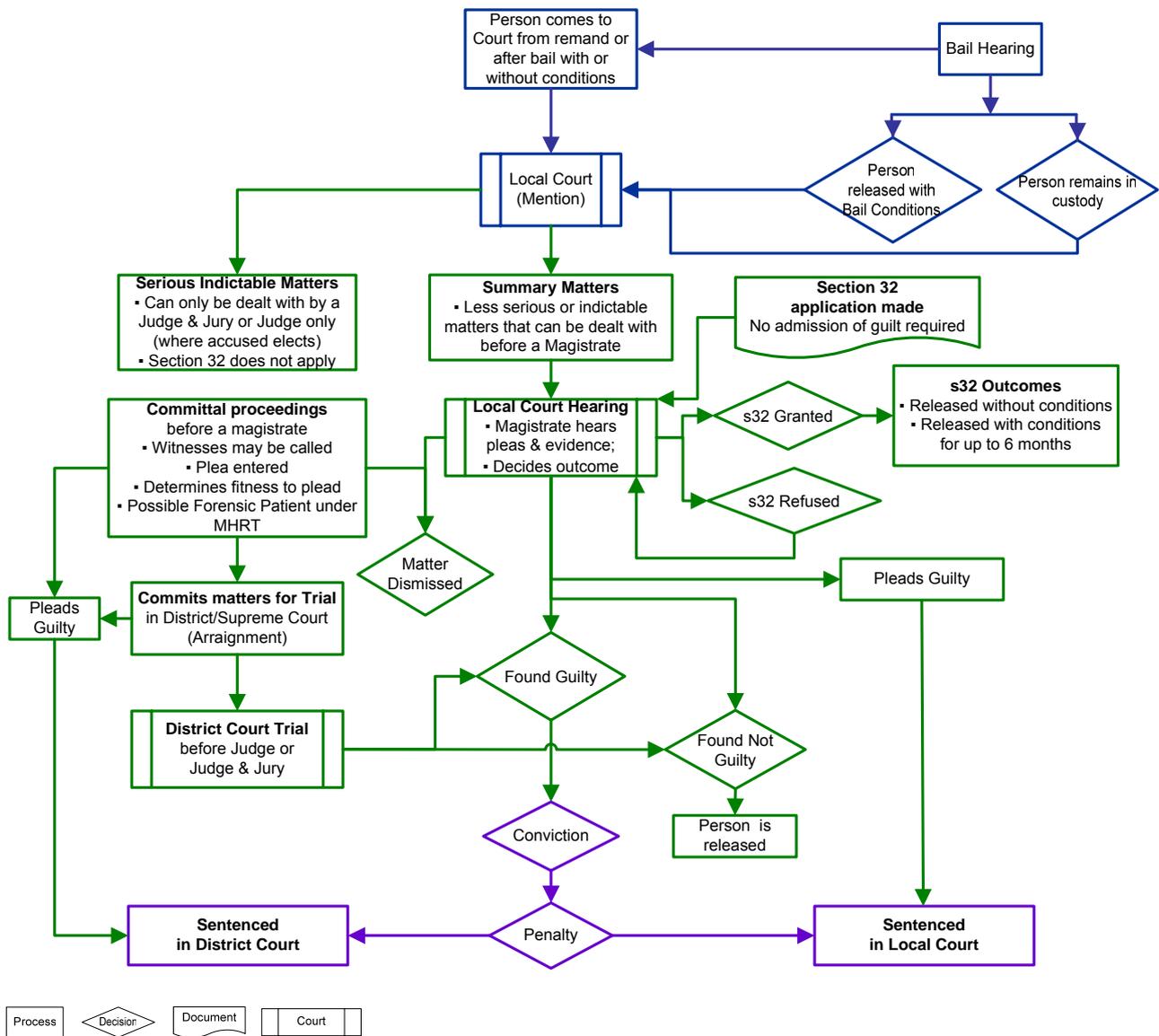
1. Support a Service User to request a change to bail conditions through their Solicitor. The Solicitor can make an immediate application to alter the bail conditions regardless of the scheduled Court date to hear the matter. The outcome of this application may still take some days to be heard. In the case of a child or young person it is likely to be dealt with more quickly.

2. Be aware that no DADHC staff should be named as the 'person responsible' on any conditions of bail.
3. Maintain a proactive relationship with the Service User's Solicitor in order to provide information that can inform a request for, or amendment to, bail conditions that the Service User is more likely to be able to comply with.
4. Consult with the Service User/Guardian (or family where appropriate) and other stakeholders when planning service options to obtain bail for the Service User.
5. Ensure any proposed services or programs are available immediately and are willing to accept the Service User. These should be a realistic and positive option that the Service User will be able to comply with.
6. Make sure that any service that accepts the Service User into their program and/or accommodation has a copy of the Service User's *Conditions of Bail*.
7. Discuss the bail conditions with the Service User and check their understanding of what they mean for them. Obtain their agreement that they will attend and comply with any proposed support services as part of their bail conditions.
8. Be prepared to attend a bail hearing at Court to explain the support services identified e.g. the structure and behaviour support that is to be provided in a particular accommodation model.
9. Where relevant, develop a collaborative working relationship with the Juvenile Justice Officer or Probation and Parole Officer assigned to supervise a young person/adult Service User whilst on bail. This working relationship should aim to help the Service User successfully meet their bail conditions.

4.3 DADHC and a Service User's bail conditions

1. DADHC has no mandate to enforce a person to comply with their bail conditions. DADHC staff should remind Police, Solicitors, Court staff and Judiciary of this when supporting a Service User in relation to bail matters.
2. If asked by the relevant supervising authorities (such as Police, Community Offender Services or Juvenile Justice), DADHC staff should provide evidence or information about the Service User's compliance with their bail conditions. DADHC staff should be sure that the information they provide is correct, relevant and not just anecdotal.
3. DADHC staff should develop a collaborative working relationship with the relevant staff from Police, Community Offender Services or Juvenile Justice that will enable the Service User to successfully meet their bail conditions.
4. DADHC staff do not have the authority to initiate a 'breach' of a Service User who is perceived to be not abiding by their bail conditions. Breaching a Service user is not a solution to be used by DADHC staff to manage a Service User's behaviour. If a Service User is considered to be breaching their bail conditions consult the relevant Manager Behaviour Support to consider additional or amended behaviour support strategies.
5. Where there is an issue raised with DADHC staff from any outside agency or Government Department about a Service User's compliance with their bail conditions, the relevant staff member's Line Manager should be consulted.

5. Going to Court



Courts in NSW

Courts and Tribunals in NSW that may impact on a Service User can include:

NSW Courts

Supreme Court

District Court

Local Court

Children's Court

NSW Tribunals

Guardianship Tribunal

Mental Health Review Tribunal (MHRT)

Consumer Trader & Tenancy Tribunal (CTTT)

Victims Compensation Tribunal

Federal Courts

Family Court

Federal Tribunals

Social Security Appeals Tribunal

5.1 The Local Court

The Local Court deals with:

- criminal and summary prosecutions
- committal hearings
- civil matters with claims of up to \$60,000
- juvenile prosecutions and care matters
- mental health issues.

Some Local Courts deal with:

- some types of family law matters
- coronial inquests and inquiries
- licensing matters
- mining matters
- industrial matters.

1. Procedure at the Local Court where the accused Service User is pleading 'not guilty'

Where the Service User is pleading 'not guilty' the hearing will proceed as follows:

- the Police will present their case for the prosecution first. They will identify their evidence in the form of a statement or tabled document from the arresting officer and any witnesses to the alleged offence
- after each witness has given their evidence the Service User's Solicitor has the right to cross-examine them
- the Service User's case, known as the case for the defence, is put to the Court after the Police have finished presenting their case
- the Service User's Solicitor will call witnesses at this time
- once each witness has been questioned by the Service User's Solicitor the Police Prosecutor can cross-examine each of these witnesses.

2. The Magistrate's decision

After hearing the cases for both the prosecution and the defence, the Magistrate will make a decision that either:

- the case is dismissed and the Service User is free to go. This means the Service User has been found 'not guilty' or the case dismissed due to lack of evidence
- the Service User is found guilty. If this happens the Magistrate will then consider what penalty shall apply. If the matter is more serious the Magistrate may request a pre-sentence report from Community Offender Services. The Magistrate may also set another date for sentencing.

If a person who has pleaded not guilty is subsequently found to be guilty, the Magistrate will consider the evidence and the various reports submitted including the *Information to the Court Report and the Support Plan* from DADHC to inform any penalty (See: Section 6 – Providing Information to Court). Another Court date is likely to be set for sentencing.

These reports will also inform the Magistrates decision regarding any application for diversion from conviction and sentencing under Section 32 of the *Mental Health (Forensic Provisions) Act 1990 (NSW)*.

3. If the Service User is pleading guilty in the Local Court

If the Service User is pleading guilty, the Police 'Facts' will be read/submitted to the Court. The Magistrate may also read statements from witnesses and the record of interview and a copy of any previous convictions.

The Service User's Solicitor will then address the Court and give an overview of the Service User's background and speak to the Magistrate on the Service User's behalf.

The Magistrate will then make a decision regarding sentencing. Just as when a Service User has pleaded not guilty, the Magistrate will examine all submissions including the *Information to the Court report and Support Plan* from DADHC to inform any sentence.

5.2 The District Court

The District Court of New South Wales is the 'middle' Court in the State's legal system. It consists of the Chief Judge and other Judges appointed by the Governor. It is a trial Court and can hear certain appeals. The District Court has both a criminal and civil jurisdiction and the Judges preside over some tribunals.

A matter in the District Court will always start in a Local Court before a Magistrate. If the alleged offence is not serious, the Magistrate at the Local Court may deal with it. If it is a serious offence and the offender pleads 'guilty', the Magistrate will commit the person to a higher Court (usually the District Court) for sentence. If the alleged offender pleads 'not guilty', the Magistrate will determine whether sufficient evidence exists to commit that person to stand trial before a jury.

When a Magistrate commits a person to the District Court for sentence or trial that person will be given the date when the matter will first come before the District Court. The Court will then manage the progress of the case.

At the District Court a defendant will have to sit in the 'dock' throughout the Court proceedings. A support person may be able to sit next to the Service User in the dock, though a request will need to be made through the Solicitor to the Judge.

If the Magistrate deals with the matter in the Local Court and the alleged offender is not satisfied with the decision, he or she may appeal to the District Court. This appeal may be on the grounds that the Magistrate's finding (e.g. a conviction) was wrong, or that the penalty imposed was too harsh.

A person's 'fitness to plead' can be raised at the District Court. The Judge will want evidence that the person is 'unfit to plead'. Should this be determined the person will be referred to the Mental Health Review Tribunal (MHRT) and be referred to as a Forensic Patient (See: Section 7.3).

See: Section 7 - Court Outcomes

5.3 The Children's Court

The Children's Court in NSW deals with matters related to the care and protection of children and young people and applies to any child or young person who committed an offence when they were under the age of 18 years, and have not yet turned 21. It does not apply to traffic offences.

Children's Courts in NSW are located at:

- Bidura (Glebe)
- Broadmeadow
- Campbelltown
- Woy Woy
- Illawarra (Port Kembla)
- Parramatta
- Wyong

In regional/rural NSW, Children's Courts sit in the Local Court and are presided over by the Local Court Magistrate or a Children's Magistrate from Sydney. The proceedings follow the pattern of the Local Court though are less formal. For example, the lay-out is more like a meeting room and people do not stand when speaking.

The Children's Court does not have a public gallery and is closed to anyone other than those involved in the matter, though a support person is able to attend with a child or young person.

The Children's Court jurisdiction applies to any child/young person up to the age of 21 years except where the matter involves a traffic offence or the offence occurred when they were over 18 years.

Children and young people at Court

Both child witnesses and accused children are treated differently by the NSW legal system in recognition of their special needs. There are specific provisions for child witnesses to help them through the court process such as CCTV, screens and video/audio evidence (see Section 5.5).

5.4 Trial and sentencing proceedings

1. Trial

- if the accused person maintains a 'not guilty' plea on the listed trial date, a jury will normally be empanelled (in some circumstances the matter may proceed as a Judge alone trial)
- the prosecution will then present witnesses and evidence to support its case. It is up to the prosecution to prove that the defendant committed the alleged offence
- the defence can elect to cross-examine the prosecution witnesses or challenge the evidence. It can also call its own evidence or witnesses
- after all the evidence has been presented the judge will sum up the case and advise the jury on questions of law. The jury then retires and deliberates
- if the jury returns the verdict of 'not guilty' the defendant is acquitted. If it returns a verdict of 'guilty' the accused is convicted and may be sentenced either then, or at a later date determined by the Court.

2. Sentencing

- at the sentence hearing the Court will be presented with the facts of the case. The Court may also order that a pre-sentence report be provided

- both the prosecution and defence may present such other reports and evidence as may be considered appropriate, including the previous criminal record of the accused and victim impact statements
- the penalties the Court can impose include fines, good behaviour bonds, community service orders, periodic detention and imprisonment.

Note:

An *Information to the Court Report* and *Support Plan* can help a Magistrate/Judge impose an appropriate sentence for a Service User who has been convicted of an offence.

See: Section 7 - Court Outcomes

5.5 The Service User appearing at Court via video

Adult witnesses or victims and children sometimes appear at Court via closed circuit television (CCTV) from another location. Defendants with cognitive impairment held on remand may also appear at Court this way. They can have their pre-recorded statement admitted as evidence-in-chief and if any further evidence is required it can be given via CCTV in a Remote witness room.

DADHC staff should:

1. Attend Court when they have provided an *Information to the Court* report and *Support Plan* (in case they may be called in relation to the report). The Service User (as Defendant) might appear via CCTV 'Remote Witness facilities' at another location e.g. Gaol (See Section 6.4 – DADHC staff being questioned at Court).
2. Consult with the Service User to arrange a suitable support person to be present at the CCTV room with the Service User if this occurs.
3. Consider arranging a support person from the Criminal Justice Support Network (CJSN) staff and volunteers who have authorised visitor status with the Department of Corrective Services. This will enable them to provide support to the Service User at the CCTV facilities in Gaol's that have them (See Section 3 - Legal Representation and Support).
4. Where CJSN is not available, support for witnesses at Court who are appearing via CCTV can be arranged through the Office of the Department of Public Prosecutions (ODPP), witness assistance services (See section 10 - Resources and Contacts).

See: Appendix 6 - Closed Circuit Television (CCTV) or Remote Witness Video Facilities

5.6 The Service User who is a victim or witness at Court

1. If a victim or witness is attending Court it is important that they are prepared prior to the day of Court (See Section 5.8 – Preparing for Court).
2. It is important that the Service User understands that the alleged perpetrator is likely to be at Court. DADHC staff should prepare the Service User and have contingency plans to support them if the experience becomes distressing.
3. Some Courts provide a witness room where a victim or witness can wait away from the defendant.
4. If the CJSN cannot provide a support person then an appropriate family member or friend can fill this role (See Sections 3.5 and 5.7).

5. In the case of a Service User who is a victim or witness at Court, it is important that the prosecutor, the Police Prosecutor or DPP Solicitor in the matter is made aware of the needs of the Service User at Court.
6. Make arrangements for any Court assistance or adjustments to be made for the service user at Court.

See: Appendix 10 – Request for Court Assistance Form

5.7 The Support Person at Court

Whether the Service User is a defendant or a witness in a matter at Court it is important that they have appropriate physical and emotional support at Court. This support may be provided by family members, Guardians, advocates, DADHC staff⁷ (where there is no other support) or from Court support services such as the Criminal Justice Support Network. It is important to find out who the Service User feels most comfortable being supported by.

See: Section 3.5 – The role of the independent support person

**An independent support person can be arranged to attend Court with the Service User
Criminal Justice Support Network (CJSN)
1300 665 908 (24 hours)**

The support person for a Service User who is either a victim or a defendant at Court should identify any needs the Service User may have in the Courtroom and ensure that these needs can be met.

Assistance can be obtained by completing a *Request for Court Assistance* form and submitting it to the Court Registrar.

Assistance can be arranged to help with:

- communication difficulties
- cognitive or intellectual disability
- hearing difficulties or deafness
- vision impairment
- emotional or psychological difficulties or support needs
- personal care needs.

See: Appendix 10 – Request for Court Assistance Form

**See IDRS website: www.idrs.org.au
Fact Sheet for Lawyers – CJSN Support Workers at Court**

⁷ Subject to issues of conflict, e.g. when both parties to the matter at Court are DADHC Service Users

5.8 The Service User who is a defendant at Court

Alleged offenders are the most common group of Service Users that DADHC staff will encounter in relation to the Court system.

When charged, the Service User will be given a *Court Attendance Notice* that would stipulate a date to attend Court. In some cases the Service User may have been held over night and would attend Court the next morning for a bail hearing where another Court date will be set.

1. When a Service User has been released with either bail conditions or with no conditions to appear on a specified Court date, DADHC staff should support the Service User to understand and comply with any conditions and prepare for Court.
2. There may be little notice provided to staff about a Service User's Court date. DADHC staff may need to respond quickly to prepare the Service User for Court, arrange support on the day and prepare the *Information to the Court Report and Support Plan* (See Section 6 – Providing Information to the Court).
3. Where a person has not yet been deemed eligible and there is a pending Court matter, DADHC staff can write a letter to the Court (via the Solicitor). This letter may be appropriate for a:
 - Hearing to obtain an adjournment (pending eligibility and the provision of reports. See: Section 6 Providing Information to the Court),
 - Bail hearing to obtain or extend bail
 - s32 application (See: Section 7 – Court and other outcomes)
 - Sentencing Hearing

This letter explains that the person has been referred to DADHC and is going through an eligibility assessment process that if deemed eligible, will result in service provision that may include:

- case management
- accommodation support
- behaviour support
- services such as Psychological services, Speech Therapy, Physiotherapy or Occupational Therapy
- training and/or skills development.

See: Appendix 4 – Letter to the Court template (Pending Eligibility for DADHC Services)

5.9 Preparing for Court

Preparing for Court - The Service User

1. Service User should meet with a Solicitor

- DADHC staff should support the Service User to meet with a Solicitor prior to the Court date. An appointment should be made with Legal Aid or, where there is a Duty Solicitor in attendance at the Court support the Service User to arrive early (prior to 9.30 am) so that they can brief the Duty Solicitor prior to their matter being heard.

See: Section 3 - Legal representation and support for the Service User

2. Aboriginal Legal Service may be required

- if the Service User identifies as an Aboriginal person, DADHC staff should support them to access Aboriginal Legal Services if this has not already been proposed.

See: Section 10 – Resources & Contacts

3. See a Duty Solicitor on the day

- the unrepresented Service User will need to see the Legal Aid Duty Solicitor at the Court on the day (If there is one located at the particular Court). For this reason they should be supported to get to Court early (prior to 9.30 am)
- check the Court List to confirm which Court room to go to.

4. Is the Service User familiar with the Court?

- if the Service User has never been before a Court before, discuss this with the Solicitor/s involved
- where possible arrange a visit to the Court so that the Service User can have the Court proceedings explained and any issues addressed prior to the actual Court date. Arrangements may be made with the Court Registrar to access an empty Court room to help familiarise the Service User with the Court environment (depending on the size of the particular Court)
- consider showing the Service User the video '*So you have to go to Court*' available as a download from the Attorney General's website or on VHS or DVD through the Diversity Services Section (See: Section 10 - Resources and Contacts).

5. Can the Service User sit or wait for long periods without stress?

- if the Service User is unlikely to be able to sit or wait for long periods discuss this with the Solicitor and consult the Court Registrar
- try to find a place to sit that is away from noise and crowds. Ensure that the Solicitor is able to locate you.

6. Arrange Court assistance and adjustments at Court for the Service User

- it is possible to arrange for the Court to provide assistance by supporting the Service User to complete a *Request for Court Assistance form* which should ideally be submitted to the Court Registrar prior to the Court date. If time does not permit arrangements to be made prior to the Court date, consult the Court Registrar as soon as possible on the day of Court
- if an interpreter is required, Police can arrange for an interpreter to be present on the first date of appearance after arrest. In other circumstances, a request to the Court can be made prior to the Court appearance. DADHC staff can phone the Court where the matter is to be heard and book an interpreter in the Service User's language. Legal Aid can also be asked to arrange an interpreter for the appointment with a duty Solicitor
- if suitable assistance or adjustments cannot be made on the day of Court, discuss the possibility of an adjournment with the Service User and their Solicitor.

See: Appendix 10 – Request for Court Assistance form

7. Make sure the Service User knows:

- the correct date and time of the Court matter
- how to get there and what public transport is available
- when to leave home to get there on time

- that they may need to wait for several hours before their matter is heard
- that they will not be able to leave the Court in case they are called.
- what papers will be needed for Court
- where to meet DADHC staff and/or the support person
- what to wear
- how they should behave at Court
- to bring a drink, something to eat, medication if required and something to fill in the time such as a magazine or personal music player.

See: Appendix 5 – Courtroom Features

Preparing for Court – DADHC staff should:

1. Prepare and provide an *Information to the Court Report* and a *Support Plan* (See Section 6 – Providing Information to the Court).
2. Arrange a support person for the Service user. Where both parties involved in the same Court matter are DADHC Service Users, each Service User should have a separate support person.

See: Section 3 - Legal representation and support for the Service User

Section 10 - Resources & Contacts

3. Be clear about the details of the Court appearance i.e. the date and location of the Court. This information is contained in the *Court Attendance Notice* given to the Service User or it can be confirmed by contacting the Court or the Police Station where the charges were laid.
4. Take printed copies of the *Information to the Court Report* and *Support Plan* (see below) to Court for their own reference and in case they need to be photocopied. Do not rely on the Solicitor to bring copies to Court.
5. Be aware that if the Service User is held on remand they will be transferred to Court and kept in the Court cells until they are called to the Court. This is usually where the Solicitor will interview them prior to being brought into the Court room.
6. Liaise with the Solicitor when making a request to see the Service User who is held in the Court cells. It may be more efficient to see him/her together. Permission should be sought from the Corrective Services staff in the Court cell area prior to the Court date. Being able to visit the Service User in the cells will depend on the circumstances on the day and the practices in the particular Court.
7. Be aware that if the Service User does not turn up at Court when they are required to do so, and no explanation has been offered, they may be in breach of bail. Their case might be adjourned or decided without them being represented and/or a *Warrant* for their arrest could be issued.
8. In the District Court ask the Service User's Solicitor to make a request to the Court for the support person to be able to sit near the defendant to provide support. In a District Court the Service User will be seated in the defendant's 'dock' throughout the Court hearing and this may be some distance from anyone who is familiar to them.

5.10 In the Courtroom

1. In the Court Room the Judicial Officer (the Magistrate or Judge) is referred to as 'Your Honour'.
2. When entering or leaving a Court room while the Magistrate or Judge is sitting you must stop and bow (a quick chin to chest nod) toward the Magistrate/Judge.
3. Quietly take a seat in the gallery. Try to sit near the Service User's Solicitor. Refrain from talking to others seated there. Sometimes the Service User may need to be seated in the gallery until their matter is heard.
4. Make sure the Service User understands what is expected when they are in the Court Room.
5. Make sure mobile phones are turned off in the Court room.
6. Speak when spoken to by either the Solicitor or Magistrate/Judge. If the Solicitor or anyone else wishes to confer with you make sure you speak quietly or leave the Court room remembering to bow on the way out.
7. If the Magistrate or Judge stands to exit the Court room, stand and do not sit until the Magistrate/Judge has left the room.

See: Legal Aid website - <http://www.legalaid.nsw.gov.au>

Going to Court: A Handy Guide to the Local Court for Defendants

6. Providing Information to the Court

Why should DADHC provide information to the Court?

A significant aspect of DADHC service provision involves supporting a Service User to participate fully in the community. This support includes enabling them to exercise their rights under law.

In this context, legislation such as the Bail Act 1978 (NSW), Criminal Procedure Act 1986 (NSW), Mental Health (Forensic Provisions) Act 1990 (NSW), Young Offenders Act 1997 (NSW) or Victims Rights Act 1996 (NSW) may impact on a number of children, young people or adults with an intellectual disability who are in contact with the criminal justice system as a victim, witness or alleged offender (See Section 11 – Legislative and Policy Context).

Providing information to the Court on behalf of a Service User helps ensure that they will have the best opportunity to be treated fairly at Court. Some Magistrates or Solicitors may not be clear about the distinction between intellectual disability and mental illness and may not appreciate the extent to which intellectual disability can adversely affect a person's access to and participation in daily community life.

A Service User who is appearing at Court as an alleged offender has the right to have issues that arise from having both cognitive and communication difficulties (for example), to be presented to the Court so that fair processes and outcomes are possible.

Without relevant information that describes the impact of an intellectual disability (and related diagnoses) on the Service User's quality of life, due consideration may not be given to the legal implications in situations such as:

- Police obtaining admissions from a child, young person or adult with an intellectual disability without a support person being present
- a child, young person or adult with an intellectual disability not understanding that it may disadvantage them to volunteer information to the Police without having consulted a Solicitor first.

Information provided to the Court by DADHC can support:

- an application made to the Local Court for a diversion from conviction and/or sentence under s32 of the Mental Health (Forensic Provisions) Act 1990 (NSW)
- a Pre-Sentence Report that may be prepared by Community Offender Services. Information about the Service User's intellectual disability and the impact it has on the Service User's day to day life along with information about disability service provision can help a Service User who is being sentenced receive fair consideration.
- submissions for an appropriate sentence, such as a bond instead of a custodial sentence. This information can enable the Magistrate or Judge to make a more informed decision when imposing any conditions

See: Appendix 7 - Applications for intellectually disabled and mentally ill Clients in the Local Court

6.1 What information should DADHC provide to the Court?

There are two documents that DADHC prepares which together provide the information required by the Court to assist a person with an intellectual disability to be considered fairly in the Court Process. These are the *Information to the Court Report* and the attached *Support Plan*.

The Information to the Court Report

- provides both background and current information about the Service User and is intended to show how their intellectual disability impacts on their day to day life.

See: Appendix 8 – Information to Court Report

The Support Plan

- describes to the Court what existing services are in place for the Service User, what needs have been identified and what other support services may be put in place to address any behaviours of concern.

See: Appendix 9 – DADHC Support Plan

Authorisation

- the *Information to the Court Report* and the *Support Plan* must be signed by the Author and their Line Manager e.g. Manager Access
- it should also be signed off by the Manager Behaviour Support (or Senior Practitioner Casework)
- if timeframes prevent sign off by both the Manager Behaviour Support and the Line Manager, at least one of the Managers must sign. A copy should be forwarded to the Manager who was not available to sign
- it is advisable to follow up any emailed documents with a signed faxed copy to ensure the Solicitor receives a signed copy. Emailed documents should be forwarded as a PDF or password protected document.

6.2 When should the documents be written?

Information to the Court should be prepared when a Service User has been charged with an offence and has a Court date pending.

1. As soon as the Court date is known the preparation of the *Support Plan* should begin. Depending on timeframes this document can aid the planning, implementation and documentation of any service provision that takes place prior to the Court date. Any progress that is made by the Service User during that time can then be brought to the attention of the Court in the *Support Plan*.
2. Ideally the completed reports would be available at least one week prior to the Court date, even if the first Court appearance is only a mention. This will enable time for feedback and amendment as it is easy to inadvertently include information that in the Court context might prejudice the Service User. Best practice is to begin preparation of the *Information to the Court* report as soon as possible.
3. If the *Information to the Court Report* and *Support Plan* need to be written without much notice it is possible for the Solicitor to request an adjournment to enable the reports to be written. The

downside of this may be that a person could be kept in custody for longer so the priority should be to ensure the person is released as soon as possible.

4. If an adjournment is given, ensure the reports are written at least 4 - 5 days prior to the next Court date as Magistrates do not like granting further adjournments because reports are not ready.
5. If there is little notice or little is known about a Service User or if they are still going through the eligibility process, a letter can be written to the Court that indicates the types of support that can be put in place subject to confirmation of eligibility for DADHC Services.

See: Appendix 4 - Letter to Court - Pending Eligibility for DADHC services

6.3 Who should provide information to the Court?

The most appropriate person to write the *Information to the Court Report* and *Support Plan* is the staff member who knows the Service User well. This is usually the Case Worker though it could also be written by a Psychologist, Behaviour Support Specialist, Manager/Team Leader Access or Network Manager.

The person who writes the report should ideally have well developed writing skills and the ability to include the most relevant information in plain English. It is essential that the person writing report has an understanding of the matter for which the Service User is appearing at Court. The information they provide should be relevant to that matter and be non-prejudicial.

DADHC staff who feel less confident about the process of writing these documents should ask colleagues to proof read the drafts and seek feedback from their Line Manager.

6.4 Questions in Court about the reports

1. The Solicitor may want to ask questions about the reports when preparing their arguments so he/she may need to speak to the author.
2. While it is not common, the Magistrate may want to ask questions in Court. The respectful title to use when responding is *Your Honour*. The Defence or Prosecution Solicitor may also wish to ask questions. Ideally the author of the reports should attend and be prepared to answer questions about the information provided.
3. DADHC staff are attending in their professional role so should not voice personal opinion or value judgements about the Service User or their alleged offences.
4. DADHC staff should not use first names at Court. Mr, Ms or Mrs should be used when referring to the Service User and any professional person they may refer to.
5. If you are nervous about being questioned at Court talk to the Solicitor. You are not on trial and you need only answer questions as best you can. It is quite appropriate to take time to answer a question or to say you 'do not know' or that you are 'not in a position to provide that information/answer that' when asked a question that you cannot answer.
6. If asked questions regarding the Service User's 'fitness to plead' or the Service User's understanding of the consequences of their actions, the DADHC staff member should not offer an opinion. Respond to this type of question with: "I am unable to answer that".
7. In general, it is rare for DADHC staff to be called to the stand to be questioned at Court. Any questioning is more likely to involve a clarification or query about a particular action or service proposed in the *Support Plan* or the status of a particular aspect of the plan. If the information provided is comprehensive, clear and well written it is less likely that questions will need to be asked of DADHC staff.

8. If the matter involving a Service User has drawn media attention and the DADHC staff member is approached by any Media at Court, they should say 'I am not in a position to speak to you' and suggest that they contact the DADHC Media Office.

6.6 Information to Court Report and Support Plan content

Content in both documents should be:

1. Relevant to the current situation and non prejudicial

- the information provided in both the *Information to the Court Report* and the *Support Plan* should be relevant to the matter for which the person is appearing at Court. For example, if the charges are for driving without a licence it would not be appropriate to describe the Service User's anger management issues or to mention unnecessary anecdotal information that is likely to portray the Service User negatively. Nor should relevant information be omitted with the intention to make the Service User appear more positive
- do not include anything that the Service User has said about the alleged offence/event as this might inadvertently imply guilt
- it is also not appropriate to include content that indicates how the Service User or DADHC might have failed or why something cannot occur or how difficult something is to implement.

2. Factual information from a verifiable source

- information should come from sources that can be checked and verified such as a Psychological report or from a formal interview with relevant professional staff such as other service providers or Department of Corrective Services staff e.g. Probation and Parole Officer from Community Offender Services
- anecdotal information or unreferenced quotes are not relevant and should be avoided
- names and dates of reports and formal interviews should be listed in the *Sources of Information* section in the *Information to the Court Report*.

3. Disability focused

- the Court requires information that describes the impact of the Service User's intellectual (and any other) disability in relation to the matter being heard and a description of the disability focused services and support that can be provided or arranged.

4. Without personal opinion or recommendations

- the personal or professional opinion of DADHC staff about the Service User or any previous offending is not relevant in this context. Any previous convictions and Court appearances would already be known to the Court
- the provision of information from DADHC and other evidence presented at Court is sufficient information for the Court to make an informed decision about any conditions that they wish to impose on the Service User
- it is not appropriate in the context of the criminal justice system for DADHC staff to recommend what the parameters of any Court imposed conditions should be.

5. Written in plain formal English

- use plain formal English and short active sentences (start with the point of the sentence e.g. "Mr Brown attends life skills classes every Tuesday" as opposed to a passive sentence such as "Every Tuesday DADHC staff support Mr Brown to attend Life Skills classes" – the most

important fact for the purposes of providing information to the Court is that he attends Life Skills classes so this should be mentioned first)

- avoid personal opinion, suggestion, or hearsay
- avoid using 'therefore' and 'however'
- avoid jargon and acronyms. Remember that DADHC acronyms mean nothing to the Court. A Magistrate may not know what a CST is, or what an MBS would be
- refer to the Service User as Mr or Ms regardless of day to day informality that may be used at DADHC. Using formal titles will ensure the Service User is respected and referred to in the same way as other community members who attend Court
- in the *Support Plan* it is better to use the title rather than the name of any DADHC staff or other Professionals referred to under the Person Responsible/Time Frame/Progress column. For example, 'Psychologist' or 'Case Manager'.

6.7 The Information to the Court Report

The template for this document includes sections under which information about the Service User and the impact of their disability is described. These include:

1. Sources of information

List the author, date and title of reports and file information referenced for this report including any formal interviews with relevant professional staff or significant stakeholders e.g. Family.

2. Background information

The purpose of providing background information is to enable the Court to understand how a person's disability (and other diagnoses) has impacted on their development and what impact these issues have on the matter being heard. Provide relevant information under the sub-categories in the *Background Information* section:

a. Developmental history

- provide an outline of the Service User's disability and refer to relevant documentation if available e.g. psychological or psychiatric reports
- describe the general impact of the Service User's intellectual disability on their day to day life such as how he/she functions e.g. poor impulse control, a lack of understanding of social cues or communication difficulties.

b. Primary support history

- briefly outline the Service User's family/carer situation and the extent of their support
- describe any other support history from previous or current service providers or others e.g. Is/was the Service User a child in 'Out of Home Care'.
- provide details of Guardianship function (if relevant).

c. Education and employment

- briefly detail the Service User's work/school history and details of any current placements including hours of attendance and any support provided e.g. support staff in workplace.

d. Medical history

- outline any relevant medical/health problems, treatments, medication and any involvement by external agencies e.g. Community Mental Health, speech therapists etc that may impact on the Service User ensuring that the information is relevant to the matter being heard at Court.

3. Current Functioning

What is going on for the Service User now? Provide information under the sub-categories of the Current Functioning section which include:

a. Peer/Social network

- outline the Service User's ability to interact socially and the extent of their social network/peer group e.g. negative or positive influence.

b. Accommodation

- describe the Service User's current living situation and/or their accommodation needs
- describe the extent of any support they may receive.
- include information about assistance provided by DADHC in this area
- include historical information if relevant to current situation and the Court matter.

c. Living skills

- describe the Service User's level of independence, including personal care, money management or domestic skills
- outline any support provided by DADHC or other agencies for these tasks.

4. Behaviour Support

- describe any behavioural issues identified by assessments or risk management plans
- outline any reactive or preventative strategies or plans that have been implemented or proposed regarding the behaviour/s
- ensure that information that is included is relevant and provided in the context of the Court matter.

5. Community Access

- outline the Service User's ability to safely access their local community and the level of support (if any) that may be needed.

6. Proposed Support Plan

- briefly describe what DADHC can offer the Service User and identify any changes or additions to the services they may currently receive e.g. they may be able to work with a DADHC Psychologist for anger management or receive life skills training through a funded service
- this section should be a brief overview of how DADHC proposes to support the Service User in the future and should refer to the attached *Support Plan*.

See: **Appendix 8 – Information to Court Report**

6.8 The Support Plan

The *Support Plan* is an action plan that is attached to the *Information to the Court Report*. It describes to the Court what types of services can be put in place for the defendant (Service User) that will help to address the behaviours of concern. It outlines the level of support that is currently being provided, what should be put in place and what can be arranged for the person concerned.

- the *Support Plan* provides a framework by which the Court can see how various types of services will work together to support the person. This might involve a range of services from DADHC or a combination that includes non-government services

- in some Court matters the *Support Plan* can help provide some assurance to the Court that dismissing the charges under s32 of the *Mental health (Forensic Provisions) Act 1990* (NSW) is an appropriate outcome (See *Section 7 – Court Outcomes*)
- the *Support Plan* template provides a number of prompts for the types of information to include. Irrelevant text should be deleted and all sections completed
- the *Support Plan* is a document that is attached to the *Information to the Court Report*, for this reason the actions can be described more generally than they would for internal DADHC use
- pay attention to updating headers and footers and ensure that the names and other titles are inserted in the appropriate places (See the *Support Plan* template)
- write short explanatory paragraphs. Avoid long descriptions or too much detail. Ensure that all information is relevant and reads correctly
- give the completed draft to a colleague to check prior to sign off as both documents should be as professionally presented as possible
- the *Support Plan* template is made up of a number of columns where information is included under a number of domains (see *Section 6.9*)
- prompts and examples of information that could be used are provided in the template as a guide. These can be amended, added to or deleted as relevant to the Service User's circumstances
- references to plans and assessments should include a brief description as the Court/Magistrate may not be familiar with their purpose or role e.g. *Behaviour Support Plan* or Community Support Team.

See: Appendix 9 – DADHC Support Plan template

6.9 What *not* to include in the Support Plan

1. Promises

- do not make promises or say something is going to be put in place when there is no confirmation that it will. If arrangements are not yet finalised use terms like 'explore' or 'investigate' when describing any proposed options
- when there will be no firm arrangements in place at the time of the Court matter being heard, use terms such as 'An application has been made to...' or 'explore possible...' or 'A referral to be made to...' It is important to indicate to the Court that ongoing planning and coordination is taking place for the Service User.

2. Opinions

- your opinion is not relevant in this context. The *Support Plan* is about outlining the relevant issues that reflect the Service User's needs, the actions to address these needs and who will take the action and when.

3. Contradictory information

- take care that information in both documents does not contradict each other.

4. Plans that might set the person up to fail

- the planning described in the *Support Plan* must be realistic and achievable for the Service User. The Magistrate may impose conditions that require the person to comply with the *Support Plan* so it is in no-one's interest to create a situation where the Service User will not be able to comply.

6.10 Using the Support Plan template

1. Columns

Domain	Issues	Actions	Person responsible / Time-frame/ Progress
--------	--------	---------	---

a. Domain

- this column identifies areas that will be addressed in the provision of services to the person
- the template contains a number of standard domains though others can be added if relevant e.g. Decision Making if an application for Guardianship is required or already in place; or, Religion and Culture, which may be relevant for an Aboriginal person or a person from a CALD background (See below).

b. Issues

- this column identifies the issues under each domain that impact on the Service User or that need to be addressed.

c. Actions

- this column describes the actions that have been or will be taken that address the identified issues.

d. Person Responsible/ Time-frame / Progress

- this column is where the title (not the name) of a person who is responsible for a particular task would be inserted e.g. Case Manager or Psychologist
- time frames can be general e.g. 'within four weeks' or 'by June 30' or enter a specific date if it is known
- a very brief progress update can be included here e.g. 'Classes to commence once verification received' or 'waiting on report from...'

2. What should be included in the Support Plan domains?

Most of the domains listed below can be included in the *Support Plan* if relevant. Those marked * should always be included. If the Service User is an Aboriginal or Torres Strait Islander or a person whose first language is not English (CALD), the 'Religion and/or Culture' domain should always be included in the *Support Plan*.

a. Accommodation*

- describe the current situation and outline any accommodation needs of the Service User
- include a brief rationale for improving, changing or not changing any accommodation situation and what actions will be needed for this to occur
- describe any arrangements for drop in support or staff ratios in any supported accommodation.

b. Behaviour Support*

- describe any existing, or the need for, a *Behaviour Support Plan*
- outline how it could help to prevent or minimise the impact of the offending behaviour/s.
- briefly outline any behavioural issues relevant to the matter at Court and actions listed, such as a review of any current *Behaviour Support Plan* and requests for behaviour support; a referral to a Psychologist, or any staff training requirements in new strategies.

c. Case Management*

- describe the role of case management in relation to the Service User, including the coordination of services, arranging case meetings and overseeing the implementation of the Service User's *Individual Plan* and the actions identified in the *Support Plan*.

d. Additional Support*

- describe any current support in place and what other services may be needed. For example, is Aboriginal Home Care needed or drop in support? Is a referral to a specific therapist i.e. Speech or Physio required?

e. Decision Making

- outline any existing Guardianship arrangements and how these will be maintained
- is Guardianship required? Identify issues and actions taken that do or do not support a Guardianship application being made.

f. Financial*

- identify any issues related to the Service User's income and financial management
- is a financial management through the Office of the Protective Commissioner required?
- will the Service User need assistance with Centrelink?

g. Religion and/or Culture

- describe any religious or cultural issues that impact on the Service User and are relevant to the matter at Court e.g. Aboriginality or Culturally and Linguistically Diverse (CALD) background
- what issues and actions does this raise in relation to supporting the Service User?
- outline how these religious and/or cultural needs will be met.

h. Protocols and Procedures

- identify issues for staff or services when working with the person. For example, protocols may need to be set up for staff to liaise with local Police, Community Offender Services or mental health services
- describe how staff will be supported by their line management and how they will address any problems that arise in the support of the Service User
- outline any mechanisms for the Service User to address any issues or grievances.

i. Family and/or Important Relationships*

- if relevant, identify any issues, strengths or protective factors that may exist with the Service User's family and/or other important relationships
- outline what support is needed for the Service User to maintain or improve these relationships.

j. Health*

- describe the Service User's general health including any health issues that are relevant to the offending behaviour
- identify any need for treatments in relation to mental health issues, medication, dental or alcohol and other drug (AOD) issues (if relevant to the matter at Court).

k. Therapeutic Services

- if relevant to the Court matter, describe any relevant issues raised by the Service User's need for particular therapeutic services such as grief or anger management counselling.

l. Vocational or Day Programs*

- describe what can be put in place to help the Service User to undertake training, work or meaningful activity.

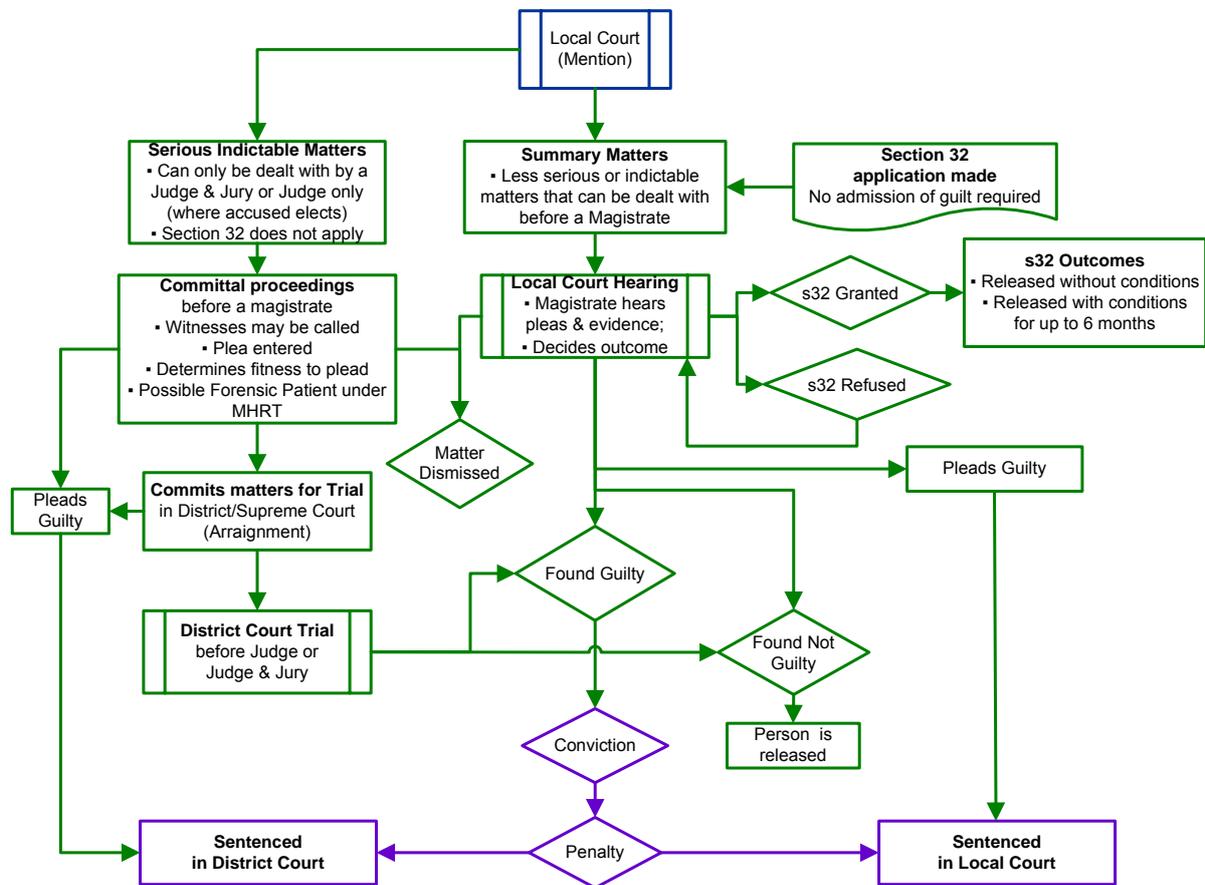
m. Community Access*

- describe any issues or risks related to the Service User in the community that is relevant to their offending behaviour
- how will these be addressed? What services will be sought to improve the situation?

n. Staff training and support

- describe any specific training requirements for staff who work with the Service User.

7. Court and other outcomes



Common options available to the Court include:

1. Alternatives to Court processes

- Warnings
- Cautions
- Youth Justice Conferencing
- Forum Sentencing
- Circle Sentencing

2. Custodial outcomes

- Suspended sentences
- Periodic detention
- Home detention
- Custodial sentences for adults
- Custodial sentence for young people

- 'Unfit to be tried'

2. Non custodial outcomes

- Application under Section 32, *Mental Health (Forensic Provisions) Act 1990 (NSW)*
- Conviction with a fine
- Dismissal of charges and conditional discharge
- Non-Association and place restriction orders
- Good behaviour bonds
- Community service order
- Deferring sentencing in favour of a rehabilitation program

7.1 Alternatives to Court processes

1. Children and young people

The *Young Offenders Act 1997* (NSW) defines a system of police warnings, cautions and youth justice conferences designed to divert young offenders from formal court processes for certain summary offences or indictable offences that can be dealt with summarily.⁸

Warnings

Warnings are issued for minor non-violent offences such as trespassing or offensive language. Police can issue warnings on the spot. They must identify themselves and the name of their Local Area Command. They must inform the young person that they are receiving a warning under the *Young Offenders Act 1997* (NSW) and record the child/young person's name, address and date of birth. A record of the warning is kept on the police computer system but cannot be used as a record of criminal history.⁹

Cautions

Cautions are given for more serious offences such as drug possession, property damage and theft. The child/young person must admit they committed the offence and agree to be cautioned. The Specialist Youth Officer from the relevant Local Area Command interviews the child/young person and issues the caution.

Young people must be assisted to access legal advice prior to being interviewed and must be interviewed and cautioned in the presence of an appropriate adult such as a parent, carer or legal representative.

Cautions usually involve:

- an explanation of the reason for the caution
- an exploration of the impact of the offence on the victim and the young offender including consequences of future offending
- Identification of how to avoid future offending.

Note: Police will keep a record of the caution.¹⁰

⁸ Section 8 of the *Young Offenders Act 1997* (NSW) lists a number of exclusions to this option. These include violent, traffic and drug offences.

⁹ Youth Action Policy Association (2006): *Opening the doors - A 'Do It Yourself' Access and Equity manual for working with young people*

¹⁰ *ibid*

Youth Justice Conferencing

The types of offences that are commonly dealt with in Youth Justice Conferences are break and enter, assault, theft, car theft and property damage. The young person must admit the offence in the presence of a responsible adult and agree to the conference.

A neutral convenor from the Department of Juvenile Justice runs the conference which includes the families and victims meeting face to face with the young person who has offended. The Solicitor for the young person, the police officer who arrested them and an interpreter (if required) also attend the conference.

The aim of the conference is that the young person takes responsibility for their actions and agrees to make amends to the victim/s in an acceptable way. In the conference all participants talk about the crime and its impact upon them.

The participants agree on an Outcome Plan at the end of the conference. Outcome plans include:

- apologising to the victim (spoken or written)
- returning stolen goods
- paying for items that were stolen or damaged
- repairing damage
- doing unpaid work for the victim
- doing unpaid work in the community
- completing a training course or program
- attending counselling
- completing a drug and/or alcohol program

2. Forum Sentencing

Forum Sentencing brings together the adult offender, their victim/s and other people impacted by the crime. This form of restorative justice currently operates at selected NSW Local Courts and will be extended across NSW.

Forum Sentencing provides an opportunity for:

- the victim and other people impacted by the crime (such as the victim's family), to meet face to face with the offender to tell them how the offence has impacted on their lives
- the offender to face the victim/s of their crime and hear how their offence impacted on the victims and they feel about it.

To be eligible for Forum Sentencing the offender must be facing a prison sentence and must agree to participate in the forum. Their eligibility and suitability is assessed by a program administrator who arranges a trained facilitator to organise and conduct the forum.

At the Forum the participants discuss the offence and how it has affected the victims and the community. A plan is developed to repair the harm to the victim and the community with strategies included that will help reduce the likelihood of re-offending and actions that the offender must agree to undertake.

The plan is sent to Court for approval with the actions detailed in the plan being undertaken either prior to, or as part of, a sentence. If the offender does not complete the actions in the plan, they may be required to appear in Court.

Forum Sentencing operates from the following local Courts:

- Burwood
- Balmain
- Liverpool
- Newtown
- Campbelltown
- Tweed Heads

3. Circle Sentencing

Circle Sentencing is an alternative sentencing court for adult Aboriginal offenders. It has the full sentencing powers of the court and involves local Aboriginal people in the process of sentencing offenders. Along with the defendant and their support people or family member/s, circle sentencing includes:

- victim/s with their support people or family member/s
- other community members affected by the offence
- respected community people
- the defendant's legal representative
- a prosecutor
- an Aboriginal Project Officer (as coordinator of the circle).

These participants and the Magistrate sit in a circle to discuss the offence and the offender. The Circle also talks about the background and effects of the offence and develops a sentence tailored for that offender.

The category of offences that make a person eligible for circle sentencing are those that can be finalised in a Local Court with a term of imprisonment being judged (by the magistrate) to be a likely outcome. Strictly indictable offences, sex offences or strictly indictable drug offences cannot be considered for circle sentencing.

The program operates in Nowra, Dubbo, Walgett, Brewarrina, Bourke, Lismore, Armidale, Kempsey and Mt. Drutt. An Aboriginal Project Officer is funded in each area to organise the Circle Sentencing Court, act as liaison between the Court and the community and to follow-up each offender to ensure that they are complying with the agreed sentence outcome plan.

4. Drug Courts

Adult Drug Court

The Drug Court is a specialist court that deals with offenders who are dependent on drugs. The Drug Court aims to assist drug-dependent offenders to overcome both their drug dependence and their criminal offending. It has Local Court and District Court jurisdiction and operates from the Parramatta Court complex.

To be eligible for the Drug Court a person must:

- be highly likely to be sentenced to full-time imprisonment if convicted
- have indicated that he or she will plead guilty to the offence
- Be dependent on the use of prohibited drugs
- reside within the catchment area (specified areas of Western Sydney)
- be referred from a court in the catchment area
- be 18 years of age or over
- be willing to participate.

A person is not eligible if he or she:

- is charged with an offence involving violent conduct
- is charged with a sexual offence or an offence punishable under Division 2 Part 2 of the *Drug Misuse and Trafficking Act (1985)*
- is suffering from a mental condition that could prevent or restrict participation in the program.

Youth Drug Court

The Youth Drug and Alcohol Court (YDAC) is a program that aims to reduce drug and/or alcohol related criminal activity by young people through judicial and therapeutic interventions. YDAC is targeted at young people aged 14 – 18 years (although younger people can be eligible in some circumstances), who live in Western and South Western Sydney.

To be eligible they must have a demonstrable alcohol or other drug (AOD) problem and be charged with a criminal offence for which a caution or youth justice conference is considered inappropriate. Like the adult drug court certain offences are ineligible for consideration (see above).

The child/young person must plead guilty, or intend to plead guilty and their offence must be one that can be finalised by the Children's Court.

See [Lawlink](http://www.lawlink.nsw.gov.au) website: <http://www.lawlink.nsw.gov.au>

5. Magistrates Early Referral into Treatment (MERIT)

MERIT is a program based in Local Courts that allows adult defendants with drug problems to work, towards rehabilitation as part of the bail process.

Participants are assessed for their suitability and a treatment program is developed to match the defendant's individual needs. The Court then makes the defendant's involvement in MERIT a condition of bail.

Defendants are closely case-managed by the MERIT Team throughout the program and the Magistrate receives regular reports on the participant. The final hearing and sentence generally coincides with the completion of the MERIT program. Magistrates are then able to consider the defendant's progress in treatment as part of final sentencing.

To meet the eligibility criteria for MERIT and adult offender must:

- be suitable for release on bail
- be an adult with a demonstrable illicit drug problem (excluding alcohol as the primary presenting problem)
- not be involved in offences related to significant violence or sexual assault, or matters that will be heard in the District Court
- not be involved in pending matters of a significant violent or sexual assault nature
- be deemed suitable for drug treatment and have a treatable problem
- have been approved to participate in the program by the Magistrate
- be willing to consent to a drug treatment program.

7.2 Non custodial outcomes

1. A 'Section 32' Application under *Mental Health (Forensic Provisions) Act 1990*

A Solicitor can make an application to the Local Court under Section 32 (s32) of the *Mental Health (Forensic Provisions) Act 1990* (NSW). The effect of a successful application under s32 MHCPA is that the defendant will not have a conviction recorded against his or her name, and will not be liable to any further punishment (provided the defendant complies with the terms of the orders that are made).¹¹

A 's32' means the accused person is 'diverted' from the criminal justice system into the human services sector where more appropriate support can be provided. This option is available to all

¹¹ NSW Young Lawyers: *A Practitioners Guide to Criminal Law* (Third ed.) 2004, Page 105.

DADHC Service Users and the *Information to the Court Report and Support Plan* that DADHC Staff can provide to the Court will assist the Magistrate to make an informed decision when considering a s32 MHCPA application and when setting any conditions.

If the Magistrate decides to impose conditions on a s32 MHCPA discharge, the defendant will be called back to Court within six months for a review. If they have failed to comply with any of the conditions the Court can then deal with the original charges as if they had not been discharged under s32 MHCPA.

2. Conviction with a fine

Fines are usually imposed for minor traffic offences and less serious criminal offences. The fine amount is decided by the Magistrate based on legislation. The Court will allow 28 days for the amount to be paid to the Court Registry. An extension on the time allowed to pay may be made through an application to the Court Registry.

Where DADHC staff are aware that the Service User may not be able to pay the fine in the specified time then they should:

- alert the Service User's legal representative
- assist the Service User to make 'time to pay' arrangements with the Court.

3. Dismissal of charges and conditional discharge

Under s10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), in cases where the Court is satisfied that despite a breach of the law there are extenuating circumstances or the matter is so trivial that punishment is not appropriate, the Court has the discretion to:

a. Have the relevant charge/s dismissed

To dismiss the charge the Court is to consider the person's character, antecedents, age, health and mental condition; the trivial nature of the offence; the extenuating circumstances in which the offence was committed and any other matter that the Court thinks proper to consider

b. Discharge the person with a (s10) Good Behaviour Bond

A s10 *Good Behaviour Bond* differs from a s9 *Good Behaviour Bond* (see below) in that it is limited to two years whereas a s9 Bond can be imposed for a maximum of five years

c. Discharge the person with the condition that they agree to participate in an intervention program

This order may be made if the Court is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person

d. Good Behaviour Bonds

Good Behaviour Bonds, ordered under s9 or s10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), usually include key conditions. These include:

- to be of good behaviour
- no further offences to be committed during the period of the order
- the person under bond reports to and follows the directions of a supervising Probation and Probation & Probation and Parole Officer or Juvenile Justice Officer for the length of the order
- the person under bond notifies the Court of any change of address
- the person under bond will appear before the Court if called on to do so at any time during the term of the bond
- the person under bond does not leave the state without prior permission

Additional conditions can be placed on the bond. These can include:

- specialised counselling and intervention
- payments of fines or compensation as stipulated
- attendance at educational or vocational training.
- assessment and treatments

4. Non Association and Place Restriction Orders

In addition to certain other sentencing options the Magistrate may impose a Non Association or Place Restriction Order. An order can be made for a period of up to 12 months that restricts a Service User from associating with certain specified persons or from going onto certain premises. This type of order will not be applied in relation to the offenders close family (including carers or Guardian).

5. Community Service Order

A Community Service Order is an order made under Division 3, section 8, Crimes (Sentencing Procedure) Act 1999 (NSW) and is technically not a non-custodial outcome. Instead of imposing a sentence of imprisonment on an offender, a Court may make a community service order directing the offender to perform community service work for a specified number of hours.

A Community Service Order is supervised by Community Offender Services. It is not generally issued to children or young people and is not generally regarded as an appropriate option for a person with an intellectual disability.

6. Deferring a Sentence in favour of a Rehabilitation Program

This option has previously been referred to as a 'Griffith Remand' (See Section 12 - Glossary), Crimes (Sentencing Procedure) Act 1999 (NSW) has replaced the Griffith Remand and provides the Court with the power to defer sentencing for rehabilitation, participation in an intervention program or other purposes such as assessment. Following a finding of guilt, a Court may make an order adjourning the proceedings for a maximum of 12 months for a number of specific purposes.

Section 11 Crimes (Sentencing Procedure) Act 1999 (NSW) stipulates that:

'A Court that finds a person guilty of an offence (whether or not it proceeds to conviction) may make an order adjourning proceedings against the offender to a specified date, and granting bail to the offender in accordance with the Bail Act 1978:

- (a) *For the purpose of assessing the offender's capacity and prospects for rehabilitation; or*
- (b) *For the purpose of allowing the offender to demonstrate that rehabilitation has taken place; or*
 - (b1) *For the purpose of assessing the offender's capacity and prospects for participation in an intervention program, or*
 - (b2) *For the purpose of allowing the offender to participate in an intervention program, or*
- (c) *For any other purpose the Court considers appropriate in the circumstances.'*

At the expiration of the period of remand (no more than 12 months) the defendant is required to reappear for sentencing. The defendant's progress during the adjournment is assessed and may be taken into account when he/she comes back to Court for sentencing.

The Court may choose this option in cases where it is presented with an intervention or program that aims at changing the person's offending behaviour. A *Support Plan* that includes strategies to support a Service User to access and participate in a rehabilitation program that is presented to Court by DADHC can fall into this category.

7.2 Custodial outcomes

1. Suspended Sentences

Having been found guilty of an offence where a custodial sentence has been imposed, the Court can decide to make an order suspending the sentence and directing that the offender be released from custody and enter into a *Good Behaviour Bond* under s12 *Crimes (Sentencing Procedure) Act 1999* for a term not exceeding the term of the sentence.

If during this term the offender breaches the bond, the Court can invoke the original sentence in full or part. This can result in the offender serving time in full custody, periodic detention or home detention.

2. Periodic Detention

In New South Wales, where an person is sentenced to a term of imprisonment which exceeds three months but is less than three years, the sentencing Court may order that the sentence be served as periodic detention. This means the offender will have to spend a specific period of each week or month in gaol for the duration of the sentence. Some sentences such as sexual offences cannot be served as periodic detention.

A person serving a sentence of periodic detention is subject to the same rules and restrictions as full-time prisoners. Committing further offences or failing to report to gaol may result in the Parole Board revoking the *Periodic Detention Order*. This would require the offender to serve the balance of the term in custody.

3. Home Detention

Under the *Crimes Sentencing Procedure Act 1999* (NSW) a Court that has sentenced an offender to imprisonment for not more than 18 months may grant a home detention application and direct that the sentence be served by way of home detention.

Community Offender Services will conduct an assessment of the person's suitability for home detention and make recommendations to the Court.

Home detention permits an offender to serve all or part of a term of imprisonment in the offender's home, under strict supervision and subject to conditions. Offenders on home detention will be supervised by Probation and Parole Officers from Community Offender Services, through the use of electronic monitoring devices, random visits and drug and alcohol testing. If the *Home Detention Order* is breached the offender may be ordered to serve the remainder of their sentence in full time custody.

4. Custodial sentences for adults

The Court may sentence the Service User (offender) to serve a period of imprisonment. This sentence will be served in a facility operated or overseen by the Department of Corrective Services (DCS). See Section 8 – Working with a Service user who has been sentenced.

In setting a term of imprisonment, a Court may order that the whole term be served or it may determine a 'non-parole' period of the sentence. Certain offences have standard non-parole periods that are set in legislation.

A non-parole period is the minimum amount of time that an offender will serve of a sentence before being eligible for release on parole. Where a sentence is three years or less the Court must make an order directing the offender's release at the end of the non-parole period. The NSW Parole Authority will decide whether an offender will be released on parole under the supervision of the Community Offender Services. If the offender fails to comply with the conditions of parole the Parole Authority may revoke the parole order

Where the sentence being served is *more* than three years, the offender will be able to apply for parole at the end of the non-parole period. Parole is not an automatically given. It is decided by the

NSW State Parole Authority who will determine whether (and when) the offender will be released on parole (supervised or unsupervised) and what the parole conditions will be.

In deciding whether to grant parole, the Parole Authority will examine a pre-release report from Community Offender Services. The Parole Authority may also consider a report from DADHC¹² on behalf of a Service User at a parole hearing.

A term of imprisonment will have an earliest release date (ERD) and a latest release date (LRD). The ERD is the end of the non-parole period. The LRD is the date of the end of a full sentence.

See: Section 8 - Working with a Service User who is in custody
Section 10 - Resources and Contacts

5. Custodial sentences for young people

In most situations, a person over 18 who is given a custodial sentence would be sent to an adult prison. In special circumstances, such as for shorter sentences or issues of vulnerability, a person over 18 (and under 21 years) can serve their sentence alongside those who are under 18 in a Juvenile Justice Centre operated by the Department of Juvenile Justice. See Section 8 – Working with a Service user who has been sentenced.

In NSW the medium security *Kariong Juvenile Correctional Centre* is operated by the Department of Corrective Services rather than the Department of Juvenile Justice. Kariong is a medium security facility for young offenders sentenced or held on remand for more serious offences.

A Service User who is serving a sentence or is held on remand in a Juvenile Justice Centre is known as a young person or detainee on a *Control Order*. They are not referred to as inmates or prisoners.

See: Section 8 – Working with a Service User in custody

7.3 Fitness to be tried

A s32 application under the *Mental Health (Forensic Provisions) Act 1990* is not made in the District Court so the option for diversion from conviction and sentencing is not available. A number of people with an intellectual disability who are prosecuted in a District Court may be deemed 'unfit to be tried' under the same Act. They are then considered to be a 'Forensic Patient' which can have significant consequences for a person with an intellectual disability whether or not they may also have mental health issues.

A Forensic Patient is a person who:

- is detained in a hospital, prison or other place or released from custody after having been found by a court to be unfit to be tried for a criminal offence
- is detained in a hospital, prison or other place having been found guilty on the limited evidence available of an offence at a Special Hearing
- is detained in a hospital after being transferred there from a prison
- has been found by a court to be not guilty by reason of mental illness.

¹² The report provided by DADHC to the NSW State Parole Authority can be presented in the same format as that provided to Court including the attached support plan (See Section 6 Providing Information to Court + Appendices 9 & 10).

The basic criteria for determining fitness to be tried

The accused must be able to:

- understand and make a plea (guilty or not guilty)
- understand and follow the nature of the proceedings
- understand the implications of any evidence against them
- decide on a defence and make his/her version of the facts known to their Solicitor and the Court.

When the question of a person's fitness to be tried is raised, for cases heard in the District or Supreme Courts, a determination is made as to whether or not a fitness inquiry should be conducted.

Following a fitness inquiry, if the person is found unfit to be tried, the matter is referred to the Mental Health Review Tribunal (MHRT) which must then determine whether the person (as a Forensic Patient) will become fit to be tried during the period of 12 months after the initial finding.

If at a Special Hearing it is found that, on the limited evidence available, the accused person committed the offence/s as charged, the Court must indicate the sentence it would have imposed if the special hearing had been a normal trial with a finding of guilt. This sentence is referred to as a Limiting Term.

The Court then orders that the person be detained either in a hospital or 'in a place other than a hospital'. For people with an intellectual disability this means they may serve their maximum sentence unless a suitable accommodation and support model is put forward. This is significant as many people who are charged with the same offences though not deemed as 'unfit to be tried' may be given parole and so be released earlier than a person who is a Forensic Patient.

In practice, there are few alternatives in NSW for forensic patients with an intellectual disability to be held other than Gaol. Forensic Patients who have an intellectual disability may serve their limiting terms in a Forensic Hospital or one of the additional support units within NSW corrective services facilities.

The person remains a forensic patient until the end of the limiting term beyond which there is no power of detention and the person, who is no longer classified as a forensic patient, must be released. Forensic Patients have no access to parole supervision following release.

As a Forensic Patient, his/her case is reviewed by the MHRT at least once every six months. The MHRT can make a recommendation for release if it is satisfied that the safety of the Forensic Patient or any member of the community will not be seriously endangered by the person's release.

Where a Service User may be deemed unfit to be tried:

It is not necessarily the best option for DADHC Service Users to be found 'unfit to be tried' or 'unfit to plead'. It is possible that the outcome, once found unfit, is more restrictive than a sentence after being found guilty of a charge.

1. If either the Service User's Solicitor or the Prosecution Solicitor is raising the issue of 'fitness to plead' or 'fitness to be tried' DADHC staff should inform their manager and take steps to provide an *Information to the Court Report* and a *Support Plan* (See Section 6 – Providing Information to Court).
2. Assessments for fitness to be tried should be done by an independent psychiatrist and/or psychologist and must be arranged by the Court or the Service User's Solicitor. DADHC may be able to suggest a Psychiatrist or Psychologist with experience in intellectual disability.
3. A thoughtfully written *Information to the Court Report* and *Support Plan* prepared by DADHC staff can assist a Service User to be released into a more appropriate support option.
4. DADHC staff working with a Service User who has been deemed unfit to be tried and has become, or is likely to become, a Forensic Patient, will be able to provide an *Information to the*

Court Report and *Support Plan* to the initial MHRT hearing or at any of the subsequent six monthly reviews.

Further information can be obtained by contacting the Forensic Division of the MHRT

☎ 02 9816 5955

☎ 1800 815 511 (free call)

8. Working with a Service User who has been sentenced

DADHC Service Users, who are serving a sentence or held on remand at either an Adult Correctional Centre or a Juvenile Justice Centre, are acknowledged to be vulnerable within these systems. While the Department of Corrective Services does provide some support for adult male inmates with an intellectual disability, the Department of Juvenile Justice does not have disability specific services for children and young people with an intellectual disability.

Sentences may also include community based orders under the supervision of Probation and Parole Offices at Community Offender Services (COS) for adults or Juvenile Justice Officers (JJO's) for children or young people.

8.1 Young people and Juvenile Justice

'Risk factors for involvement in juvenile crime include family factors, intellectual functioning and school performance, truancy, influence of delinquent peers, poverty, unemployment and substance misuse. Young perpetrators of crime are commonly already suffering from, or are at risk from poor health outcomes as a result of their offending.

Studies on the physical health of young offenders indicate an early engagement in health risk behaviours affecting physical and mental health, particularly among females. There is also a high prevalence of trauma, suicide attempts and self-harm.'

*NSW Young People on Community Orders – Health Survey 2003-2006*¹³

In 2003 DJJ conducted the *Young People in Custody Health Survey*.¹⁴ The findings of the survey indicate a high level of disabilities among young people in custody:

- 88% reported symptoms consistent with a mild, moderate or severe psychiatric disorder
- 30% reported symptoms consistent with Attention Deficit Hyperactivity Disorder
- 21% reported symptoms consistent with schizophrenia
- 10 -13% were assessed as having an intellectual disability.

The report also revealed:

- 8% of young men and 12% of young women reported having attempted suicide in the previous 12 months
- 21% of young men and 56% of young women reported drinking in the hazardous/harmful range
- 59% indicated that they had been under the influence of alcohol, drugs or both at the time of their offence
- 68% had reported some form of abuse or neglect in their childhood.

¹³ Kenny, Nelson, Butler, Lennings, Allerton, Champion (2006): *Young People on Community Orders Health Survey 2003 – 2006: Key Findings Report*

¹³ <http://www.djj.nsw.gov.au/pdf/publications/2003YoungPeopleInCustody.pdf>

Working with the Department of Juvenile Justice

The main practical difference in working with juveniles in Juvenile Justice Centres is that the time frames are so much shorter. Young people are held on remand for shorter periods and are 'processed' through the system more quickly, therefore, DADHC staff must be prepared to act promptly when working with a young person who is involved with the juvenile justice system.

By developing a collaborative working relationship with Juvenile Justice Case Managers in community offices and in Juvenile Justice Centres there is an opportunity for DADHC to increase the capacity of DJJ to identify young people with intellectual disability and make appropriate service requests to DADHC. These working relationships will also improve DADHC's ability to provide appropriate services to children and young people under the supervision of DJJ.

DJJ has three main service delivery areas. These are:

- Youth Justice Conferencing
- Community-based Services which includes the provision of offender assessments to Courts and Court-ordered supervision of young people within their communities
- Juvenile Custodial Services for young people on control orders directed by the Court to be placed in detention.

8.2 Juvenile Justice Community Offices

The JJO works locally as a case manager to a young person in the community with the aim of reducing the risks associated with re-offending and to supervise young offenders to meet their legal obligations. To achieve this, services provided from Juvenile Justice Community Offices include:

- assessment reports prepared to assist Courts in determining sentences
- Court directed supervision of juvenile offenders placed on good behaviour bonds, probation and community service or parole orders
- support for young people with problems seeking bail or remanded in custody, including Court ordered bail supervision
- alternatives to detention through programs that specifically address risk factors linked to the individual's offending behaviour
- provision of specialised programs that deliver forensic and other psychological testing, assessment and interventions that include the *Sex Offender Program* and *Violent Offender Program*
- case management and collaboration with other government and community-based services to link juvenile offenders to support services that can assist to minimise re-offending and provide support to comply with any legal orders. This can include participation in specific offending-focussed programs, accommodation, dealing with relationship difficulties, finding employment, developing employment skills, and supporting the young person's return to school.

DADHC staff should:

1. Act promptly and work collaboratively with the relevant JJO who is case managing the young person who has an intellectual disability. This may involve assistance to gain eligibility for DADHC services and may also include the preparation of an *Information to the Court Report* and a *Support Plan* for a young person who is going to Court. See: Section 6 – Providing Information to Court.
2. Respond immediately when working with children and young people as time frames in the Juvenile Justice system are shorter than the adult system.

3. Where a young Service User is being supervised on a bond or community service order DADHC staff should establish and maintain a working relationship with the JJO in order to support the Service User to comply with the conditions of their order.

8.3 Juvenile Justice Centres

The *Children (Detention Centres) Act 1987* (NSW) governs the circumstances under which juvenile offenders may be confined to a Juvenile Justice Centre, the treatment of detainees, the granting to a detainee of leave from a Juvenile Justice Centre and their discharge from a centre.

There are eight juvenile justice centres in NSW and one emergency short-term accommodation unit at Broken Hill. These centres are located at St Marys, Campbelltown, Lidcombe, Central Coast, Emu Plains, Wagga Wagga, Dubbo and Grafton

- *Kariong* Juvenile Correctional Centre is a high security facility for serious young offenders aged 16 and over on a custodial order or on remand. It is operated by the Department of Corrective Services rather than Juvenile Justice
- *Juniperina* Juvenile Justice Centre is a juvenile justice centre for young women offenders at Lidcombe
- *Reiby* Juvenile Justice Centre at Campbelltown addresses the special needs of 10 to 16 year old male detainees with behaviour difficulties
- all custodial facilities provide educational, recreational, vocational, specialised counselling and personal development programs
- individual case management is provided to detainees to plan for their reintegration into the community.

When a young person arrives at a Juvenile Justice Centre:

- the young person is interviewed and family members and significant others are identified
- over the following 48 hours the young person undergoes a health check and risk assessment. They are asked how they are feeling and assessed in relation to possible self harm. A person with an intellectual disability may not be identified in this process
- within seven days a case plan is prepared by the Juvenile Justice Centre case manager and a regular schedule of client service meetings will be established. DADHC staff should participate in these meetings where possible, or provide input and be kept informed about them to foster collaborative case management for the young Service User held in a Juvenile Justice Centre.

DADHC staff should:

1. Respond immediately and liaise with the Assistant Manager Client Services at the relevant Juvenile Justice Centre in relation to the needs of a Service User detained on control orders or held on remand at a Juvenile Justice Centre. This includes any health issues or medication including dosages and the prescribing Doctor's contact details as well as any communication needs and/or behavioural information.
2. Attend Juvenile Justice Client Service meetings and case conferences in relation to a Service User held at the Juvenile Justice Centre.
3. Work with DJJ staff to prepare a release plan for a young person who is a Service User who is due to be released from a Juvenile Justice Centre.

8.4 Adults and Corrective Services

Most people with an intellectual disability who serve a custodial sentence are housed in the main population within NSW Correctional Centres. All adults who have been given a custodial sentence including those who are remanded in custody are transported from Court to a Corrective Services Reception Centre. They will then go through a screening process that will include questions relating to possible disabilities – including an intellectual disability.

When a disability is suspected, a referral is made to the Statewide Disability Service (SDS) where an assessment will be undertaken. For male inmates the assessment process includes discussion with the offender and staff as to the person's coping strategies within the Correctional Centre and prioritisation for possible placement within an Additional Support Unit (ASU).

While accommodation within women's correctional centres is appropriate for most women, some with complex presentations (including mental illness) may be accommodated within the *Mental Health Screening Unit* at Silverwater Women's Correctional Centre (formerly known as *Mulawa*). Female inmates with an intellectual disability who require additional support may also be accommodated in the *Mum Shirl* Unit. SDS provides input to the case management of female inmates on request.

Adult males who are identified as having an intellectual disability either during the reception screening process, through a follow up assessment or through a referral from a third party, such as DADHC, will be referred to SDS for a possible placement at an ASU.

When SDS is informed that a Service User is coming into a correctional centre they can take steps to ensure that the person's disability is known to the relevant correctional staff and that available support can be put in place for that person. SDS may arrange for people who are particularly vulnerable to be housed in an additional support unit.

The Additional Support Units within NSW Department of Corrective Services include:

Long Bay Correctional Complex – Malabar Special Programs Centre (MSPC)

- *Five Wing* - An assessment and general programs unit for remand and sentenced inmates
- *18 Wing* – A pre-release unit for sentenced minimum security inmates (opening late 2009)
- *6 Wing* – Therapeutic unit - Sex Offender Program (opening late 2009)

Goulburn Correctional Centre

- *X-Wing* – has an ASU within it for 15 minimum security inmates.

Placement at an *Additional Support Unit* may take some time, depending on the inmate's perceived level of need and the availability of a bed. Inmates waiting on placement who are considered vulnerable may be held in the higher protection areas of a correctional centre for long periods everyday.

DADHC staff should:

1. Ensure that they find out as soon as possible which Correctional Centre the Service User is to be transported to and when this will occur. This information can be obtained from the Court Cell staff.
2. Phone or email the DCS Statewide Disability Services (SDS) to notify them that a Service User is coming into a Correctional Centre (See below) even if they are not sure which one.
3. Provide any relevant information to SDS that can help provide support to the Service User whilst they are in Gaol. This includes any health issues or medication including dosages and the prescribing Doctor's contact details as well as any communication needs and/or behavioural information.

4. Where possible contact Justice Health staff directly at the Correctional Centre if the Service User's health needs are urgent. For example a person who is insulin dependant.
5. Inform Housing NSW if they are aware that a Service User who is a public housing tenant is entering custody. This will enable steps to be taken to protect their tenancy where possible.
6. Notify Centrelink that the Service User is in custody in order to prevent the Service User accruing a debt. Liaise with SDS so that accurate information is provided to Centrelink.
7. Assist the Service User who is entering custody to maintain employment and other community and family links where possible.
8. Where possible, visit the Service User in Gaol (or detention). Arrangements should be made through SDS. An authorisation form will need to be completed and returned to SDS no less than 5 days prior to the date of the visit. For those who make regular visits to correctional centres, applying for Authorised Visitor Status may be appropriate. Contact SDS for further information.

Contact: Department of Corrective Services, Statewide Disability Services

☎ 02 9289 2136 or 02 9289 2138 Fax: 02 9289 2134

Email: sds@dcs.nsw.gov.au

8.5 Release Planning and the Statewide Disability Service

The Department of Corrective Services (DCS) Statewide Disability Service (SDS) makes a number of referrals to DADHC as a result of identifying inmates who have an intellectual disability. Some referrals are for people who may have had some contact with DADHC previously, though many are people who have never received any services or support.

Service Users exiting Gaol are more likely to re-offend within the first few months of coming out of Gaol. For many, the reasons why this happens are related to the extent of their disability as well as a lack of resources, support and preparation for life outside of Gaol. Release planning is an important strategy that will help support a Service User to make the transition from Gaol back into the community.

Many new referrals to DADHC from the DCS or the Department of Juvenile Justice (DJJ) include those who may be unfamiliar with, or resistant to, receiving services from government departments or funded service providers. It must be recognised that effective service provision for this group requires the building of a flexible but consistent relationship that aims to maintain engagement over the longer term. By developing and utilising individualised strategies to encourage the acceptance of services, overcome resistance and sustain engagement with DADHC the Service User who is exiting custody will be better able to avoid re-offending.

Planning for release and maintaining contact with a Service User while they are in Gaol will require DADHC staff to liaise with SDS and consult with their line manager. An existing Service User who is serving a sentence or on remand is likely to return to their DADHC region, release planning should therefore consider the earliest and latest possible release date and what the Service User's needs will be post release.

For example:

- a person who is sentenced for three months should have a release plan developed straight away. Contact might be maintained through a monthly visit and liaison with SDS
- a person who is sentenced for two years may have a non-parole period of 14 months which might mean they will be released at this point. In this example, release planning would start 8 - 11 months after the person begins their sentence. Until then their DADHC file could be suspended and then reopened at the appropriate time.

Planning for a Service User's release date by supporting them to establish or re-establish support services, accommodation, financial arrangements, education, training, employment and any treatment services they may need, will go a long way to helping them to avoid returning to a pattern of behaviour that might lead them to re-offend.

When working with a Service User who is in custody, DADHC staff should:

1. Where possible, visit the Service User in Gaol to discuss what their needs will be when they are released.
2. Make arrangements with SDS to discuss and clarify aspects of any pre-release planning with the Service User if DADHC staff are unable visit them prior to release.
3. Consult with SDS to obtain information and advice about a Service User's needs and/or risks when they are released.
4. Liaise with other stakeholders and services (such as Community Offender Services) to collaborate in pre-release planning.
5. Liaise with SDS where it is felt that a Service User requires a Guardian or when an application has been made to the Guardianship Tribunal.
6. Take into account that an inmate cannot be held beyond midnight on their latest release date. Liaise with SDS prior to the Service User's release to clarify arrangements for release day. This might include coordinating transport and hand over arrangements.
7. Arrange with SDS for Centrelink to establish/re-establish Disability Pension payments.
8. Liaise with SDS to ensure the cash payment from Centrelink that is made to the Service User on release is forwarded to the Office of the Protective Commissioner (OPC) where a Service User's finances are managed by the OPC.

See: Section 9.1 - Staying safe when visiting a Service User in Gaol

8.6 Working with Community Offender Services

Probation and Parole Officers (PPO) from Community Offender Services prepare pre release reports for the State Parole Authority (SPA) which decides whether an individual is to be released on parole. A PPO may also give verbal evidence at SPA Hearings if required. The Pre-release reports are submitted to SPA for all NSW offenders serving a total sentence (a combined non-parole and parole period) of over 3 years.

Pre-release reports contain detailed information regarding the offender's background, post release plans and suitability for release. In preparing the report the PPO will conduct an assessment of the offender's suitability for release and their risk of re-offending. They will also undertake a home visit to assess the suitability of any proposed accommodation and related community case management issues, including release plans.

DADHC staff can provide information about the impact of the Service User's disability and the disability services that can be accessed to the PPO for inclusion in the pre-release report or they may submit a DADHC report directly to Parole hearing utilising the *Information to the Court* and *Support Plan* templates.

See: Appendix 9 - Information to the Court Report template

Appendix 10 – Template Support Plan template

Release planning for a DADHC Service User on supervised or unsupervised parole should include strategies to help the Service User to meet the conditions of parole. Where parole is supervised, the Service User will need to meet with their Probation and Parole Officer at set times and be seen to comply with the stipulated conditions for the duration of the parole period.

When working with a Service User with parole conditions DADHC Staff should:

1. Where possible, develop a release plan for the Service User who is to be released on parole in consultation with both Statewide Disability Services and/or Community Offender Services at the Department of Corrective Services.
2. Develop a working relationship (for the benefit the Service User) with the Service User's local Probation and Parole Officer.
3. Support the Service User to understand the conditions of parole and help them to develop strategies to comply.

9. Keeping Safe

9.1 Professional boundaries

The establishment and maintenance of professional boundaries is an important factor in any professional relationship. Due to the nature of some of the behaviours of some people with an intellectual disability involved in the Criminal Justice System, DADHC staff are advised to generally keep their own personal details confidential. They should not provide identifying information about themselves or their families.

It is not necessary for DADHC staff to create a relationship which is devoid of any personal conversation though they should be cautious, as some Service Users may have behavioural issues where personal information may be abused. For example, it may be appropriate to discuss the weekend football games and which team a DADHC staff member or Service User may follow. It would *not* be appropriate to discuss which games the DADHC staff might attend, if they attend them with their family, if the ground is local to where they live or if they catch a train or bus to get there.

Case management and clinical service planning should identify and document potential behaviour triggers or risk situations associated with the particular Service User they are working with. This is particularly relevant when working with people who have a history of violent crimes, crimes against children or arson.

Checklist for maintaining professional boundaries

1. Do not provide personal information including the suburb or area where you live.
2. Do not provide information regarding family situation e.g. married or separated, whether you have children, their ages, names etc.
3. Do not leave identifying information in an area where the Service User has access. For example, do not have keys with registration numbers or address or phone number tags attached. Do not leave diaries around with identifying information such as phone number or address.
4. Remember that you are a DADHC staff member who is friendly not a friend.
5. Do not be drawn into conversations where the Service User is asking your personal opinion or advice, or wishing to exchange personal details with you.
6. In general, DADHC staff should avoid visiting a Service User alone if they do not know them well who may also be in their living situation. It may be more appropriate to arrange to meet the Service User the first few times in a café or at the DADHC Office.
7. Safety precautions include informing line management of any plan to make a home visit, taking a mobile phone and where possible, attending with another colleague.

Support for DADHC staff

If a DADHC staff member experiences difficulties in relation to their work with a Service User they should discuss the issues with their line manager in the first instance. DADHC staff can also utilise the Employee Assistance Program (EAP) a free service that provides counselling and support through an independent company either online, by phone or through a face to face appointment. Details can be found on the DADHC intranet at:

http://dadhc-intranet.nsw.gov.au/working/staff_services/staff_support_programs/employee_assistance_program

9.2 Staying safe when visiting a Service User in custody

1. Remember to be aware of clothing and your general manner when visiting a Service User in a correctional centre (or Juvenile Justice Centre). All DADHC staff should wear clothing that reflects their professional role in the Service User's lives. While it may suggest a level of discrimination, female staff *do* need to be mindful of the length of skirts, the tightness of clothing, whether shirts are low cut or have low buttoning when visiting a male correctional centre. Jewellery and perfumes should also be kept to a minimum.
2. Where possible, visit the Service User in Gaol (or detention). Arrangements should be made through SDS in the first instance. An authorisation form will need to be completed no less than five days prior to the date of the visit. For those who will be visiting a Correctional Centre or Juvenile Justice Centre regularly, they should consider applying for professional visitor status. Contact SDS (or the relevant Juvenile Justice Centre) for more information.
3. Safety policies at correctional centres require all professional visitors* to wear closed in shoes.
4. You will not be able to take a mobile phone or bag into the correctional centre (though clear PVC bags are acceptable). Leave these in the boot of your car or in any facilities provided when you sign in.
5. Find out what the professional visiting procedures are for the particular correctional centre when you make arrangements to visit the Service User through SDS.
6. A professional visitor* will need to take some form of photo identification and confirmation that your visit is approved (usually a signed form).
7. Follow the advice and instructions of SDS staff and Correctional Services staff. Ask if you are unsure.
8. A professional visitor* may be required to wear a duress alarm which attaches to a belt while visiting the Service User in Gaol. Contact the relevant correctional centre to confirm what is required.

9.3 Knowledge of the local environment

1. DADHC staff that work with Service Users who are involved with the Criminal Justice System need to be aware of environmental factors which will impact on risk management strategies. For example, when supporting a Service User to obtain accommodation be aware of any areas which may pose a risk to them in terms of exacerbating re-offending behaviour or increasing their vulnerability where the community may be at risk. For example, where it is relevant to the

* In this context these rules apply to any person visiting a Service User in their role as a professional regardless of having received 'Professional Visitor' status

Service User's offending behaviour, consider whether there are children also living in the same block or site. Equally, if a Service User who has an offending history influenced by anti-social associates in a particular area, it would be sensible to consider an alternative location for an accommodation option.

2. For further information see the *Environmental Checklist Guide*. This tool is available on the DADHC Intranet under Resources on the Statewide Behaviour Intervention Service page.
3. DADHC staff should also be mindful of issues of confidentiality, particularly where there may be misinformation provided to the local community, with regard to the Service User and which could result in discriminatory practice. Do not share information with the general public that will identify the Service User's criminal justice involvement or medical diagnoses.

10. Resources and Contacts

Contacts listed in this section include those that can provide legal advice, information, resources or assistance to a Service User or DADHC staff in relation to the criminal justice system in NSW (See *References* and *Glossary* for further information).

Aboriginal Disability Network

PO Box 47, Strawberry Hills NSW 2012	Phone: 02 9319 1422 TTY: 02 9318 2138 TTY Free call: 1800 422 015 Fax: 02 9319 1466
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Web: <http://www.pwd.org.au/adnsw/index.html>

The Aboriginal Disability Network NSW (ADN) is a loose network of Aboriginal people with disability and of Aboriginal people who have an association with an Aboriginal person with disability. The need for the establishment of the ADN has risen because of the high degree of unmet need for Aboriginal people with disability and the resultant need for a systemic voice of and for Aboriginal people with disability living in NSW. (From ADN Newsletter Issue 1 2003)

Aboriginal Legal Service (ALS)

Redfern Office First Floor, 619 Elizabeth St Redfern NSW 2016 PO Box 2257, Strawberry Hills 2012	Phone: 02 9318 2122 or 02 8303 6600 Fax: 02 9319 2630 Web: http://www.alsnswact.org.au/
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The ALS:

- is a community-controlled organisation responsible for providing legal aid services to Aboriginal people in NSW and the ACT
- has around 24 offices across NSW and the ACT from which it provides legal advice, referral and casework assistance in the fields of Criminal and Family Law (including Care and Protection)
- also provides advice on Civil Law matters from some of its offices.

Attorney General's Department

Parramatta Justice Precinct 160 Marsden St Parramatta NSW 2124	Phone: 02 8688 7777 Free call: 1800 684 449 Fax: 02 8688 7980
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Web: http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/attorney_generals_department_about_us

The Attorney General's Department (AG's) of NSW administers the courts, tribunals, law and justice programs of the State.

Sections of AG's relevant to people with an intellectual disability include:

Diversity Services

Level 5, Parramatta Justice Precinct	Phone: 02 8688 8460 or 02 8688 7507
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160 Marsden St

Fax: 02 8688 9626

Parramatta

TTY: 02 8688 7733

Web: http://www.lawlink.nsw.gov.au/lawlink/diversityservices/LL_DiversitySrvces.nsf/pages/disability_index

Diversity Services can arrange for Court Assistance including:

- Provisions for a support person
- Preferred document formats
- Interpreters
- Hearing equipment
- Wheelchair access

Diversity Service Resources include:

- *The Capacity Toolkit* - a guide to assessing a person's capacity to make legal, medical, financial and personal decisions.
- *Information about going to Court*
- *So you have to go to court!* - a video that has been developed to assist people with cognitive disabilities who are required to attend a local court as a witness or a defendant. The So you have to go to court! video is available to watch online or download as a MP4 or wmv file. A DVD or VHS kit is also available by contacting Diversity Services.

Lawlink

Web: <http://www.lawlink.nsw.gov.au/>

- Lawlink (<http://www.lawlink.nsw.gov.au/>) is an online government portal to law and justice agencies and services hosted by the Attorney General's Department of NSW. It has information about Courts and Tribunals in NSW as well as information about and links to, legal and justice agencies in NSW.

LawAccess

PO Box 620

Phone: 1300 888 529 (Mon – Fri 9am – 5pm)

Parramatta 2124

TTY: 1300 888 529

Web: <http://www.lawaccess.nsw.gov.au/>

LawAccess is a free government online and telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW.

Law Access:

- Has Solicitors that can provide legal advice in some situations and information about all types of legal matters
- Has Aboriginal staff who can help an Aboriginal person with legal information
- Can help with a Legal Aid application
- Can help find a private Solicitor
- Is funded by the NSW Attorney General's Department and Public Purpose Fund of NSW.

Victims Services

Level 1

Phone: 02 8688 5511

160 Marsden Street

Free call: 1800 069 054 (Non-metro)

Parramatta NSW 2150

TTY: 02 8688 5575

Fax: 02 8688 9630 (Compo & Counselling)

24 hr Victims Support Line (7 days a week) - Information, support and referral for victims of crime

Phone: 02 8688 5400

Free call: 1800 633 063

TTY: 02 8688 5575

Aboriginal & Torres Strait Islander Contact Line

Free call: 1800 019 123

- Victims Services (is part of the NSW Attorney General's Department and consists of the Victims Compensation Tribunal, the Victims of Crime Bureau and the Families and Friends of Missing Persons Unit.
- The Victim's Services website includes information about obtaining counselling and victims'

compensation. It also provides information about victims' rights and the Victims Assistance Scheme.

Victims Services resources include:

- [Help for victims of sexual assault](http://www.sexualassault.nsw.gov.au/) (<http://www.sexualassault.nsw.gov.au/>) an online resource that provides information about sexual assault, the legal process, reporting to Police, support and counselling and also has links to sexual assault support services.
- [Courtwise](http://www.Courtwise.nsw.gov.au/) is an online resource which provides information for a person who has to go to Court and can be viewed at <http://www.Courtwise.nsw.gov.au/>

Community Restorative Centre (CRC)

174 Broadway, (cnr Shepherd St), Phone: 02 9288 8700
 Broadway NSW 2007 Fax: 02 9211 6518
 Website: <http://www.crcnsw.org.au> Email: info@crcnsw.org.au

- CRC is a community organisation in New South Wales dedicated to supporting prisoners, ex-prisoners, and their families and friends.
- Staff in Sydney and the Hunter region offer practical assistance, phone information and referral to other services.
- CRC operates transitional support programs for inmates exiting jail, family support information, a transport service to the country jails, as well as running a court support scheme and the 'Jailbreak' radio program.
- CRC also runs specific training for other services regarding this client group.
- The CRC website has current CRC transport timetables and more information on the various projects, including a number of resources (see above) and links to other useful sites.

The CRC website has a number of information brochures (see: <http://www.crcnsw.org.au>)

- [Are You Going To Court?](#)
- [Preparing For Prison](#)
- [Which Prison Are they In?](#)
- [Visitor Transport](#)
- [Inmate Accounts - How To Deposit](#)
- [Mental Health](#)

and publications such as:

- [Getting Out Handbook](#) - Your Guide to Surviving on the Outside
A guide for ex-prisoners and prisoners who are about to be released.
- [Gimme Shelter](http://www.gimmeshelter.org.au) web and print based resources for services working with ex-prisoners. See website www.gimmeshelter.org.au
- Audio Resource (CD) - *The Jailbreak Families audio CD* that demystifies the NSW prison system and covers issues that arise for people with a relative/friend inside.

Community Offender Services (Probation & Parole)

District Offices:

Albury	02 6041 2933	Dubbo	02 6882-9744	Muswellbrook	02 6543 2255
Armidale	02 6772 2073	Fairfield	02 8717-4600	Narrabri	02 6792 4457
Bankstown	02 9707 2144	Forbes	02 6852-2219	Newcastle	02 4929 3921
Batemans Bay	02 4472 4987	Glen Innes	02 6732-2644	Newtown	02 9550 4056
Bathurst	02 6332 2737	Gosford	02 4324-3744	Nowra	02 4422 1599
Bega	02 6492 3144	Goulburn	02 4821-5800	Orange	02 6361 4666
Blacktown	02 9671 4266	Grafton	02 6643-2585	Parramatta	02 9685 2666

Community Offender Services (Probation & Parole)

District Offices:

Bourke	02 6872 2455	Griffith	02 6964-2242	Penrith	02 4731 1511
Bowral	02 4861 3777	Gunnedah	02 6742-5220	Port Macquarie	02 6583 6677
Broken Hill	02 8087 9155	Hurstville	02 95796200	Queanbeyan	02 6229 7500
Burwood	02 9745 2211	Inverell	02 672-0309	Sutherland	02 9521 3544
Campbelltown	02 8796 1900	Katoomba	02 47822944	Tamworth	02 6766 7444
Casino	02 6662 4311	Kempsey	02 65627622	Taree	02 6552 7599
Chatswood	02 9413 1822	Lake Macquarie	02 49565533	Tumut	02 6947 4104
City	02 9265 7500	Lismore	02 66221277	Wagga Wagga	02 6921 2950
Coffs Harbour	02 6652 6933	Lithgow	02 63521555	Windsor	02 4560 1000
Cooma	02 6452 1903	Liverpool	02 96120800	Wollongong	02 4226 1928
Coonamble	02 6822 1988	Maitland	02 49334333	Young	02 6382 3599
Dee Why	02 9982 7266	Moree	02 67524088		
Deniliquin	02 5881 4408	Mt. Druitt	02 94213000		

Disability Discrimination Legal Centre (DDLC)

PO Box 989	Free call:	1800 800 708 (NSW only)
Strawberry Hills NSW 2010	TTY:	02 9310 4320
	TTY Free call:	1800 644 419 (NSW only)
Website: http://www.ddlcnsw.org.au/	Fax:	02 9310 7788

- Provides free legal advice, representation and assistance for cases involving discrimination against people with disabilities and their associates.
- DDLC advice lines are open Tuesdays, Wednesdays and Fridays from 9.30am

Department of Juvenile Justice (DJJ)

To locate:

<u>Juvenile Justice Centres</u> go to:	http://www.djj.nsw.gov.au/contactus_jjcentre.htm
<u>Juvenile Justice Community Services</u> go to:	http://www.djj.nsw.gov.au/contactus_comser.htm
<u>Juvenile Justice Regional Offices</u> go to:	http://www.djj.nsw.gov.au/contactus_regoffices.htm
<u>Youth Justice Conference Administrators</u> go to:	http://www.djj.nsw.gov.au/contactus_yjcadmin.htm

Office of the Director of Public Prosecutions (DPP)

Witness Assistance Services

Sydney	02 9285 2502	Free call:	1800 814 534	TTY:	02 9285 8646
Parramatta	02 9891 9800		Campbelltown	02 4629 2811	
Gosford	02 4323 2556		Newcastle	02 4929 4399	
Bathurst	02 6332 2555		Penrith	02 4721 6100	

Dubbo 02 6881 3300 Wagga Wagga 02 6925 8400
Lismore 02 6627 2222 Wollongong 02 4224 7111

Website: <http://www.odpp.nsw.gov.au/was/bawitn/Default.html>

- WAS is provided by the Office of the Director of Public Prosecutions (DPP) to meet the needs of victims of crime and witnesses appearing in Court matters prosecuted by the DPP
- WAS services cover information, referral, Court preparation, Court support, and after Court.

Guardianship Tribunal

Level 3, 2a Rowntree Street
Balmain NSW 2041

Phone: 02 9556 7600
Free call: 1800 463 928

Web: <http://www.gt.nsw.gov.au/>

The Guardianship Tribunal conducts hearings throughout New South Wales and makes decisions in relation to the appointment of Guardians and financial managers; or in relation to medical and dental consent, for people with disabilities who do not have the capacity to make their own decisions. The Tribunal may make a range of other orders as well.

Intellectual Disability Rights Service (IDRS)

2c, 199 Regent Street
Redfern NSW 2016

Phone: 02 9318 0144
Free call: 1800 666 611
Fax: 02 9318 2887

Website: <http://www.idrs.org.au>

Email: info@idrs.org.au

- IDRS is a Community Legal Centre for people with an intellectual disability, their families and carers
- Legal advice is initially provided over the phone by appointment. Mon - Fri 2 - 5 pm.

Criminal Justice Support Network (CJSN) Phone: 1300 665 908 (24 hr - local call)

CJSN is a program funded by DADHC through IDRS which:

- provides volunteers to support people with an intellectual disability at Police interviews and at Court
- covers Sydney, Hunter, Illawarra/Shoalhaven, & Central Coast areas
- has a roster of pro bono Solicitors on call to assist people with an intellectual disability who are being charged with a crime
- provides information and support statewide by phone, 24 hours, 7 days a week

IDRS and CJSN resources include:

- *Acting for Clients with an intellectual disability* - Fact sheet for Lawyers
- *CJSN Support Workers at Court* - Fact sheet for lawyers
- Video/DVD Resource kit: *Getting Arrested - What to Do!*
- *Lawyers Information Kit*

Justice Health (NSW Health) – State wide Court Liaison Service

PO Box 150
Matraville 2036

Phone: 02 9700 3000
Fax: 02 9700 3493

Justice Health Court Liaison Officers are located at the following Local Courts in NSW:

- Blacktown
 - Dubbo
 - Manly
 - Sutherland
 - Wyong
 - Burwood
 - Gosford
 - Nowra
 - Sydney Central
 - Campbelltown
 - Lismore
 - Parramatta
 - Tamworth
 - Coffs Harbour
 - Liverpool
 - Penrith
 - Wagga Wagga
- the Statewide Court liaison Service provides mentally ill offenders with court-based diversion options from the criminal justice system towards treatment in mental health facilities
 - there are Justice Health Court Liaison Officers (CLO's) in 17 courts across NSW.

Law Society of NSW

The Law Society is the representative and governing body for Solicitors in NSW. See website for:

Pro Bono Scheme

Phone: 02 99260364

Email: probonoscheme@lawsocnsw.asn.au

Criminal lawyers available after hours: <http://www.lawsociety.com.au/page.asp?partID=15278>

or contact the NSW Solicitor Referral Service during business hours. Phone: 02 9926 0300

- The Law Society of NSW operates a **Pro Bono Referral Scheme** for eligible members of the community who cannot afford the cost of a Solicitor and who are not eligible for Legal Aid
- The Law Society website has a list of Solicitors who may be available after hours.

NSW Legal Practices and NSW Solicitors

- The Law Society website has a database that can locate legal firms and Solicitors in NSW

Website: <http://www.lawsociety.com.au/page.asp?partID=15278>

Legal Aid

Phone: 02 9219 5000 (General)

Legal Aid Offices are located state wide. Check the website or White Pages for contact details

Website: <http://www.legalaid.nsw.gov.au/asp/index.asp>

- Legal Aid NSW is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW)
- Legal Aid NSW works with LawAccess NSW, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, and private lawyers to provide free or means tested legal services to people throughout New South Wales.

In addition to legal representation, Legal Aid provides the following services:

Children's Legal Services

Legal Aid Youth Hot Line

Free call: 1800 10 18 10

- Monday – Friday 9am – Midnight
- 24 hours weekends and public holidays (i.e. 9am Friday to midnight Sunday)

The Children's Legal Service operates from Legal Aid offices at:

Sydney (for Bidura Children's Court and Campsie Children's Court) Phone: 02 9219 5120

Parramatta (for Parramatta Children's Court) Phone: 02 8688 3800

Campbelltown (for Campbelltown Children's Court) Phone: 02 4692 2752

- Solicitors from the Children's Legal Service provide legal advice over the telephone to children and young people under 18 who have committed or who are suspected of committing an offence
- Children's Legal Service represents children and young people under 18 in criminal and child welfare cases before the Children's Court.

Legal Aid Prisoners Legal Service

Parramatta Justice Precinct Phone: 02 8688 3888
Level 1, 160 Marsden Street,
Parramatta 2150.

Web: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=595>

The Legal Aid Prisoners Legal Service visits NSW Gaols and provides free & confidential legal advice and minor assistance in matters like, bail, legal aid, appeals, classification and other prison issues, family law, victims' compensation and restitution fines and debt.

The Prisoners Legal Service can also represent prisoners at:

- hearings at the State Parole Authority
- life sentence determinations
- segregation appeals
- visiting justice hearings.

Legal Aid Women's Domestic Violence Court Assistance Schemes

Various locations. See Legal Aid website under Specialist Services at:
<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=728>

- women can contact the Scheme prior to going to court or ask Local Court staff to direct them to a Scheme worker at the court on the day the matter is listed. Community and government organisations can also refer women to Schemes for assistance
- there are 33 Schemes located across rural and metropolitan NSW.

Mental Health Advocacy Service (MHAS)

Level 4, 74-76 Burwood Road Phone: 02 9745 4277
Burwood
NSW 2134 Fax: 02 9744 6936

Web: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=594>

The Mental Health Advocacy Service (MHAS):

- is part of Legal Aid and provides free legal advice and assistance about mental health law
- represents people in hearings that relate to their detention and treatment in hospitals and the community, and the management of their money
- provides representation for people with other disabilities before the Guardianship Tribunal
- provides advice to relatives and friends
- has a social worker to help with a wide range of related issues.

National Association of Community Legal Centres (NACLC)

PO Box A2245
Sydney South
NSW 1235

Phone: 02 9264 9595

Fax: 02 9264 9594

Web: <http://www.nacalc.org.au/directory/>

- Community Legal Centres (CLC's) are independent, non-profit community organisations that provide free legal services to the public.
- [NACLC website](#) has a full directory of Community Legal Centres in Australia organised by state
- some Community Legal Centres in NSW are specialist centres such as the Tenants' Union, the Consumer Credit Legal Centre or the Intellectual Disability Rights Service (see above).

Office of the Protective Commissioner (OPC)

160 Marsden Street
Parramatta 2150
or
144 Clarence Street
Sydney

Phone: 02 8688 2600

Outside Sydney local call: 1300 360 466

TTY: 1800 882 889

Fax: 02 8688 9783

Web: <http://www.lawlink.nsw.gov.au/opc>

OPC provides financial management services for people who are unable to manage their own affairs due to disability. The OPC also provides authorisation and direction for people who have been appointed to privately manage the financial affairs of individuals who are not able to manage their own affairs due to disability.

Office of the Public Guardian (OPG)

Urgent Decisions after hours: 02 8688 2650

TTY: 1800 882 889

Information and support: 02 8688 6070

Private Guardian Support Unit: 02 8688 6060

Western Regional Office

160 Marsden Street
Parramatta 2150

Phone: 02 8688 2650

Free Call: 1800 451 510

Fax: 02 8688 9797

Southern Regional Office

Level 2, 83 York Street
Sydney 1235

Phone: 02 8083 9100

Free Call: 1800 451 428

Fax: 02 8083 9111

Northern Regional Office

Level 3, 4 Watt Street
Gosford 2250

Phone: 02 4320 4888

Free Call: 1800 451 694

Fax: 02 4320 4818

Web: http://www.lawlink.nsw.gov.au/lawlink/opg/ll_opg.nsf/pages/OPG_aboutus

The OPG promotes the rights and interests of people with disabilities through the practice of Guardianship, advocacy and education. The Guardianship Tribunal appoints the NSW Public Guardian as Guardian of last resort and the Office is part of the Attorney General's Department.

The OPG can:

- make a particular lifestyle decision on behalf of a person under the Guardianship of the Public Guardian when given the authority to do so
- provide or withhold consent to medical and dental treatment on behalf of a person under Guardianship of the Public Guardian when given the authority to do so

- advocate on behalf of the person under Guardianship for services the person may need
- be the Guardian for a specified time in the Guardianship order
- provide information and support to private and enduring Guardians and provide information on the role and function of Guardians to the general community.

Public Defenders Office

Carl Shannon Chambers, Phone: 02 9268 3111
 Level 13, 175 Liverpool St Fax: 02 9268 3168
 Sydney, NSW 2000

Web: http://www.lawlink.nsw.gov.au/lawlink/pdo/ll_pdo.nsf/pages/PDO_index

- Public Defenders are barristers independent of the government who appear in serious criminal matters for clients who have been granted legal aid
- A Public Defender may be briefed to advise or appear in a matter through the Legal Aid Commission, the Aboriginal Legal Services, a private Solicitor or any community based legal group
- Public Defenders represent clients granted legal aid who are charged with serious criminal offences anywhere in New South Wales.

Statewide Disability Services (Dept. Corrective Services)

Offender Services & Programs

Principal Officer Disabilities Phone: 02 9289 2135 or 9289 2165
 Fax: 02 9289 2134

Email: sds@dcs.nsw.gov.au

- to contact the Welfare Officer at X-Wing in Goulburn, first contact Manager Statewide Services (see above email and phone numbers)
- to locate contact details of [NSW Goals](http://www.dcs.nsw.gov.au/) go to: <http://www.dcs.nsw.gov.au/> and locate Correctional Centres under 'Offender Management'

Women's Legal Service NSW

PO Box 206 Phone: 02 9749 7700 (Admin)
 Lidcombe NSW 1825 02 9749 5533 (Sydney)
 Free Call: 1800 801 501
 TTY: 1800 674 333
 Fax: 02 9749 4433

Web: <http://www.womenslegalsw.asn.au/default.htm>

WLS NSW is a community legal centre providing women with a range of free community legal services, including legal advice and information, education, training and resources across metropolitan and regional areas of New South Wales.

Indigenous Women's Legal Contact Line Free Call: 1800 639 784

- this toll-free line is staffed by Aboriginal women, and is open 10:00am - 12.30pm & 1.30 - 4.00pm Monday, Tuesday, Thursday, and Friday.

- advice lines do not operate on a Wednesday.

Domestic Violence Advice Line

Advice Line: 02 8745 6999

Free Call: 1800 810 784

TTY: 1800 626 267

- General and Domestic Violence Advice Lines are open 9.30am - 12.30pm and 1.30pm – 4.30pm Monday, Tuesday, Thursday and Friday.
- Advice Lines do not operate on a Wednesday

Note: A full listing of sexual assault services in NSW can be found through the [NSW Health Services Directory](http://www.health.nsw.gov.au/services/) at the NSW Health website: <http://www.health.nsw.gov.au/services/>

Disability Advocacy Organisations

Disability Advocacy NSW

Web: <http://www.da.org.au/>

Newcastle

1300 365 085 or

Phone & TTY: 02 4927 0111

Fax: 02 4927 0114

Email: newcastle@da.org.au

Tamworth

Phone: 02 6766 4588

Fax: 02 6766 4261

Email: tamworth@da.org.au

Forster / Taree / Port Macquarie Office

Phone: 1300 365 085

Fax: 02 4927 0114

Email: mnc@da.org.au

Coffs Harbour

Phone: 02 6651 1159

Fax: 02 4927 0114

Email: coffsharbour@da.org.au

Armidale

Phone: 02 6771 4100

Fax: 02 6766 4261

Email: armidale@da.org.au

Family Advocacy Sydney

Phone: 02 9869 0866

Free call: 1800 620 588 (non-metro)

Fax: 02 9869 0722

Web: <http://www.family-advocacy.com/index2.php>

Indigenous Disability Advocacy Service

Phone: 1300 114 327

Harris Park (Sydney)

Fax: 02 9687 7699

Web: <http://www.idas.org.au/>

People with Disability Inc.

Phone: 02 9370 3100

Sydney + statewide

Toll Free 1800 422 015

TTY: 02 9318 2138

TTY Toll Free: 1800 422 016

Web: <http://www.pwd.org.au/services.html>

Fax 02 9318 1372

Multicultural Disability Advocacy Association

Phone: 02 9891 6400

Sydney + statewide

Toll free: 1800 629 072

TTY 02 9687 6325

Web: <http://www.mdaa.org.au/>

Fax: 02 9635 5355

Disability Advocacy Network Wagga Wagga Web: http://www.dan-inc.net.au/	Phone: 02 6921 9225 Toll Free: 1800 250292 Fax: 02 6921 7140
Disability Advocacy Information Service Bathurst Web: http://www.binc.org.au/dias.htm	Phone: 02 6332 2100 Fax: 02 6332 6611
Disability Advocacy and Information Service (DAIS) Web: http://www.disability-advocacy.com.au/ Covers areas in NSW comprising of: City of Albury; Hume Shire including townships of Gerogery, Burrumbuttock and Howlong; Corowa Shire; Holbrook Shire; Culcairn Shire including townships of Henty, Talmalmo, and Woomargama; Berrigan Shire comprising the townships of Tocumwal, Finley and hinterland; Deniliquin Shire; and Urana Shire.	Phone: 02 6056 2420 Fax: 02 6024 6809
Self Advocacy Sydney Sydney Web: http://www.sasinc.com.au/	Phone: 02 9622 3005 Fax: 02 9622 6030
Ability Incorporated Northern Rivers Web: http://abilityincorporated.org.au/	Phone: 02 6628 8188 Toll Free: 1800 657 961 Fax: 02 6628 8199
Action For People With Disability Inc. (Sydney Metro North region) Web: http://www.actionadvocacy.org.au/	Phone: 02 9449 5355 Fax: 02 9449 2652
Central Coast Disability Network Individual Advocacy Project Web: http://www.ccdn.com.au/	Phone: 02 4324 2355 TTY: 02 4322 4066 Fax: 02 4324 3187
Side by Side Advocacy Inc. Web: http://www.sidebyside.org.au/sbscontactus.html Covers areas in Sydney are comprising of: Northern Sydney Local Government Areas of: Ryde, Hunters Hill, Willoughby, North Sydney, Mosman, Lane Cove, Hornsby, Pittwater, Warringah, Manly and Ku-ring-gai	Phone: 02 9808 5500
City & Inner West Disability Advocacy (CIWDA) Web: http://www.mdaa.org.au/ciwda	Phone: 02 9212 2020 Fax: 02 9211 2606
Illawarra Citizen Advocacy Web: No website	Phone: 02 4229 4064 or 02 4229 4999 Fax: 02 4228 0406

Newell Advocacy Inc.

Phone: 02 6792 3195(Narrabri)

Web: No website

02 6752 1215 (Moree)

Covers areas in NSW comprising of: Narrabri, Moree, Gwydir, Coonamble, Warrumbungle, and Walgett Shires.

11. Legislative & Policy Context

The *Disability Services Act 1993* (NSW) provides for the funding and provision of disability services and sets out the standards which must be applied in the design, administration and delivery of services. This legislation supports the equal rights of people with disabilities and provides a basis for ensuring that their specific needs are met.

The legislation requires that services must be provided in a way that meets the individual's needs and personal goals (Standard 2); that the right to privacy, dignity and confidentiality is respected (Standard 4); and that each person with a disability is supported to participate in the life of the community (Standard 5).

11.1 Policy context

New South Wales

A New Direction for NSW: State Plan 2006 - 2016

The New South Wales Government State Plan outlines the objectives for NSW public sector agencies until 2016. Priorities established in the plan that are relevant to this policy include:

R1 - Reduced rates of crime

R2 - Reducing re-offending

F2 - Increased employment and community participation for people with disabilities

F4 - Embedding prevention and early intervention into government service delivery

Stronger Together: A new direction for disability services in NSW 2006-2016

Stronger Together is a ten-year plan to provide greater assistance and long-term practical solutions for people with a disability and their families. *Stronger Together* provides a significant increase in funding for disability services. Objectives include:

- making access to disability services fairer and more transparent
- helping people remain in their own home, linking services to need
- creating more options for people living in specialist support services
- ensuring the system is sustainable.

Better Together: A new direction to make NSW Government services work better for people with a disability and their families 2007-2011

This whole-of-government strategy aims to improve coordination, planning and delivery of agency services for people with a disability and their families in NSW. The strategy identifies eight priority areas for improvement, including:

- early intervention
- making it easier for people to get the therapeutic services they need
- strengthening services and support for people with autism and their families
- improving access to community support and specialist accommodation

- supporting and recognising carers
- working with Aboriginal families and communities.

NSW Interagency Service Principles and Protocols

Led by DADHC, the Senior Officers' Group on People with an Intellectual Disability and the Criminal Justice System (SOG) was established to improve the whole-of-government coordination of services provided by NSW government agencies for people with an intellectual disability in, or at risk of, contact with the criminal justice system.

The SOG developed the *NSW Interagency Service Principles and Protocols* that aimed to 'improve the planning, coordination and delivery of services to people with an intellectual disability and to improve the operation and responsiveness of the criminal justice system to the circumstances of people with an intellectual disability.'

The *NSW Interagency Service Principles and Protocols* identify the commitments, roles, and responsibilities of the various agencies in relation to key points in the criminal justice system. Agencies are required to report annually on their progress as part of their Disability Action Plans.

NSW Interagency Service Principles and Protocols have been agreed to between the following Government Departments:

- NSW Attorney-General's Department (AGD)
- NSW Department of Ageing, Disability and Home Care (DADHC)
- NSW Department of Corrective Services (DCS)
- NSW Department of Education and Training (DET)
- Housing NSW
- NSW Health (including Justice Health)
- NSW Department of Juvenile Justice (DJJ)
- NSW Police Force.

Other Interagency Agreements

The DADHC *Justice Services Policy* and *Criminal Justice Resource Manual* operate in the context of the following interagency agreements:

- *Memorandum of Understanding between the Department of Community Services and the Department of Ageing, Disability and Home Care on Children and Young Persons with a Disability* (2003 – Under review)
- *NSW Housing and Human Services Accord (the Accord) - Between the Department of Housing and NSW Human Service Agencies* (2007)
- *Agreement on the Interagency Care and Support Pathway for People With Acquired Brain Injury* (2008)

DADHC Policies, Procedures & Resources

The *Criminal Justice Resource Manual* operates in conjunction with the *Justice Services Policy* (June 2009) and other DADHC policies and procedures which can be found on the DADHC staff Intranet and public website: <http://www.dadhc.nsw.gov.au>

11.2 Commonwealth and State Law

The Parts, Divisions and Sections of the Acts and Regulations listed below are provided as a guide and included in this manual as an overview of the legislation and regulations that may be relevant in a DADHC Service User's criminal justice matter. To view the complete legislation, go to:

[Australasian Legal Information Institute \(Austlii\)](http://www.austlii.edu.au/au/nsw/)
<http://www.austlii.edu.au/au/nsw/>

or [The Parliamentary Counsel's Office \(NSW\)](http://www.legislation.nsw.gov.au/)
<http://www.legislation.nsw.gov.au/>

Commonwealth ACTS

Crimes Act 1914

Part IB Sentencing, Imprisonment and Release of Federal Offenders

- Division 6 Unfitness to be tried
- Division 7 Acquittal because of mental illness
- Division 8 Summary disposition of persons suffering from mental illness or intellectual disability
- Division 9 Sentencing alternatives for persons suffering from mental illness or intellectual disability

Disability Discrimination Act 1992

- All sections

Disability Services Act 1986

- All sections

Human Rights And Equal Opportunity Commission Act 1986

- s50 Schedule 4 Declaration on the Rights of Mentally Retarded Persons
- s50 Schedule 5 Declaration on the Rights of Disabled Persons

New South Wales ACTS

Anti-Discrimination Act 1977

- Part 4A Discrimination on the Ground of Disability**
- Part 8 The Anti-Discrimination Board**
- Part 9 The Functions of the President, the Tribunal and the Board**

Bail Act 1978

- All sections

Child Protection (Offenders Registration) Act 2000

- All sections

Children And Young Persons (Care And Protection) Act 1998

- All sections

Children (Criminal Proceedings) Act 1987

Part 2 Criminal Proceedings Generally

- s5 Age of criminal responsibility
- s6 Principles relating to the exercise of criminal jurisdiction
- s7 Jurisdiction of Children's Court not to be exercised by certain other Courts
- s8 Commencement of proceedings
- s9 Expedition where child in custody
- s10 Exclusion of general public from criminal proceedings
- s11 Publication and broadcasting of names

- s12 Proceedings to be explained to children
- s12A Bail applications
- s13 Admissibility of certain statements etc
- s14 Recording of conviction
- s15 Evidence of prior offences and other matters not admissible in certain criminal proceedings
- Division 4 Penalties: s16 - s21
- Part 3 Criminal Proceedings In The Children’s Court**
- s28 Jurisdiction of the Children’s Court
- s29 Jurisdiction in respect of 2 or more co-defendants who are not all children
- s33 Penalties
- s33D Non-association and place restriction orders
- s38 Destruction of photographs, finger-prints etc
- s40 Variation of good behaviour bond or probation
- s41 Enforcement of conditions of good behaviour bond or probation or compliance with outcome plan
- s41A Provisions applicable where control order suspended subject to good behaviour bond
- s42 Action may be taken after good behaviour bond has expired
- Part 5 Miscellaneous**
- s50 Bail Act 1978 to prevail
- s50B Special provision relating to drug rehabilitation programs

Children (Community Service Orders) Act 1987

- All sections

Children (Juvenile Justice Centres) Act 1987

Part 2 Juvenile Justice Centres

Part 3 Persons on remand and persons subject to control: s9 – s32A

- Division 2 Treatment of detainees: s5 – s8A
- s28A & 28 B Certain children may be remanded in correctional centres
- s28BA Certain persons to serve balance of detention order in correctional centre
- s28C Meaning of “Juvenile Justice Centre offence”
- s37E Functions of Justice Health
- s37F CEO, Justice Health, to have access to Juvenile Justice Centres, detainees and medical records
- s42 Attendance of persons subject to control before Courts and Court officers

Community Services (Complaints, Reviews And Monitoring) Regulation 2004

- All sections

Crimes Act 1990

- All sections

Crimes (Administration Of Sentences) Act 1999

Part 2 Imprisonment By Way Of Full-Time Detention

- Division 2 Segregated and protective custody
- Division 3A Juvenile inmates

Part 3 Imprisonment By Way Of Periodic Detention

Part 4A Imprisonment By Way Of Compulsory Drug Treatment Detention

Part 5 Community Service Work and Other Work Performed By Offenders

Part 6 Parole

Part 7 Revocation and Reinstatement by Parole Authority of Certain Orders

Part 8 The Parole Authority

Part 11 Administration

- Division 1 Correctional complexes, correctional centres and periodic detention centres
- Division 3 Staff
 - s235 Functions of correctional officers
 - s235C Transitional centre officers
 - s235D Functions of periodic detention field officers
 - s235E Functions of community service field officers
 - s235F Common work sites
 - s235G Functions of Departmental compliance and monitoring officers

Crimes (Forensic Procedures) Act 2000

- s5 How forensic procedures may be authorised in different circumstances
- s6 Time limits for carrying out forensic procedures

Part 3 Forensic procedures on suspect by consent

- s7 Forensic procedure may be carried out with informed consent of suspect
- s8 Police officer to ask whether suspect identifies as Aboriginal person or Torres Strait Islander
- s9 Informed consent to forensic procedures-general
- s10 Informed consent to forensic procedures-Aboriginal persons and Torres Strait Islanders
- s11 Conditions under which Police officer may request consent to forensic procedure
- s13 Matters that suspect must be informed of before giving consent
- s14 Withdrawal of consent
- s15 Recording of giving information and suspect's responses
- s16 Time for carrying out forensic procedure-suspect not under arrest

Part 6 Carrying Out Forensic Procedures On Suspects

- 54 Presence of interview friend or legal representative-children and incapable persons
- 75F Informed consent to forensic procedures

Part 8 Carrying out of forensic procedures on volunteers and certain other persons

Crimes (Sentencing Procedure) Act 1999

Part 5 Sentencing Procedures for Imprisonment

Part 6 Sentencing Procedures for Periodic Detention Orders

Part 7 Sentencing Procedures for Home Detention Orders

Part 8 Sentencing Procedures for Community Service Orders

Part 9 Sentencing Procedures for Good Behaviour Bonds

Criminal Procedure Act 1986

Chapter 2 General Provisions

- s76 Recordings of interviews with vulnerable persons

Chapter 4 Summary Procedure

- s185 Recording of interviews with vulnerable persons (Div2 Pre-trial procedures)

Chapter 6 Evidentiary Matters

- s275B Witness with communication difficulty entitled to assistance from person or communication aid
- s294C Complainant entitled to have support person or persons present when giving evidence

Part 6 Giving Of Evidence By Vulnerable Persons s306M – s306ZP

Chapter 7 Miscellaneous

Part 4 Intervention Programs s345 - s352

Criminal Records Act 1991

- All sections

Disability Services Act 1993

- All sections

Freedom Of Information Act 1989

- All sections

Guardianship Act 1987

- All sections

Health Records And Information Privacy Act 2002

- All sections

Law Enforcement (Powers And Responsibilities) Act 2002

Part 2 Powers Of Entry

Part 3 Powers To Require Identity To Be Disclosed

Part 4 Search and Seizure Powers Without Warrant

Part 5 Search and Seizure Powers With Warrant or Other Authority

Part 6 Search, Entry And Seizure Powers Relating To Domestic Violence Offences

Part 8 Powers Relating To Arrest

Part 9 Investigations and Questioning

s112 Modification of application of Part to certain persons [Relates to vulnerable persons]

Mental Health Act 2007

Chapter 3 Involuntary Admission and Treatment In and Outside Facilities: s12 - s67

Part 1 Requirements for Involuntary Admission, Detention and Treatment: s12 -s16

Part 2 Involuntary Detention and Treatment in Mental Health Facilities: s17 - s49

Division 2 Admission to and initial detention in mental health facilities: s18 - s33

Division 3 Continuing detention in mental health facilities: s34 – s45

Part 3 Involuntary Treatment in the Community: s50 - 67

Division 1 Applications for and making of Community Treatment Orders: s50 – s56

Division 2 Operation of Community Treatment Orders: s57 – s64

Chapter 6 Mental Health Review Tribunal: s140 – s162

Mental Health (Forensic Provisions) Act 1990

Part 2 Criminal Proceedings In The Supreme Court And District Court Relating To Persons Affected By Mental Disorders: s4 – s30

Part 3 Summary Proceedings before a Magistrate Relating to Persons Affected by Mental Disorders: s31 - s36

s32 Persons suffering from mental illness or condition

s33 Mentally ill persons

Part 5 Forensic Patients and Correctional Patients: s40 - s76

Division 2 Forensic Patients

Division 5 Community treatment orders relating to forensic patients and correctional patients

Division 6 Enforcement

Division 7 Tribunal Functions

Division 8 General

s76B Treatment, care and detention of patients

s76C Functions of Commissioner of Corrective Services and Director-General of Department of Juvenile Justice

s76G Planning for release and leave

s76I Grants of leave do not affect sentences or limiting terms

s76J Exchange of information

s76K Duties of certain agencies

Privacy And Personal Information Protection Act 1998

- All sections

Protected Estates Act 1983

- All sections

Summary Offences Act 1998

Part 2 Offences In Public And Other Places

Part 3 Prostitution

s29a Penalty notices: custody of knives in public place or school and failure to comply with police directions

Victims Rights Act 1996

Part 2 Charter of Victims Rights

Victims Support And Rehabilitation Act 1996

Part 2 Approved Counselling Scheme And Statutory Compensation Scheme

Division 1 Victims eligible for statutory compensation

Young Offenders Act 1997

s4 Definitions

s5 Meaning of Victim

s7A Persons in relation to whom Act applies

s8 Offences covered by Act

s10 Admission of Offences

s11 Relationship with other legislation

Part 3 Warnings: s13 – s17

Part 4 Cautions: s18 – s33A (particularly s29)

Part 5 Youth Justice Conferences: s34 - 61

s65 Publication and broadcasting of name

s66 Disclosure of records

s68 Interventions not to be disclosed as criminal history

NSW Regulations

Bail Regulation 2008

- All sections

Children And Young Persons (Care And Protection) Regulation 2000

- All sections

Child Protection (Offenders Registration) Regulation 2001

s5B Corresponding registrable persons

s12 Registrable persons who are children or who have special needs

s14 Manner in which registrable person may report

s18 Child Protection Register

Children (Criminal Proceedings) Regulation 2005

- All sections

Children (Juvenile Justice Centres) Regulation 2005

- All sections

Children (Community Service Orders) Regulation 2005

- All sections

Crimes (Administration of Sentences) Regulation 2008

- All sections

Crimes (Forensic Procedures) Regulation 2008

- All sections

Crimes (Sentencing Procedure) Regulation 2005

- All sections

Criminal Procedure Regulation 2005

s19. Circle sentencing intervention program

Part 5a Recorded Interviews With Vulnerable Persons

Law Enforcement (Powers And Responsibilities) Regulation 2005

Part 3 Division 3 - Vulnerable persons, sections 23 - 36

Mental Health (Forensic Provisions) Regulation 2009

Part 2 Tribunal Procedures

Part 3 Community Treatment Orders

Mental Health Regulation 2007

Part 2 Admission to, and Care in, Mental Health Facilities

Part 3 Community Treatment Orders

Part 7 Mental Health Review Tribunal

Young Offenders Regulation 2004

Part 3 Warnings and Cautions

Part 4 Youth Justice Conferencing

12. Glossary

The Glossary contains names and common terms that may be used when providing support to a Service User who is in, or at risk of, contact with the criminal justice system.

Aboriginal Legal Service (ALS)	
ALS is a criminal law practice which provides advice and representation for both Aboriginal and Torres Strait Islander adults and young persons. ALS:	
<ul style="list-style-type: none"> ▪ deals with civil matters, family law and child protection matters ▪ has 21 offices throughout NSW (See: <i>Resources & Contacts</i> Section). 	
Adjournment	
The postponement of a case to a later date.	
Advocate	
An Advocate supports a person by providing information and advice to encourage that person to advocate for themselves in areas such as:	
<ul style="list-style-type: none"> ▪ dealing with a landlord ▪ providing support when going to Court, support in dealing with the Police or dealing with a legal issue ▪ negotiating a better deal from a government department ▪ dealing with Guardianship and financial management orders ▪ dealing with problems at work, school, TAFE or uni etc). 	
<u>An Advocate may also:</u>	
<ul style="list-style-type: none"> ▪ link a person with other relevant services (e.g. helping a person get legal advice from a Solicitor). ▪ talk over problems; listen and help to think through options for moving forward ▪ support an individual to take formal action on matters related to disability discrimination or when making a complaint against a service provider (e.g. assisting a person to make a complaint with the Anti-Discrimination Board). 	
<u>An advocate is someone who:</u>	
<ul style="list-style-type: none"> ▪ is independent of service providers, who only represents and advocates for the best interests of the person with disability. ▪ may be paid to conduct this role and is sometimes described as a formal advocate ▪ may also be a friend/associate of the person and may be described as an informal advocate ▪ may support a person throughout their life (citizen advocate) or may be linked to a person with a specific issue or set of issues for a time limited period. 	
Note: DADHC staff do not perform the role of an advocate	
Affirmation	
A promise to tell the truth in Court. Used by people who do not wish to swear on the Bible or other religious text.	
Alleged Offender	
Until a person pleads or is found to be guilty of a crime, the person is referred to as an alleged offender.	
Arraignment	
The procedure whereby a defendant is required to enter a plea in response to a charge.	
Arrest	
To take a person into custody by legal authority. A person can be arrested if a Police Officer:	See: Appendix 2 - <i>Under Arrest?</i> – Law Society Fact Sheet http://www.lawsociety.com.au
<ul style="list-style-type: none"> ▪ suspects on reasonable grounds that an offence has been committed or that someone is 	

<p>about to commit an offence</p> <ul style="list-style-type: none"> has a warrant (written authority) issued by a Court to arrest the person named in the warrant 	<p><i>Getting Arrested and What to do?</i> – CJSN training kit http://www.idrs.org.au/cjsn/Policekit.html</p>
<p>At risk of involvement with the criminal justice system</p>	
<p>Many DADHC Service Users may be considered to be ‘at risk’ of involvement in the criminal justice system when their behaviour, if brought to the attention of Police, might result in being charged with an offence.</p> <ul style="list-style-type: none"> these encounters may not initially result in any charges being laid and may occur several times before a person receives an official Police ‘Warning’ or is charged the person might also be suspected of behaving illegally and may be perceived to be at risk of being charged with an offence 	
<p>AVO</p>	
<p>An Apprehended Violence Order (AVO) is made if a Court is satisfied on the balance of probabilities that a person has reasonable grounds to fear violence, harassment, intimidation or stalking by another person. There are two types of AVO’s:</p> <ol style="list-style-type: none"> <i>Apprehended Domestic Violence Orders (ADVO)</i> are sought in circumstances where a person is seeking protection from someone with whom he or she has or has had a domestic relationship (a relative, spouse, de facto partner, intimate or dependent relationship, or shared residence). <i>Apprehended Personal Violence Orders (APVO)</i>’s are sought in circumstances where a person is seeking protection from someone with whom he/she does not have a domestic relationship. 	
<p>Bail</p>	
<p>Bail is a commitment made (and possibly secured by cash or property) to secure the release of a person being held in custody and suspected of a crime in order to provide some kind of guarantee that the suspect will appear to answer the charges at some later date.</p> <ul style="list-style-type: none"> this is the primary consideration where Police or Courts grant Bail. They must also have regard to other matters such as the protection and welfare of individuals and the community generally bail may be made subject to conditions, for example to report regularly to Police or to participate in drug/alcohol treatment programs. 	<p>See: Section 4 - Bail</p>
<p>Bail Refused (or denied)</p>	
<p>Where the person has been charged and the Police oppose bail. The Police may consider the seriousness of the offence warrants holding a person in custody until the Court date or when they believe the person will abscond or not appear</p> <ul style="list-style-type: none"> when Bail is refused it may then be granted at a Bail Hearing. 	<p>See: Section 4 - Bail</p>
<p>Barrister</p>	
<p>A lawyer who specialises in Court representation. Usually wears a wig and gown in Court.</p>	
<p>Bond</p>	
<p>There are several types of Good Behaviour Bonds:</p> <ul style="list-style-type: none"> Section 9 (Good Behaviour Bond) Section 10 (Good Behaviour Bonds, no conviction recorded) Section 12 (Suspended Sentence) Bonds may require the offender to be supervised by Community Offender Services conditions may specify that the offender must undertake a rehabilitation program non-compliance with the conditions of the Bond or a re-offence while the Bond is in effect could result in the offender being breached. it is the responsibility of Community Offender Services (Probation and Parole) or Juvenile Justice Officers to notify the Court of the 	<p>See: Section 7 – Court Outcomes</p>

<p>Breach when the Bond is supervised by this service</p> <ul style="list-style-type: none"> ▪ offenders who receive a Bond are sometimes referred to as a Probationer. 	
<p>Breach</p>	
<ul style="list-style-type: none"> ▪ an offender is breached if they fail to meet the conditions of their Bonds, Community Service Order, Bail or Parole Order ▪ a breach may result in a warning from the Court or Parole Board or it may result in returning to Court ▪ if the matter is returned to Court the original order may be revoked and the offender being re-sentenced or in the case of Parole, the Parole Order may be revoked and the person returned to Gaol. 	
<p>Brief</p>	
<p>The gathering of evidence in written form, including charge/s, witness statements and photographs that the prosecution will use to support their case.</p>	
<p>Case Law</p>	
<p>Law which is found in previously decided cases.</p>	
<p>CAN (Court Attendance Notice)</p>	
<p>A Court Attendance Notice (CAN) is a form that notifies a person in writing that they must appear at a particular Court and includes the date and time of that appearance.</p> <p>A Court attendance notice must:</p> <ul style="list-style-type: none"> ▪ describe the offence ▪ briefly state the particulars of the alleged offence ▪ contain the name of the prosecutor ▪ require the accused person to appear before the Magistrate at a specified date, time and place, unless a warrant is issued for the arrest of the person or the person is refused bail ▪ state that, unless a warrant is issued for the arrest of the person or the person is refused bail, that failure to appear may result in the arrest of the person or in the matter being dealt with in the absence of the person. 	
<p>Caution</p>	
<p>Under s122 of <u>Law Enforcement (Powers and Responsibilities) Act 2002</u> (NSW), a person detained by Police must be 'cautioned' orally and in writing that they do not have to say or do anything but that anything the person does say or do may be used in evidence</p> <ul style="list-style-type: none"> ▪ the Police Custody Manager must also give the person a summary in writing ▪ the person who is being 'cautioned' is required to sign that they have been told both orally and in writing about the provision of this part of the Act. <p><u>Formal Caution</u></p> <ul style="list-style-type: none"> ▪ under Part 4 of the <u>Young Offenders Act 1997</u> (NSW) a formal caution may be given by Police for prescribed offences. A formal caution can only be given to a child who has admitted the offence in the presence of a person responsible if the child is under 16 years, or an adult chosen by the child if the child is over 16 years ▪ subsection (2), s29 stipulates that 'if a child who is to be cautioned has a communication or cognitive disability, it is the duty of the person giving the caution, so far as practicable, to give the caution in the presence of an interpreter or other appropriately skilled person and, if necessary, to obtain the assistance of such a person in giving the caution.' 	
<p>CCTV or remote witness facilities</p>	
<p>This is a provision available to child witnesses, adult complainants in sexual assault matters and people with disability so they can give evidence to the Court from another location</p> <ul style="list-style-type: none"> ▪ in special situations CCTV is used for adult witnesses at the discretion of the Court. It is often used for people with an intellectual disability ▪ if a person is in custody, it is also known as 'bail link' and can be used for bail hearings and State Parole Authority (Parole Board) hearings. ▪ it can also be utilised for client interviews with Solicitors, e.g. when the person is appearing at Court via CCTV at a Gaol and the Solicitor is at the Court. 	

Charge/s	
A charge is an allegation that a person has committed an offence. A charge is set out in a document called a complaint.	
Children in Out of Home Care	
Children and young people who are unable to live with their birth families and placed in care because they are at risk of harm or neglect. <ul style="list-style-type: none"> Reasons for this may relate to a parent's drug or alcohol abuse, family breakdown, a parent's illness or depression, a death in the family, or other serious issues. 	
Children's Court	
The Children's Court deals with matters related to the care and protection of children and young people, and also criminal cases concerning children and young people.	
Children's Court Clinic	
The Children's Court Clinic was established as a result of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) to provide clinical assessment of children, young people and their families and provide reports to Court. These reports represent independent, expert assessments and are used at Court to assist the Children's Court Magistrates in their decision making.	
Circle Sentencing	
An alternative sentencing Court for Aboriginal and Torres Strait Islander people available in some areas of NSW. Circle Sentencing: <ul style="list-style-type: none"> involves taking the Court to community settings where Aboriginal Elders, community members and the Magistrate sit in a circle to discuss the offence and the offender can involve victims, offender's families and other respected community people. It is a justice program to ensure that the impact on victims and the broader Aboriginal community is recognised by the offender and reflected in sentencing decisions. 	
CJSN (Criminal Justice Support Network)	
A program of the Intellectual Disability Rights Service (IDRS), CJSN is a service that trains and provides volunteers to support people with an intellectual disability at Police interviews and at Court including those who are in custody <ul style="list-style-type: none"> CJSN support people are available in the Sydney, Wollongong and Hunter regions CJSN also has a network of Solicitors who are available for after-hours advice to people with an intellectual disability who are to be interviewed by Police. 	See also: IDRS, Support Person, Independent Support Person Note: CJSN can be contacted 24 hours Phone: 1300 66508 See: Section 3 – Legal Representation & Support for the Service User
Committal Proceedings	
A hearing before a Magistrate of the Local Court for the purpose of deciding whether or not the person charged with an indictable offence should be committed for trial or sentence.	
Community Based Orders	
Refers to a range of sentencing options, which can be imposed on an offender that does not include a full time custodial sentence <ul style="list-style-type: none"> includes Good Behaviour Bonds and Community Service Orders, Periodic Detention and Home Detention. 	See: <i>Section 7 – Court Outcomes</i> See also: Bail, Breach, Bond, Conditions, Community Service Orders, s32
Community Legal Centres	
Community Legal Centres (CLC's) are independent and community managed non-profit services which provide a range of assistance on legal and related matters to people on low incomes and those with special needs <ul style="list-style-type: none"> CLC services may include information and referral, legal advice and ongoing legal assistance CLC's are located across NSW (See Section 10 - Resources & Contacts). 	
Community Offender Services	
Community Offender Services (COS) is the name for the	See: Probation and Parole

section of the Department of Corrective Services that was previously known as Probation and Parole.	
Community Service Orders	
A Community Service Order (CSO) requires the offender to undertake community service work for a number of hours specified by the Court <ul style="list-style-type: none"> Community Service Orders often specify that the offender must undertake specific rehabilitation programs Community Offender Services (Probation and Parole) administers Community Service Orders. 	See: Section 7 – Court Outcomes
Community Treatment Order	
Under s51 of the <i>Mental Health Act 2007</i> (NSW), a community treatment order authorising the compulsory treatment in the community of a person may be made by the Mental Health Review Tribunal (MHRT) or a Magistrate.	
Complaint	
A Court document that sets out one or more charges against a person.	
Complainant	
The person who signs a complaint. In practice the term is often used to refer to the alleged victim of crime.	
Conditions	
Refers to specified requirements issued by Police, Probation and Parole or a Magistrate that a Service User must follow until a Court Hearing or for a specified time	See: Section 7 – Court Outcomes See also: Bail, Breach, Bond, Community Based Orders, s32
Consent to Exchange Information	
A form signed by a Service User that grants permission for DADHC to seek information from other government departments and agencies or, to provide information to other agencies about the Service User <ul style="list-style-type: none"> the form must stipulate what type of information will be sought and which organisations or agencies will be involved in any exchange the consent is valid for twelve months though consent may be withdrawn at any time. valid consent is particularly important when providing services to a person with an intellectual disability who is involved with the criminal justice system as delays can impact on their DADHC eligibility and subsequently impact on any application for a diversionary Court outcome (See s32). 	
Conviction	
A conviction is the verdict that results when a Court of law finds a defendant guilty of a crime.	
Correctional Centre	
In NSW, Gaols or Prisons are referred to as Correctional Centres.	
Corrective Services (DCS), The Department of	
The Department of the NSW Government that is responsible for the administration of sentences. <ul style="list-style-type: none"> this includes the operation of Correctional Centres (Gaols, prisons) and includes the Kariiong Juvenile Correctional Centre. DCS also oversees the management of private correctional centres and Community Offender Services (Probation and Parole). 	
Court Report	
A report provided to Court that concerns a person who has to appear to answer charges. DADHC can provide an <i>Information to the Court Report</i> with an attached <i>Support Plan</i> .	
Criminal justice system	
Collective description of the Police, Courts and Corrective services/juvenile justice systems.	
Custody	
A person may be held in a cell by Police temporarily, held on remand until a Court appearance or given a custodial sentence in a Gaol/Juvenile Justice Centre. All are forms of custody.	
DCS	
(See Corrective Services, Department of)	

Defendant	
A person charged with an offence or a person against whom a civil claim has been made.	
Detainee	
A young person who is detained in a Juvenile Justice Centre.	
Juvenile Justice Centre	
A custodial centre operated by the Department of Juvenile Justice for young people up to 21 years old.	
Detention after arrest for questioning/forensic examinations	
If Police hold a reasonable suspicion that a person has committed a criminal offence, they are permitted to arrest a person and detain him/her for the purpose of investigating whether the person in fact committed the offence <ul style="list-style-type: none"> ▪ the <i>Law Enforcement (Power and Responsibilities) Act 2002</i> (NSW) sets out the relevant procedures ▪ people can be detained in custody for a reasonable period, not exceeding 4 hours. This can be suspended for certain ‘time out’ periods, and may be extended once for up to an additional 8 hour period for specified reasons subject to the granting of a Detention Warrant ▪ the <i>Crimes (Forensic Procedures) Act 2000</i> (NSW) authorises the detention of arrested people for the purpose of carrying out forensic investigations (taking samples of hair, body fluids etc) 	
De novo	
Latin for ‘anew’, which means starting over, as in a trial de novo. For example, if a person does not meet their <i>s32 Mental Health (Forensic Provisions) Act 1990</i> (NSW) conditions, their matter may be dealt with ‘from the beginning’ and could result in a conviction and sentence.	
District Court	
The District Court deals with a wide range of criminal matters. The only charges that the District Court cannot deal with are murder or treason, which must be dealt with by the Supreme Court. Types of criminal matters dealt with by the District Court include: <ul style="list-style-type: none"> ▪ offences against the person - including offences like manslaughter, malicious wounding to inflict grievous bodily harm and dangerous driving ▪ assaults - including offences like common assault, assault occasioning actual bodily harm and assault of Police officer ▪ sexual assaults - including offences like sexual assault, indecent assault and carnal knowledge. ▪ offences relating to property - including offences like robbery from the person, break enter and steal, larceny (stealing) and embezzlement ▪ offences involving drugs - including offences like the importation of heroin and other drugs into Australia, supply prohibited drug and possess prohibited drug ▪ offences involving fraud - including offences like passing valueless cheques, obtaining money by deception and forgery. 	
Doli incapax	
<i>Doli incapax</i> is a Latin term which means “incapable of wrong”. They are presumed incapable of committing a crime because of a lack of <i>mens rea</i> (criminal intention). <ul style="list-style-type: none"> ▪ in New South Wales section 5 of the <i>Children (Criminal Proceedings) Act 1987</i> (NSW) provides that a child under the age of ten years cannot commit an offence. This statutory presumption is non-rebuttable. ▪ the common law presumption of <i>doli incapax</i>, is a rebuttable presumption though it means the prosecution, in addition to proving the elements of the offence, must also prove that the child knew that what he or she did was seriously wrong in the criminal sense. 	
Duty Solicitor	
A Duty Solicitor is a Solicitor whose services are available to a person either suspected of, or charged with, a criminal offence free of charge (pro bono) if that person does not have access to a Solicitor of their own. In NSW the Duty Solicitor is usually a Solicitor on roster from Legal Aid. The Duty Solicitor will act ‘on the day’ for an unrepresented person at Court. A Legal Aid application is required for that Solicitor to continue with the matter further.	
Earliest Release Date (ERD)	See also: Release Dates
The ERD is the earliest possible date a person can be released from a custodial sentence. This is usually the date when the non-parole period finishes.	

Evidence
The information, testimony or exhibits used in Court to prove or disprove an allegation.
Family Court
The Family Court of Australia is a Federal Court that interprets and applies the law in relation to separation and marriage dissolution including provision for the welfare of any children of separating couples.
Fitness to plead
<p>It is the responsibility of the Court to decide a person's 'Fitness to Plead' or 'Fitness to be Tried'. Under Common Law a person must be 'Fit to be Tried'. They must be capable of participating adequately in the Court process, before he/she can be dealt with by a criminal Court. The accused must be able to:</p> <ul style="list-style-type: none"> ▪ understand and make a plea (guilty or not guilty) ▪ understand and follow the nature of the proceedings ▪ understand the implications of any evidence against them ▪ decide on a defence and make his/her version of the facts known to their Solicitor and the Court. ▪ intellectual disability is one of a number of factors that may affect a person's ability to comprehend the Court process, to give instructions to Solicitors and to give evidence in Court (other factors include age, mental illness and some physical disabilities) ▪ legislation concerning fitness to be tried is contained in the <u><i>Mental Health (Forensic Provisions) Act 1990</i></u> (NSW) ▪ in the Local Court, Magistrates can use Section 32 (for persons with an intellectual disability) or Section 33 (for persons with mental illness) of the MHFP Act to divert defendants from custody whom they believe are unfit to be tried ▪ in the District and Supreme Courts the issue of fitness to be tried is addressed through the use of fitness inquiries and a series of other procedures designed to deal fairly with the defendant's possible unfitness to plead
Forensic Patient
<p>Under the <i>Mental Health (Forensic Provisions) Act 1990</i> (NSW), a Forensic Patient is a person who:</p> <ul style="list-style-type: none"> ▪ is detained in a hospital, prison or other place or released from custody after having been found by a court to be unfit to be tried for a criminal offence ▪ is detained in a hospital, prison or other place having been found guilty on the limited evidence available of an offence at a Special Hearing ▪ is detained in a hospital after being transferred there from a prison ▪ has been found by a court to be not guilty by reason of mental illness.
Guardian Ad Litem (GAL)
<p>Section 100, <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) enables the Children's Court to appoint a <i>Guardian ad litem</i> (GAL) for a child or young person when there are special circumstances to warrant the appointment and the child or young person will benefit from the appointment. (See Children's Court Clinic)</p> <ul style="list-style-type: none"> ▪ section 101 of the Act enables the Children's Court to appoint a GAL for the parent of a child or young person if it is of the opinion that the parent is incapable of giving proper instructions to his/her legal representative. Circumstances that may warrant the appointment of a GAL include where a child, young person or parent has an intellectual disability or mental illness ▪ the role of the GAL is to safeguard and represent the interests of the child, young person or parent; instruct the legal representative of the child, young person or parent; and to perform any services specified in the GAL Handbook. This may include being the tutor for an infant beneficiary in relation to the administration of a will.
Good Behaviour Bond
<p>A 'Good Behaviour Bond' is part of a Dismissal and conditional discharge where the Court finds the offender guilty but dismisses the charge without recording a conviction. The Court imposes a condition that the offender is to be of good behaviour (under a good behaviour 'bond') for up to 2 years. In determining whether or not to make such an order the Court must take into account:</p> <ul style="list-style-type: none"> ▪ the offender's character, previous criminal history, age, health and mental condition ▪ the trivial nature of the offence ▪ the extenuating (mitigating) circumstances in which the offence was committed

<ul style="list-style-type: none"> any other matter that the Court thinks should be considered. <p>An offender who breaches the conditions can be convicted and sentenced for the original offence.</p>
<p>Griffith Remand</p> <p>Section 11 of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) was introduced as a replacement for the Griffith Remand and provides the Court with the power to defer sentencing for rehabilitation, participation in an intervention program or other purposes</p>
<p>Guardianship Tribunal</p> <p>The Guardianship Tribunal is a legal tribunal, located in Sydney. The Tribunal conducts hearings throughout New South Wales. Its purpose is to facilitate decision making for people aged 16 years and over with disabilities and who lack the capacity to make certain decisions themselves</p> <ul style="list-style-type: none"> the Guardianship Tribunal appoints Guardians and financial managers. Orders issued by the Guardianship Tribunal stipulate the areas in which an appointed Guardian can consent consent may be provided for medical and dental treatment and/or accommodation and services.
<p>Hearing</p> <p>A proceeding where evidence is taken for the purpose of determining an issue of fact and reaching a decision based on that evidence.</p>
<p>Intellectual Disability Rights Service (IDRS)</p> <p>A NSW Community Legal Centre that provides legal advice for people with an intellectual disability. IDRS also auspices the Criminal Justice Support Network (CJSN).</p>
<p>Independent Support Person See also: Support Person</p> <p>A person (usually trained) that provides support to a person with intellectual or cognitive disabilities during legal processes such as Court, legal interviews or Police interviews</p> <ul style="list-style-type: none"> the Criminal Justice Support Network (CJSN) provides trained volunteers to act as independent support people (see CJSN) <p>Note: DADHC staff cannot function as independent support persons for DADHC Service Users</p>
<p>Indictable Offence</p> <p>An indictable offence is a serious criminal offence that is usually heard in a higher Court before a judge and jury (or judge alone)</p> <ul style="list-style-type: none"> less serious indictable offences can be heard in a Local Court indictable offences take their name from the indictment, which is a written document, prepared on behalf of the Crown (commonly the Director of Public Prosecutions). Hence cases are listed as Regina [Latin for Queen] v. Smith (for example).
<p>Informant</p> <p>An informant is a person who gives information in relation to a criminal matter or a breach of an order. It is generally the arresting Police Officer.</p>
<p>Inmate</p> <p>Name for a person who is a prisoner in a correctional centre.</p>
<p>Intensive Corrections Order (ICO)</p> <p>An alternative sentencing option that involves an individual being supervised and closely case managed in the community for the duration of their sentence.</p> <p>An ICO is more stringent</p>
<p>Joint Investigation Response Teams (JIRTs)</p> <p>Made up of DoCS, NSW Police and NSW Health professionals who undertake joint investigation of child protection matters.</p>
<p>Judge</p> <p>An appropriately qualified legal practitioner who is appointed to preside over the Court.</p>
<p>Judiciary</p> <p>Refers to the systems of the administering justice i.e. the Court systems. Also specifically refers to the Magistrates and Judges – the administrators of justice.</p>
<p>Jurisdiction</p> <p>The scope of the powers possessed by a particular Court.</p>
<p>Jury</p> <p>A group of men and women sworn to decide questions of fact in a judicial proceeding</p> <ul style="list-style-type: none"> although juries are not used in the Magistrates Court (the magistrate decides the facts and rules on the law), they are used in the Supreme Court

Juvenile Inmate	
According to the <i>Children (Detention Centres) Act 1987</i> (NSW) a juvenile inmate is an inmate who is under the age of 21 years. They would be referred to a young person or detainee <ul style="list-style-type: none"> ▪ if older than 18 and under 21 in an Adult Correctional Centre they would be referred to as a 'young adult offender' 	
Juvenile Justice, Dept. of, (JJ or DJJ)	
The NSW Department of Juvenile Justice supervises and cares for young offenders in the community and in Juvenile Justice Centres. <ul style="list-style-type: none"> ▪ it also provides youth justice conferences for young offenders referred by Police or the Courts. 	
Latest Release Date (LRD)	
This is the date identified as the date a person will be released after completion of a custodial sentence.	See also : Release Dates
Legal Aid	
Legal Aid was established under the Legal Aid Commission Act 1979 of New South Wales as an independent statutory body <ul style="list-style-type: none"> ▪ Legal Aid also works with LawAccess NSW, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, and private practitioners to provide legal services to people throughout New South Wales. 	See also: Youth Legal Aid Hotline
Legal Representation	
The legal work that a registered Solicitor performs on behalf of a client.	
Line Manager	
The supervisor or manager of the DADHC staff member referred to in this manual.	
Local Court	
A Magistrate hears criminal cases in the Local Court <ul style="list-style-type: none"> ▪ Local Courts deal with criminal cases, some civil and family law cases and committal proceedings ▪ there are restrictions particularly in terms of length of custodial sentence that may be handed down in Local Courts. 	
Magistrate	
The person in charge of the Children's or Local Court who decides whether someone is guilty, not guilty or needs to be sent to the District Court for a trial <ul style="list-style-type: none"> ▪ the Magistrate is called 'your honour' 	
Mentally Ill Person	
According to s14 of the <i>Mental Health Act 2007</i> (NSW), a person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary: <ol style="list-style-type: none"> For the person's own protection from serious harm, or For the protection of others from serious harm <ul style="list-style-type: none"> ▪ in considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account. 	
Mention	
A brief hearing to sort out what will happen with the case, such as setting a date for the committal hearing or deciding bail. It is not a full hearing of the case.	
MERIT	
The Magistrates Early Referral into Treatment (MERIT) program is a drug crime diversion initiative based in Local Courts throughout NSW and aimed at breaking the drug-crime cycle <ul style="list-style-type: none"> ▪ the target population is adult defendants with substance abuse issues who are motivated to undertake drug treatment ▪ once assessed as suitable and accepted onto the program, participants undertake supervised drug treatment as part of their bail conditions for a period of approximately 12 weeks ▪ defendants are closely managed by the MERIT team throughout the program with the Magistrate receiving regular reports on participation ▪ Magistrates are able to consider the defendants progress in treatment as part of the final sentencing. 	

MIN Number	
The unique number that identifies a person managed by Corrective Services, either in custody or in the community.	
MHRT (Mental Health Review Tribunal)	
The function of the Mental Health Review Tribunal is to review the care, treatment and detention of Forensic Patients and make recommendations to the Minister of Health. The MHRT may recommend changes to a person's detention or release into the community.	
Offender	
A person who has committed an offence and who has been convicted of that offence.	
OPC	
The Office of the Protective Commissioner (OPC) manages the financial affairs of individuals who are not able to manage their own affairs due to disability.	
OPG	
In NSW a Public Guardian is an official from the Office of the Public Guardian (OPG) who can be appointed by the NSW Guardianship Tribunal to be the Guardian of a person (16 years and over) with a disability when there is no other person suitable or able to be the Guardian	
<ul style="list-style-type: none"> ▪ when appointed as someone's Guardian, the Public Guardian may make decisions on behalf of the person in the areas of decision-making authority (i.e. functions) identified in the Guardianship order. ▪ the Public Guardian never makes financial decisions on behalf of the person under Guardianship. 	
Outcome Plan	See also: Youth Justice Conference
The outcome plan is developed for a child at a Youth Justice Conference. Where a child successfully completes the Plan then no further action is taken. Where the Plan is not completed the administrator of the Plan notifies the referring body (the Police or Court) and further action is taken.	
Parole	See also: Probation and Parole (P&P)
Parole is given to an offender once their earliest release date has been reached or parole granted by the State Parole Authority. A Parole Order may be supervised by the Community Offender Services or Juvenile Justice Community Services. The offender may also be given an unsupervised Parole Order.	
There are usually conditions attached to the Parole Order, these conditions can include:	
<ul style="list-style-type: none"> ▪ where the person lives ▪ who the person can associate with ▪ whether the person can drink alcohol ▪ which services the person must attend (e.g. mental health, Substance abuse treatments etc.) ▪ that the person must be of good behaviour and not re-offend ▪ if any conditions are breached the offender may be sent back to Gaol for part of, or the remainder of, the sentence, or the offender may be sent a warning letter from the State Parole Authority ▪ in cases where Parole Orders are supervised by Community Offender Services, issues of non-compliance with the conditions of Parole Orders are referred back to the State Parole Authority who will consider the circumstances and take into account information provided by the various stakeholders such as DADHC ▪ in the case of a child or young person who is supervised by the Department of Juvenile Justice, the Juvenile Justice Officer will inform the relevant Court. 	
Parole Board (Now referred to as the State Parole Authority)	See also: Probation and Parole (P&P), Parole, Probation, Pre-Sentence Report
The primary responsibilities of the State Parole Authority of NSW is to:	
<ul style="list-style-type: none"> ▪ deliberate on the cases of inmates for whom the Courts have specified a non-parole period and an additional term which together exceed 3 years ▪ review parole orders, home detention and periodic detention where revocation may be necessary. 	
Person subject to Control	See also: Juvenile Detainee
According to the <u>Children (Detention Centres) Act 1987</u> (NSW) a person subject to control means a person who is the subject of a detention order, but does not include a person who is in a Juvenile Justice Centre on remand.	
Plea	
In a criminal trial, the plea is the response of a defendant to a charge. The most common pleas are guilty and not guilty.	

Police Prosecutor	
A person from the Police who will present the evidence against the person who is accused of breaking the law.	
Pre-Sentence Report	See also: Probation and Parole (P&P), Parole, Probation, Parole Board
Once a person has been found guilty or has pleaded guilty the Magistrate/Judge may order a Pre Sentence Report from Community Offender Services (COS) or the Department of Juvenile Justice (DJJ). <i>Pre Sentence Reports</i> :	
<ul style="list-style-type: none"> ▪ provide the Court with details of the COS/DJJ assessment of the individual's suitability for community sentencing options. ▪ provide the Court with details of the offender's background, any substance abuse history, current situation and history of contact with the Criminal Justice System. 	
Probation	See also: See also: Probation and Parole (P&P), Parole Board, Parole, Pre-Sentence Report
An offender may be placed on probation as a condition of a Good Behaviour Bond	
<ul style="list-style-type: none"> ▪ probation is a flexible sentence which imposes a penalty within a framework of constructive case management ▪ the offender is assisted in the development of pro-social goals and skills directed towards a law-abiding lifestyle. Probation incorporates a range of intervention strategies, requiring the Probation and Parole Officer to have regular contact with the offender, both at an office and in the offender's home, as well as contact with significant people in the offender's life and other checks to monitor compliance with conditions of the bond ▪ case work intervention may also involve participation in a group work program targeting the offending behaviour. Probation and Parole Officers also engage the support of community agencies to assist the offender. 	
Probation and Parole (P&P)	
Now known as Community Offender Services at the Department of Corrective Services	
<ul style="list-style-type: none"> ▪ offenders released to parole supervision are subject to conditions imposed by the State Parole Authority or other sentencing bodies ▪ conditions may include counselling for drug or alcohol abuse, a requirement to attend for psychiatric treatment or group work programs or residential restrictions ▪ failure to abide by the conditions is reported to the releasing authority and may result in revocation of the parole order and return to Gaol ▪ Probation and Parole Officers are responsible for monitoring compliance with conditions of parole and those subject to supervised community orders ▪ a case management plan is implemented which aims to address the offending behaviour and reduce the potential for re-offending ▪ Probation and Parole Officers provide assessments (Pre-Sentence Reports) to the Courts, as to the suitability of a person for community sentencing options. 	
Pro Bono	
<i>Pro bono publico</i> (usually shortened to pro bono) is a phrase derived from Latin meaning 'for the public good'. The term is sometimes used to describe professional work undertaken voluntarily and without payment as a public service. For example, many Legal firms will undertake some legal representation ' <i>Pro Bono</i> '.	
Prosecutor	
The person who takes Court proceedings alleging the commission of an offence	
<ul style="list-style-type: none"> ▪ a Police Officer (Children's or Local Courts) or trial lawyer (from the Office of the Director of Public Prosecutions) representing the government in a criminal case and the interests of the crown in a Court ▪ in criminal cases, the Director of Public Prosecutions has the responsibility of deciding who and when to prosecute. 	
Release Date	
When the Court sentences a person, the Judge or Magistrate will give the full sentence and identify a non-parole period. The end of the non-parole period is the earliest release date (ERD) possible	
<ul style="list-style-type: none"> ▪ the latest release date (LRD) is the date when the sentence finishes ▪ if the total sentence is less than three years, the person is automatically released to Parole at their earliest release date, unless the State Parole Authority revokes the automatic release date based on information provided by Community Offender Services 	

<ul style="list-style-type: none"> ▪ if the total sentence is more than three years, once the earliest release date is due, the State Parole Authority must decide if and when Parole is to be granted. Parole is not an automatic entitlement in such cases.
<p>Remand</p> <p>Prior to conviction an offender may be refused bail, and held in a correctional facility until the Court matter is finalised or until the Magistrate or Judge is satisfied the offender can meet specific bail conditions.</p>
<p>s32</p> <p>Section 32 of the <i>Mental Health (Forensic Provisions) Act 1990 (NSW)</i> allows for a person with a developmental disability or mental illness or condition to be diverted from trial and punishment under the normal rules of the criminal justice system</p> <ul style="list-style-type: none"> ▪ a successful application made under s32 MHCPA means the defendant will not have a conviction recorded against his or her name, and will not be liable to any further punishment provided the defendant complies with any conditions of the order that may be imposed.
<p>s33</p> <p>A matter at the Local Court can be dealt with under Section 33 of the <i>Mental Health (Forensic Provisions) Act 1990 (NSW)</i> which relates to people who are mentally ill as defined by the <i>Mental Health Act 2007 (NSW)</i></p> <ul style="list-style-type: none"> ▪ a Magistrate can direct that a person be taken to hospital for assessment and treatment under the MHA. If the hospital does detain and treat the person, the charges are deemed to be dismissed if the person does not reappear at Court in relation to the matter within six months ▪ a Magistrate may also dismiss the charges either conditionally or unconditionally.
<p>Statewide Disability Services (SDS)</p> <p>SDS comes under the Offender Services & Programs arm of the Department of Corrective Services and is the Department's primary strategy in addressing the additional support needs of offenders with disability held in custody or supervised in the community</p>
<p>Search Warrant</p> <p>A document signed by a Judge, Magistrate or other authorised officer that allows the Police to search a specified location.</p>
<p>Service User</p> <p>A person who has been assessed as having an intellectual disability and is eligible to receive services from DADHC.</p>
<p>State Parole Authority</p> <p>See Parole Board</p>
<p>Subpoena</p> <p>A Court order to summon (make) a witness come to Court to give evidence and/or bring documents to Court.</p>
<p>Summary Offence</p> <p>A charge that is dealt with in the Local Court</p> <ul style="list-style-type: none"> ▪ summary offences require trial before a Magistrate, who sits as both the tribunal of law and fact ▪ whilst indictable offences are prosecuted on behalf of the Crown, in summary matters the proceedings are initiated in the name of a private informant. The informant can be anyone, but is usually the arresting officer or the officer responsible for conducting prosecutions in that Police station ▪ some Indictable Offences can be dealt with summarily in front of a Magistrate
<p>Summons</p> <p>A Summons is a legal requirement to attend the Court to be questioned by either party in a hearing</p> <ul style="list-style-type: none"> ▪ being charged on summons - If a person is charged on summons this means they have to appear in Court on a specific date but have no other conditions or requirements prior to that date. They are able to continue living where they have been, they can continue to attend or not attend specific programs, and they are not required to report to the Police at any time prior to the Court appearance
<p>Support Person</p> <p>A Support Person (also referred to as an independent support person) provides support to a person considered to be vulnerable (such as a person with an intellectual disability) in a Police Interview or at Court</p> <ul style="list-style-type: none"> ▪ a Support Person is the person called in to be present at any Police questioning of vulnerable person (DADHC Service User), either as an alleged offender, victim or witness

<ul style="list-style-type: none"> ▪ their role is to ensure that the person understands what is being said in the interview process or during Court proceedings <p>Note: DADHC staff should avoid acting as a Support Person where possible.</p>	
Supreme Court	
The Supreme Court hears and decides on any matters in the Criminal Court of Appeal from the District Court and is involved in major criminal matters such as murder. A Judge hears matters in the Supreme Court.	
Treatment Plan	
Under <u>s54 of the <i>Mental Health Act 2007</i></u> (NSW), a treatment plan is understood to be an outline of the proposed treatment, counselling, management, rehabilitation or other services to be provided to implement the community treatment order, and in specific terms, the method by which, the frequency with which, and the place at which, the services would be provided for that purpose	
<ul style="list-style-type: none"> ▪ DADHC refers to a document in this context as a <i>Support Plan</i> 	
Victims Compensation Scheme	
In NSW the victim's compensation scheme was established to assist victims of violent crime	
<ul style="list-style-type: none"> ▪ the scheme is run by Victims Services, who also help victims in other ways, such as providing counselling, support and information ▪ in order to claim compensation an application needs to be lodged with Victims Services. 	
Victim Impact Statement	
A statement read or presented before the sentencing of an offender which informs the Court about the harm suffered by the victim arising from the offence. See: Part 3, Division 2, <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	
Vulnerable Persons	See: Appendix 3
According to the NSW Police Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME) – February 2008 (page 19): 'Clause 24 of the Law Enforcement (Powers and Responsibilities) Regulation 2005 provides that a person who falls within one or more of the following categories is a 'vulnerable person':	
<ul style="list-style-type: none"> ▪ children ▪ people who have impaired intellectual functioning ▪ people who have impaired physical functioning ▪ people who are Aboriginal or Torres Strait Islanders ▪ people who are of non-English speaking background 	
but, does not include a person whom the custody manager reasonably believes is not a person falling within any of these categories.'	
Warning	
Under Part 3 of the <u><i>Young Offenders Act 1997</i></u> (NSW), a child can be given a warning if they have committed (or alleged to have committed) a summary offence.	
<ul style="list-style-type: none"> ▪ a warning can be given despite having a prior record and no conditions can be imposed on a warning ▪ the child's name is recorded but the incident does not form part of a criminal record 	
Warrant	
A document signed by a Judge, Magistrate or other authorised officer that orders the arrest, detention or imprisonment of a person.	
Witness	
A person who gives evidence in a Court.	
Youth Drug & Alcohol Court	
The Youth Drug and Alcohol Court (YDAC) program aims to help young people who have been charged with an offence overcome their drug or alcohol problem through judicial and therapeutic interventions	
<ul style="list-style-type: none"> ▪ at the end of the program the young person will be sentenced, with the Court taking their participation in the program into account. 	
Youth Legal Aid Hotline	See also : Legal Aid
The Legal Aid Youth Hotline is a legal advice line provided by NSW Legal Aid	Legal Aid Hotline for under 18's
<ul style="list-style-type: none"> ▪ staffed by qualified, experienced criminal lawyers, with expertise in juvenile justice and the <i>Young Offenders Act 1997</i> (NSW), advice can be provided to all young people who have committed, 	Phone: 1800 10 18 10
	Monday – Friday
	9am – Midnight

<p>or are suspected of committing, a criminal offence</p> <ul style="list-style-type: none"> ▪ under the <u>Young Offenders Act 1997</u> (NSW), young people have the right to this advice before they make an admission or a statement to the Police. 	<p>24 hours weekends and public holidays (9am Friday to midnight Sunday)</p>
<p>Youth Justice Conference</p>	
<p>Where the offender is a child and the offence is covered by the <u>Young Offenders Act 1997</u> (NSW) the Police may refer the child to the Department of Juvenile Justice for a Youth Justice Conference</p> <ul style="list-style-type: none"> ▪ organised and facilitated by a conference convener, the Youth Justice Conference provides an alternative process for dealing with young people who have committed certain offences rather than going through Court proceedings ▪ the conference brings together relevant parties including the child, their family, their lawyer, the Police and the victim/s or victim's representative to develop an outcome plan. 	
<p>Young Offenders Act 1977 (NSW)</p>	<p>See also: Youth Justice Conference,</p>
<p><i>The <u>Young Offenders Act 1977</u> (NSW) is a system of warnings, cautions and conferences for young people whom the Police suspect have committed an offence. These are called 'Court-diversionary programs' meaning those people who are dealt with under this Act, may not have to go to Court for their offence.</i></p> <p>Options for young people under the <u>Young Offenders Act 1977</u> (NSW):</p> <ul style="list-style-type: none"> ▪ a warning can be given to young people for minor summary offences with no violence or related issues. It can be given on the spot by Police officers and the young person's name can be recorded ▪ a caution is a formal warning, where the details of the young person are recorded. This is given for more serious offences. The young person has to admit to the offence and agree to be dealt with by a caution, but before they admit to the offence or agree to a caution they are entitled to receive legal advice ▪ a Youth Justice Conference can be appropriate where the offence is serious and where a victim has suffered harm at the hands of the young person. The decision to have a conference can be made by the Department of Public Prosecutions, a Court, a Juvenile Justice Conference Administrator or a Police Specialist Youth Officer ▪ Police will inform young people if they can be dealt with by way of a conference. The young person must first admit to the offence and then attend a conference with the victim of their crime ▪ the young person and the victim must agree to an outcome plan to rectify or compensate for the harm suffered by the victim. See www.legalaid.nsw.gov.au 	

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Appendices

1. Form - *Consent to Exchange Information* (Draft)
2. Law Society Fact Sheet - *Under Arrest*
3. Extract from *Police Code of Practice for 'CRIME' (Custody, Rights, Investigation, Management and Evidence)*
4. *Letter to the Court* template (pending eligibility for DADHC services)
5. NSW Attorney General's Department information - *Courtroom Features*
6. Closed Circuit Television (CCTV) or Remote Witness Video Facilities
7. Extract from *A Practitioner's Guide to Criminal Law - Applications for intellectually disabled and mentally ill clients in the Local Court*
8. Template - *Information to the Court Report*
9. Template - *Support Plan for Court*
10. Form - *Request for Court Assistance*
11. DADHC Circular - Assessing eligibility for service of people in custody
12. DADHC Circular – Prioritisation of Department of Juvenile Justice service requests