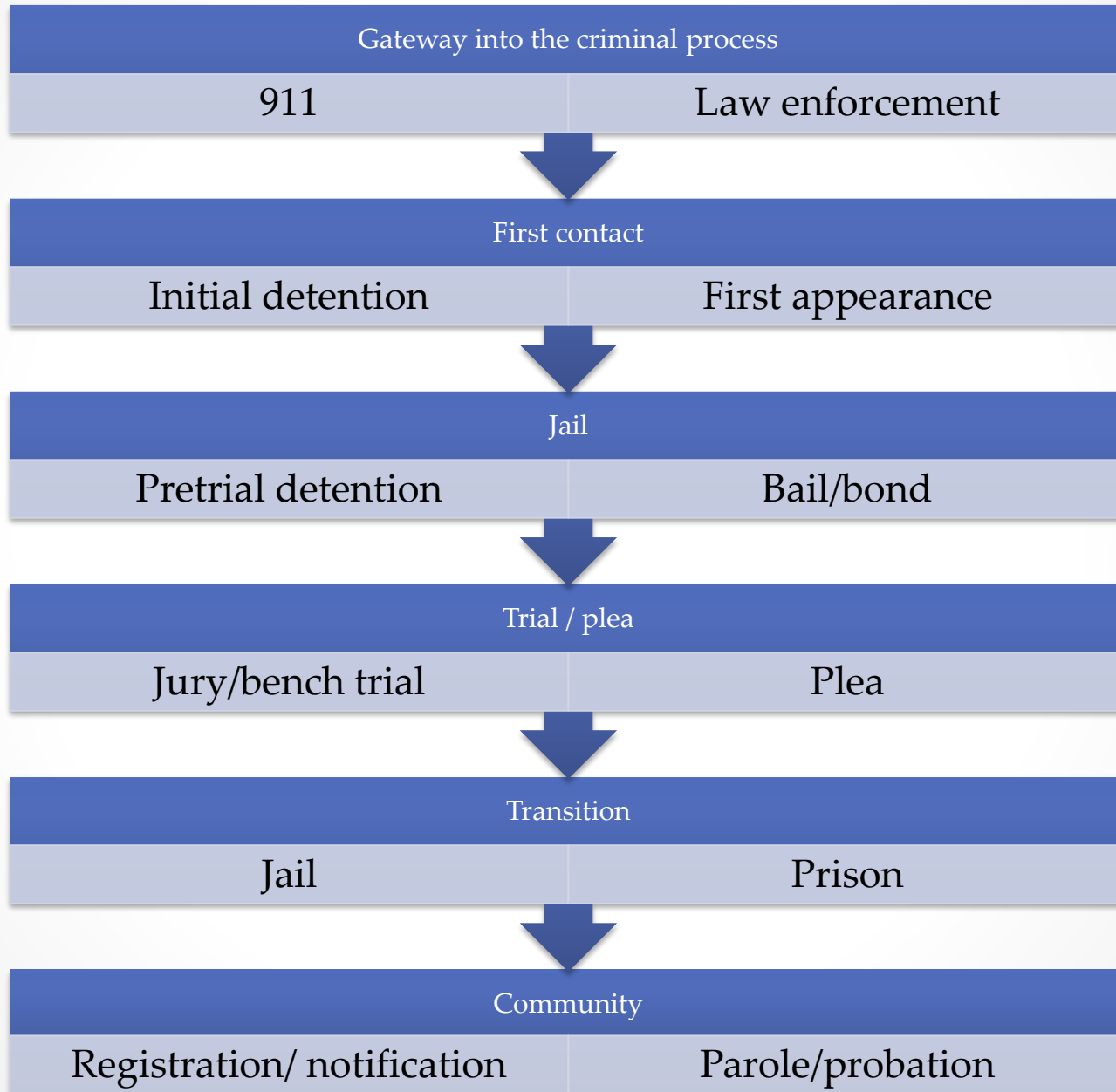


Effectively Advocating for the Client with Developmental Disabilities who has been Charged with a Sex Offense

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CYCLE OF A CRIMINAL SUSPECT



Adequacy of counsel

- Special skills needed in counseling defendants with mental disabilities
- Why the general ethical and practice standards for criminal defense lawyers are unsatisfactory and incomplete

Acknowledging the disability

- Be aware of the disability and how it influences behavior
- Identify the source of the defects in sexual behavior
- Consider the defect as it relates to the charged crime
- Expert assistance
- Risk assessment

DSM and IQ

- DSM I = NO IQ PARAMETERS
- DSM II = IQ: 52-67
- DSM III = IQ: BETWEEN 50 - 70
- DSM IV: IQ: HIGH OF APPROXIMATELY 70
- DSM 5: IQ NOT INCLUDED IN DIAGNOSTIC CRITERIA

Basic skills deficits

- Communication
- Sex education
- Moral reasoning
- Amenability/ copycat behaviors

Gateway into the criminal process

- Arrest
- Investigation
 - Locate as much historical information as possible
 - When
 - Where
 - Who
 - Victim
 - Witness/ complainant
 - Police report
- Interrogation
 - Anxiety
 - Desire to please
 - Lack of understanding rights



First contact: advocate/ attorney

- Understanding competency in the law (*next slide*)
- Arraignment
- Pretrial detention
 - Where
 - Conditions
 - *Kingsley v. Hendrickson*, 35 S. Ct. 2466 (2015)
- High profile cases

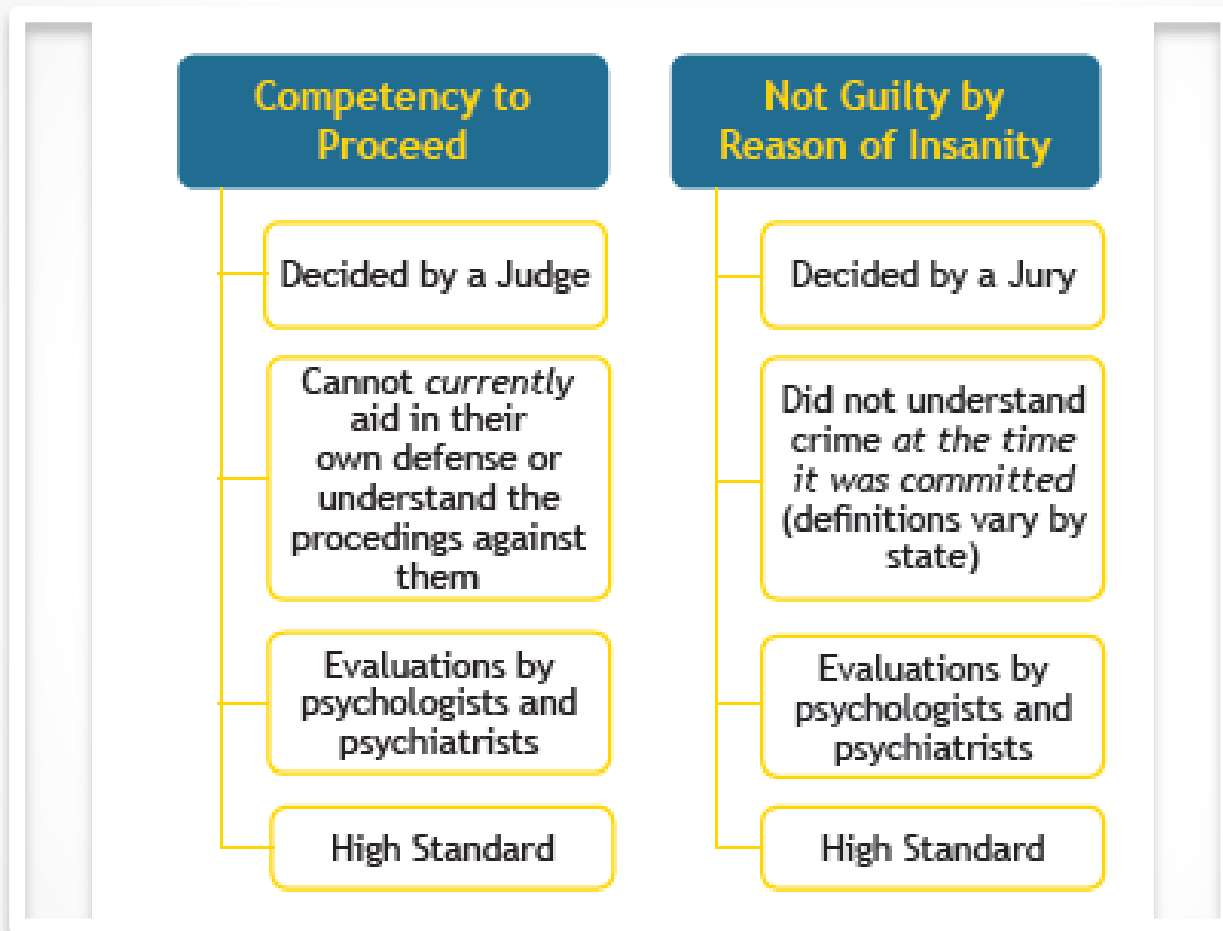
Pretrial motions

- Police intervention
 - 4th amendment violations
 - Excessive force
 - Warrantless violations
 - 5th amendment violations
 - Self incrimination
 - Competency (next slide)
 - *Miranda*
 - §1983 tort (*Graham v. Connor*, 490 U.S. 386 (1989))

Competency for ID/DD

- Competency to waive *Miranda* rights
- Bail
 - Right to be competent
 - Other skills identified as important in community integration
 - Willingness to seek help from peers or professionals
- Competency to plea
 - Competency to plea (*Godinez v. Moran*, 509 U.S. 389 (1993))
 - Client's right to decide
- Competency to stand trial
 - Restoration
 - *Jackson v. Indiana*, 406 U.S. 715 (1972)

Understanding Competency



Courtesy: Elizabeth Kelley, Attorney at Law

Trial

- Realities of going to trial on a sex offense charge
 - Full disclosure
 - Registration and notification
 - SVP commitment
- Jury or bench trial?
 - Stigma
 - Ordinary common sense vs. pretextuality
- Affirmative defenses

Jail/ prison

- Right to treatment
- Right to refuse treatment
 - *Washington v. Harper*, 494 U.S. 210 (1990))
- Conditions of confinement
- Deterioration
 - *Youngberg v. Romeo*, 457 U.S. 307 (1982))

Aftermath of a criminal conviction

- Questioning adequacy of counsel at prior stages
 - Consideration at appeal stages and community reentry
- Lacking skills that inhibit community integration
- Ability to seek help from peers or professionals
- Appropriate conditions set by probation or parole
- SVP commitment or SORA/SORNA
- Scarlet letter

SVP commitment

- State statutory requirements
- U.S. Supreme Court precedent
 - *Kansas v. Hendricks*, 521 U.S. 346 (1997)
 - *Kansas v. Crane*, 534 U.S. 407 (2002)
- Understanding the process
 - Competency
 - Expert testimony
 - Hotel California
 - Realities of treatment success

Danny's story

- Early 20's with a cognitive disability
- A neighbor and her 7 year old son see Danny running through the neighborhood naked
- Police arrest Danny at his home
- Danny is convicted of indecent exposure in the presence of a minor and is subject to registration and notification requirements

Questions to consider, 1

- Quality of representation at criminal stage?
- Has Danny been recently evaluated?
- Likelihood of compliance (*State v. Young*, 535 S.E.2d 380 (N.C. App. 2000))
- Likelihood of seeking out assistance
- Parole/probation

Questions to consider, 2

- Does Danny live in a state that has complied with the federal act SORNA?
- State statutes and federal oversight
 - SORA
 - AWA (SORNA)
- Tier levels
- Risk assessment

The Aftermath of Registration

- Residency
- Travel
- Employment
- Access to the internet
- Access to education
- G.P.S. monitoring



Summary

- Legal rights are not implicitly self-executing
- Counsel must understand the unique dynamics in working with ID/DD clients
- Necessity of expert assistance
- Need for counsel to serve an educative function for the court
- Significance moral, social and political issues surrounding this population.