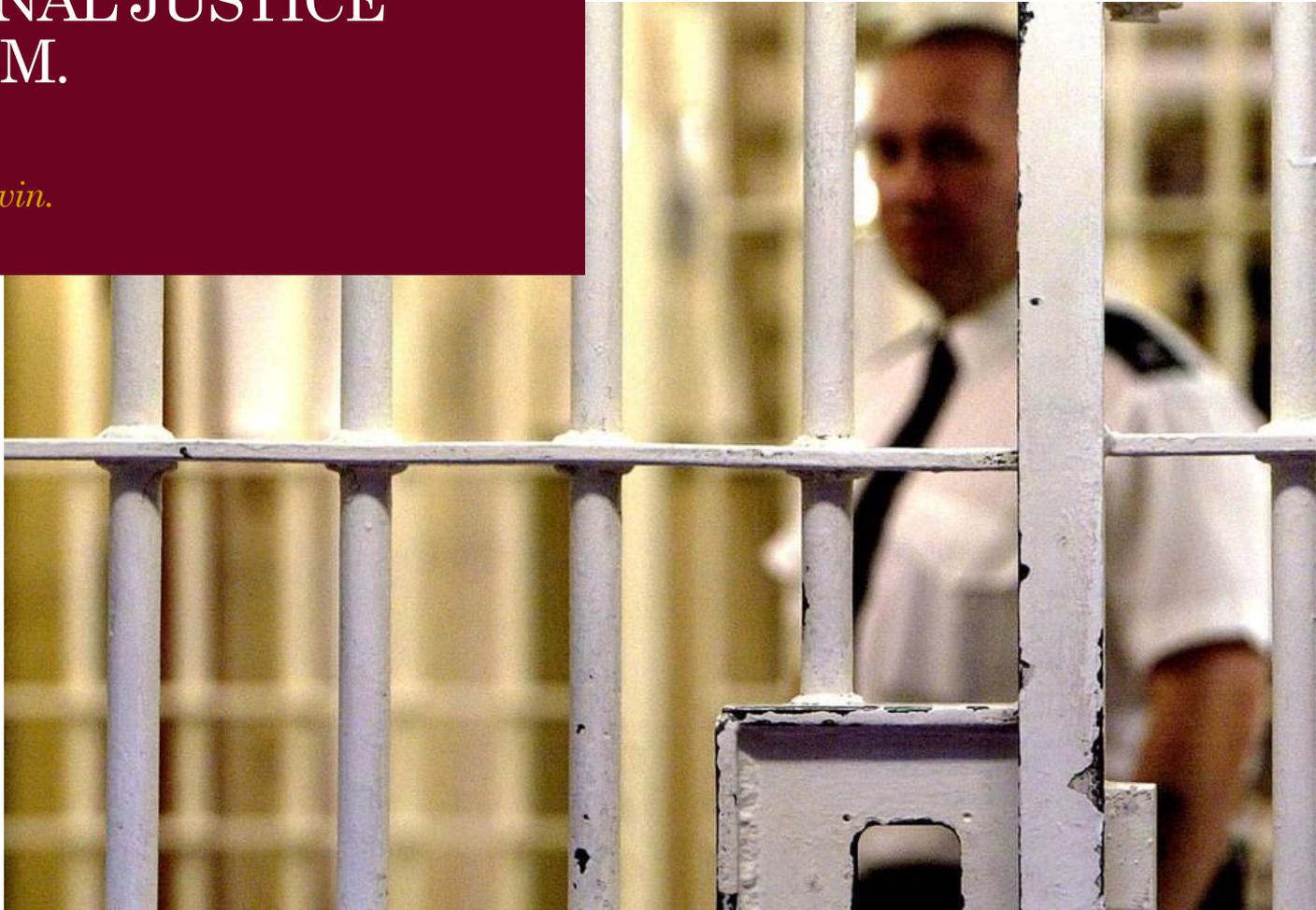


# AUTISM & THE CRIMINAL JUSTICE SYSTEM.

*Clare L. Melvin.*

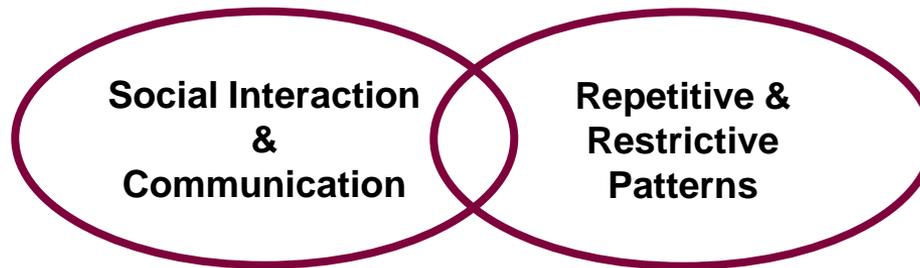


# Overview

- Autism and the CJS.
- Autism & Offending.
- Police Contact and Arrests.
- At Trial.
- Sentencing and Detention.
- In Prison.
- Treatment for Autistic Offenders.
- Future research and Policy.

# What are Autism Spectrum Conditions?

- Developmental Disorder, includes Autism and Asperger's Syndrome.



- Literal understanding of speech, difficulties with sarcasm and certain kinds of humour, small talk, may have intense interests or narrow focus on hobbies, stereotypies, cognitive inflexibility.
- Occur with or without an intellectual disability (ID IQ  $\leq 70$ ; average IQ=100)
- Often presents co-morbidly with ADHD, epilepsy and psychiatric conditions e.g. anxiety, depression.
- 62/10000 (Elsabbagh et al., 2012), male to female (4:1) ratio in doubt.

# Autism and the CJS.

- Criminal justice system covers from initial police contact through the courts and post-conviction or release.
- Autistic individuals being recognised at each of these stages, with some adaptations/changes and but much still needed for both adults and adolescents.
- Focusing on those who come in contact as offenders or perpetrators of crime rather than as victims or witnesses.
- Some of the implementations apply across police involvement and include victims and witnesses with autism.

# Autism and offending behaviour – a vulnerability?

- Majority of individuals with ASC do not display criminal behaviours.
- High profile cases in the press and over representation in forensic/mental health populations (Hare *et al.*, 1999; Scragg & Shah, 1994), offence types, question association between ASC and criminal behaviours.
- Potential of clinical features of ASC in offending and resistance to treatment (Barry-Walsh, 2004; Dein & Woodbury-Smith, 2010; Higgs & Cater, 2015).
  - **social naivety**
  - **theory of mind**
  - **empathy**
  - **special interests or ‘obsessions’**
  - **cognitive rigidity**
  - **central coherence**
- Share characteristics with IDD such as impulsivity, high rates of mental health problems and reduced social networks but some are more pertinent to the cognitive profile and behavioural characteristic of ASC.

# ASC not a proclivity for illegal behaviours!

- No evidence of increased conviction rates in Asperger's original sample (Hippler *et al.*, 2010).
- Aspects of ASC less likely to break the law (Frith, 1991, Howlin, 2004); no evidence of over-representation of ASC in the CJS (King & Murphy, 2014; Mourisden, 2012).
- Populations and samples used to examine prevalence rates i.e. mostly prison, psychiatric samples, juveniles.
  - Exception Woodbury-Smith *et al.*, (2006) community study on CJS involvement found lower rates of offending in ASC than non-ASC sample.
- Offending literature typically refers to those with Asperger's Syndrome or HFA on account of *mens rea*.
  - Looking at *offending behaviours* rather than challenging behaviour.
    - Capacity: Fitness to be interviewed, fitness to stand trial
    - Conviction: The act (or omission of act) (*actus reus*), the intentionality, recklessness or negligence (*mens rea*)

# Police Contact and Arrests.

- Early research suggested propensity towards specific offense types such as violence, sexual offending and arson, however commit whole range of crimes.
  - Some authors e.g. Freckleton (2013) do still argue for certain crimes to committed by offenders with ASC including cybercrime.
- Youth with ASC likely to come into contact with police, particularly male with externalising behaviours, **but** higher interaction rate does not result in higher conviction/arrest rates (Rava et al., 2017).
- Tint et al. (2017) Factors associated with police contact as suspect/perpetrator: *history of aggression, older, more likely to live outside the family and parents had higher baseline stress levels and unable to afford services/day activities.*

# Police Contact and Arrests (Cont.)

- Policy & Guidance: Equalities Act (2010), ASC training, Appropriate Adult (MoJ, 2011), Registered Intermediary (MoJ, 2012), NAS guidance for CJS professionals (2011).
- Support for individuals with ASD who come into contact with CJS: Keyring, Circles of Support, SOTSEC-ID guidance on navigating the CJS and NAS, plus police and probation information.
- Crane et al., (2016) surveyed police officers about their interactions with autistic individuals and members community who have engaged with the police.
  - Police (n=259) 43% as suspect (compared to 36% as victim, 10% as witness).
  - Of the suspects 17% violence, 16% criminal damage, 12% sex offences and 12% domestic violence.
  - Common themes: lack and need of training; needs, expectations and adaptations; disclosure; .discrimination and victimisation by police.
  - Autistic community reported largely negative responses to satisfaction with police encounter (69-74% unsatisfactory, 13-15% satisfactory, 4-13% neutral/unsure),

# At Trial

- Adaptations and adjustments: *witness intermediary scheme, removal of wigs/gowns, breaks, avoidance of certain vocabulary and questioning styles, video-recording evidence, court familiarisation, screens, communication aids or prompts, Achieving Best Evidence video.*
- As with arrest, behaviour or presentation during trial may present challenges or disadvantages to the autistic offender e.g. reading book at wife's trial (*Sultan v The Queen, 2008*).
- Presence of a jury may disadvantage the individual due to being judged by your peers, how far is this unbiased or 'fair' if you have atypical or idiosyncratic social style.
  - Creaby-Attwood & Allely highlight this in relation to sexual offending (2017).
- Alternative is for evidence to trial to be before judge alone (*State of WA v Mack, 2012*) if they are considered an unreliable witness.

## At Trial (Continued).

- Liaison with legal professionals. Guidance for those coming into contact with individual with ASC in the CJS, but many still feel ill-equipped.
- Maras et al. (2017) surveyed barristers and solicitors (n=33) about their engagements with autistic individuals and members of the autistic community about their experiences of interacting with legal professionals.
  - 68% engaged with suspects with ASC ( cf 13% as victim, 7% witness), with 18% violent crimes, 12% sexual offences and 13% criminal damage.
  - Common themes: lack of overall understanding, variation in perceived efficacy of professionals in the CJS; strategies before and during court hearings.
    - 76% had experience of witness intermediary scheme and 88% reported it as helpful.
- Choice to disclose. 95% (n=19) of legal professionals surveyed reported that the autism was disclosed during or prior to first contact, but 92% (n=13) reported they had also experienced instances of diagnosis disclosed at trial.

# Conviction, Detention and Sentencing.

- Importance of disclosure and whether ASC and related evidence is allowed (e.g. *R v Thompson, 2014*), *but* diagnosis does not necessarily mitigate culpability.
- Judges understanding/view of autism can influence sentencing. Berryessa (2016) illustrated ASC can be a mitigating factor or aggravating factor.
- Sentenced to prison custody or referred/transferred to psychiatric care and detained under Mental Health Act.
  - MHA Codes of practice specific guidance for individuals with ASC.
    - Detention under MHA linked to treatability and if no co-morbid mental health condition, reason for detention or transfer from prison, would be associated with the offending behaviour and not treating autism.
- Some interviewed as part of the Berryessa (2016) study expressed concern over the available options for autistic offenders and the ability of the CJS to effectively help.

# ASD in Prisons.

- Difficult to estimate prevalence of autism in prison population:
  - underestimation due to misdiagnosis and missed diagnosis, and
  - overestimation due to use of screening tools (e.g. Young et al., 2018).
  - Prevalence rates of ASC in custody from studies across Europe and America range between 5% and 24% (Cheely et al., 2012; Barendregt et al. 2015).
- One category A prison with autism accreditation (Wakefield) in England, one probation service (Lancashire) and two YOIs, Feltham first in 2015.
- Very limited data on experience of individuals with autism in prisons.
  - Two literature reviews identified only 3 and 4 articles (Allely, 2015; Robertson & McGillivray, 2015).
    - Particular difficulties identified for offenders with ASC in prison include: *vulnerabilities and conflict within the prison environment, increased rates of isolation and seclusion, limited opportunity to engage in rehabilitation programmes, difficulties coping with transition back to the community* (Robertson & McGillivray, 2015).
    - Positive aspects identified by a couple of inmates included opportunity to be diagnosed (Gordon, 2002) and the structure/routine of prison (Allen et al., 2008).
  - Case studies and individuals with ASC identified in larger prison samples, very limited generalisability, little to no research on post-release or being on probation except those included in IDD and other populations (e.g. OFFSCA-ID, the mATCH Study).

# Offender Treatment.

- Offender treatments, reduce risk of future re-offending.
- Driven by public policy and opinion, not necessarily evidence base.
- Autistic offenders may be offered standard or adapted treatment programmes (adapted for IDD).
  - Both standard and adapted programmes show impacts on re-offending, however some inconsistencies (particularly in sex offender treatment).
  - Mainly utilise CBT approach but also include psychotherapy, cognitive analytical therapy and dialectic behavioural therapy.
- Treatment offered in prisons and secure hospitals, and through charities, NGOs and healthcare and probation services in the community.
- Questions over appropriateness of offender treatment programmes for ASC e.g. group nature, addressing empathy, challenging cognitive distortions, etc.

# Treatment for Offenders with ASC.

## Systematic Review of Treatment Effect for Offenders with ASC (Melvin et al. 2017).

### Aims of review:

- a) identify and synthesize studies that attempted to examine the effectiveness of treatment for offending behaviour amongst individuals with ASCs, and
- b) explore the relationship between the symptoms of ASCs and treatment outcome.

### Studies had to:

- ✓ ASC sample or differentiate ASC from ID,
- ✓ include original, empirical data (i.e. not a review or theoretical paper)
- ✓ refer to a psychological or pharmacological treatment outcome or have designed/applied a particular treatment for offending/criminal behaviour.
  - ✗ Not challenging behaviour or inappropriate/hypersexual sexual behaviour
- Used Mixed Method Appraisal Tool (MMAT) (Pluye *et al.*, 2011) for quality appraisal of studies.

# Systematic Review Search Results (Melvin et al. 2017).

“Autism spectrum condition/disorder” AND “offending/criminal behaviour” AND “treatment/intervention/therapy”

Electronic database and hand searches (including grey literature)



**\*Exclusion Criteria:**

- Non-ASC sample/does not differentiate between ASC and ID
- Non-offending
- Non-treatment
- Not original, empirical evidence

**4 Quantitative Studies**

United Kingdom (4)

**9 Qualitative Case Reports**

UK (4), USA (3), Israel (1), Singapore (1)

**75 Participants**

(Males age 14 - 60yrs)

**Treatment Approaches:**

- Cognitive Behaviour Treatment (CBT)
- Cognitive Analytical Treatment (CAT)
- Reconstructive Therapy
- Psychopharmacology
- Personality Disorder Programme
- Family Therapy
- Psychotherapy

**Offending Behaviours:**

- 57.8% sexual offending behaviours
- 19.2% violence/aggression
- 15.4% arson
- 11.5% manslaughter
- 7.7% theft
- 3.9% impersonal threats
- 3.9% firearms conviction

**Diagnoses:**

- 40% Asperger’s Syndrome
- 50% Autism Spectrum Disorder/Condition
- 7% Autism
- 3% Pervasive Developmental Disorder

**Treatment Approaches:**

- Cognitive Behaviour Treatment
- Psychoeducation
- Emotion Regulation
- Relapse Prevention

# Findings & Other Research.

**13 publications (12 studies) 4 quantitative studies, 9 qualitative reports.**

- 58% sexual offending, 19% violence/aggression, 15% arson, 11% manslaughter, 8% theft, 4% firearms offences, 4% impersonal threats (bomb hoax).

- **Effectiveness**, primarily defined by reduction in further offending behaviours, was variable across the data.
- All case reports identified **need for adaptations** to treatment programmes, necessitated by the symptoms of ASCs.
- Majority of articles referred to the **potential influence of clinical features of ASC** in offending e.g. special interests, social naivety.
- The case reports also discussed **impact of ASC on treatment** e.g. inflexibility of thought, weak central coherence.
  - **But** –not measured or quantified and there were no direct measurements of ASC features or comparisons to those without autistic features and behaviours.
- More case studies published since the above review, plus other research into treatment specifically for offenders with ASC (Melvin et al., submitted and in preparation, and Vinter et. al, 2018).

# The Future of ASC in the CJS.

- Consistency in implementations and adaptations across police, courts, prisons and probation.
- More evidence regarding effectiveness of current rehabilitation and treatment programmes.
- Sentencing alternatives, not prison or detention under MHA then where?
- More information on autistic offenders (adults and adolescents) on probation and post-release – mATCH in prisons!

# THANK YOU

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