PEOPLE WITH IDD IN THE CRIMINAL JUSTICE SYSTEM

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OUTLINE

• Prevalence of ‘offending’ in people with IDD
• Vulnerabilities in the CJS with regard to understanding rights, being interviewed, making decisions, going to court
• Protections & diversion from CJS
• Assessment, treatment and support
• Conclusions
STUDIES OF PREVALENCE - ID

• Two very different questions with different purposes
• Q1: What percentage of people in parts of the Criminal Justice System have ID?
  If there is no over-representation of people with IDD, expect ~2% to have ID in any stage of CJS.
• Q1 usually relates to questions about what support to provide to people with ID once they are in the CJS

• Q2: What percentage of people with ID commit offences?
  Need total population group with ID & good control group of people with no ID for comparison.
• Q2 relates more to need for services to prevent people with ID engaging in behavior that could be termed criminal
PERCENTAGES OF PEOPLE WITH ID IN PARTS OF THE CJS: PRISONS

- Figures obtained depend on methodology (sample, screening) & jurisdiction (& diversion)

- Prisons in UK: 1% or less in 1990s (rising now?) (Murphy et al, 1995, screened 157 men S London prison, individual IQ testing; Birmingham et al, 1996 screened 569 men one prison & Brooke et al, 1996, screened 750 men on remand in 13 prisons/YOIs; newer data from Hayes et al suggests 7%)

- Prisons elsewhere: very variable, mostly reducing rates with time
PEOPLE WITH ID IN PARTS OF THE CJS: POLICE, COURTS, PROBATION

Police station:
- In UK, 2-9% of suspects in police station have ID (Lyall et al 1995; Gudjonsson et al., 1993; McKinnon et al 2015)

Court studies:
- Few studies in UK, 1%? (in Berkshire, unpub)
- In Australia, 3%-21% acc to area & date of study (14-21% Hayes, 1993, 1996); 3.5% (Vanny et al, 2009)

On probation:
- In UK, 6% have IDD (Mason & Murphy 2002)
PERCENTAGES OF PEOPLE WITH ID WHO OFFEND

Contradictory studies:

- Need total population of ID & control group with no ID
- Hodgins 1992 & 1996: Follow-up of 2 cohorts (15,117 in special schools in Sweden & >324,000 hospital admissions in Denmark) showed risk ratios for convictions: 3 to 7 times higher for men with ID & 4 to 6 times higher for women with ID, compared to those without ID.
- Community-based study showing 3% of people with IDD had a conviction, 9% with CJS contact in McBrien et al 2003 – c.f. Farrington & West studies: 411 ‘working class’ boys, London, over 30% convicted by 32 yrs of age.
PEOPLE WITH ID WHO OFFEND & PEOPLE WITH ASD WHO OFFEND

- Adolescents with ID: secondary analysis of national survey on adolescents, showed twice as many adolescents with ID in trouble with police (16%), compared to those without ID (8%). Difference disappeared when social deprivation taken into account (Dickson et al, 2005).

- What about Autism? Much harder to identify in CJS (eg in prison, Robinson et al 2012)

- Crime rates in people with Autism Spectrum Disorders lower than in those without ASD, in 3 well-designed cohort studies - Brookman Frazee et al 2009; Cheely et al 2012; Lundstrom et al 2014 (see King & Murphy, 2014)
WHO ARE THE SUSPECTS?

- Usually people with mild or moderate LD &/or ASC (actus reus; mens rea)
- Usually young men (around 15-20% women)
- Often have mental health needs
- Usually from very deprived and chaotic family backgrounds
- May not be in touch with services for pwID/ASC
- Tend to be ‘bounced’ from ID to MH to forensic services & back
- OFFSCA-ID study
- Poor services: often restrictive
VULNERABILITIES & BARRIERS TO JUSTICE

• Not understanding police caution (UK); Miranda rights (US); Notice to Detained Persons (UK)
• Acquiescence & suggestibility in police interviews & in court, & false confessions
• Poor decisions in police interviews & in court
• Not understanding court words or processes, lawyers’ language, formal letters (eg from probation)

(Clare & Gudjonsson ’91,’92,’93, ‘95; Fulero & Everington, 1995; Perske, 2005; 2007; 2008; 2011; Mason, ‘99; Smith ‘93; Kebbell & Hatton 01; McCombie, 2017)
VULNERABILITIES & BARRIERS TO JUSTICE (QUOTES FROM TALBOT, 2008)

• **About the Lawyer**
  ‘The solicitor tried to talk to me but used big words and I found it difficult to understand. The solicitor came and spoke to me in the cell and when she left I thought ‘What was all that about?’” (Prisoner talking about his lawyer).

• **In the Police station**
  ‘There was a solicitor, one police lady and two other people. I don’t know why they were there, police talk maybe. It was somebody I didn’t know before I got in trouble with the police. I didn’t know if it was someone who could have helped me’. (Prisoner talking about being interviewed in the police station)
VULNERABILITIES & BARRIERS TO JUSTICE (QUOTES FROM TALBOT 2008)

• Court

‘The judges don’t speak English, they say these long words that I never heard in my life’

‘To be truthful, I couldn’t understand them. They talk so fast, they were jumping up and down saying things. I gave up listening.’
PROTECTIONS IN THE CJS

• **Step 1**: Screening for ID/ASC in police stations & prisons - starting but not routine across any state/nation

• **Step 2**: Helping/supporting:
  - **Appropriate Adults** - in police stations in UK
    (Bean & Nemitz, 1994; Medford, 2000; Talbot, 2008)
  - **Intermediaries** - in UK & also being considered in Australia (Hepner et al, 2015)
  - **Judges’ interventions** – very rare in UK (Kebbell et al 2004)
There is no easy way to know if people have learning disabilities (mental handicap, learning difficulties)

They may have difficulty
- Speaking
- Moving
- Understanding
- Telling the time
- Remembering their date of birth, age, address, telephone number
- Knowing the day of the week, where they are, and who you are.

They may
- Also have physical disabilities, visual or hearing impairments (but most people with physical disabilities do not have learning disabilities)
- Appear very eager to please or repeat what you say

Ask
- Where they live. Do they live in a group home, hostel, hospital or, as an adult, still live with parents?
- Where they work. Do they attend a special work scheme?
- Where they went to school. Was it a special school?

Ask if they
- Carry special identification
- Have a social worker or key worker
- Go to a Day Centre (‘ATC’, ‘RAC’, ‘SEC’)
- Get a disabled living allowance
- Are a member of People First, Mencap, a Gateway club

Ask
- ‘Do people say you have learning disabilities or are mentally handicapped?’

If the pattern of answers suggests that a person has a learning disability, and you want more help, contact:

Suspects with learning disabilities must have an appropriate adult present when questioned (PACE)
PROTECTION: DIVERSION FROM THE CJS

- Crime may not be reported – treated as CB?
- Police may decide not to proceed - L&D service
- Lawyers may decide not to proceed (e.g. Crown Prosecution Service (E & W) or District Attorney (US))
- Court may decide: unfit to plead (E & W, Australia) / insanity in bar of trial (Scotland) / no capacity to stand trial (US, Canada)
- Diversion to hospital (before or after conviction) in UK under Mental Health Acts, & parts of Australia
- Secure care or mandatory care (after conviction) – Norway, Finland, New Zealand, & parts of Australia
FITNESS TO PLEAD (E & W)

• Based on Pritchard criteria, 1836: whether could:
  - understand the proceedings so as to make a defence
  - challenge a juror
  - comprehend the evidence (Mackay, 1990).

• More recently (E & W) 5 criteria considered:
  - ability to plead;
  - ability to understand the evidence;
  - ability to understand the court proceedings;
  - ability to instruct a lawyer and
  - knowing that a juror can be challenged
    (Grubin, 1991a; Mackay & Kearns, 2000).
CAPACITY TO STAND TRIAL: US

• ‘Dusky’ criterion: ‘whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him’ (Dusky v. United States, 1960).
• More recently three criteria:
  - understanding the nature and seriousness of the charge
  - understanding the nature and purpose of the court proceedings
  - and being able to assist one’s lawyer in providing a defence (Baroff et al., 2004).
• Very large numbers of competency hearings in US & Canada
PROBLEMS WITH FITNESS TO PLEAD (E & W)

- In past: no trial of the facts & person sent to hospital indefinitely. Same true in Scotland.
- With mental health needs: may become fit to plead, leave hospital, return to court (but often don’t)
- Research in UK showed people with ID often never got out of hospital (Grubin, 1991)
- Newer legislation: *Criminal Procedure (Insanity and Fitness to Plead) Act 1991* in E&W required a trial of the facts & more flexible disposal, including discharge or hospital order or supervision order.
- Law Commission report proposed reform to fitness to plead system (Jan 2016); Government response due soon.
RESOURCES

You’re under Arrest
Sheila Hollins, Isabel Clare and Glynis Murphy
illustrated by Beth Webb

Positive Practice Positive Outcomes
A Handbook for Professionals in the Criminal Justice System working with Offenders with Learning Disabilities
2011 EDITION

paperback
CAPACITY TO STAND TRIAL IN US

- Similar events in US to in UK - 50% of those found ‘incompetent’ and sent to hospital in Michigan were never released (Hess and Thomas, 1963)
  - if ‘incompetent’, more people left hospital, in Massachusetts, by dying, than any other route (McGarry 1971).

- After *Jackson v Indiana*, in 1972, the US Supreme Court ruled that if in hospital following incompetency hearing, could not be kept there for unreasonable time.
  - Average length of time in hospital ➔ six months- year
  - Where considered ‘untreatable’, required to proceed with a civil commitment or drop the charges.
INTERVENTION PACKAGES

Two main approaches:
- Risk, needs, responsivity approach (RNR)
- Good Lives approach, with support needed. Not really evaluated yet for people with ID.

Specific interventions:
- Anger management
- Arson
- Sexual offending
- General offending packages
Anger management – CBT of around 15 X 2hr sessions

Self-report of reduced anger reliably found

Newest study: RCT, n=180 – train the trainers approach in community sample (not CJS sample); limited effects (Willner et al 2013, in UK)

Self-report of anger vs records of aggressive incidents
ARSON

- Successful single case, man with ID – broadly CBT; offence free for 10+ yrs (Clare al. 1992)
- Group CBT, no controls, for 8 men & 6 women, all with ID - scores on FIRS, FAS little change; anger & GAS improved (Taylor et al 2004 & Taylor et al 2006)
- Fire Intervention Programme for Prisoners (FIPP) – CBT & Good Lives approach. Controlled study in prison promising for non-ID, but not tested properly yet for ID (Gannon 2012)
- How to show effective?
SEXUAL OFFENCES: MOSTLY GROUP CBT

• Individual case & small n studies abound (eg Griffiths et al 1989; O’Connor 1996; Lindsay et al 1998, Rose 2002)

• Group treatment:
  - Lindsay & Smith 1998 showed men did better after 2 yrs of treatment than after 1yr (reconvictions)
  - Murphy, Sinclair et al 2007; & 2010; Heaton & Murphy, 2013: SOTSEC-ID group showed better sexual knowledge & empathy & lower cognitive distortions (1yr ttmt), maintained at 2.5 yr follow-up. Low rates of further offences. Autism worse prognosis?
  - Lindsay et al: reduction in harm in 29 repeat offenders

• Group treatment with untreated controls or RCTs: none
EQUIP (LANGDON ET AL 2013)

- Adapted from Equipping Youth to Help One Another Programme (Gibbs et al, 1984)
- Based on moral reasoning; intensive (4 sessions/week for 12 weeks); n=7 in pilot study
- Mutual help sessions (group helps solve a problem) & equipment sessions (anger management, social skills training, decision-making training)
- Moral reasoning, cognitive distortions, problem solving & anger all improved
ADAPTED - THINKING SKILLS PROGRAMME

- Thinking Skills Programme runs in UK prisons; people with IQ<80 excluded
- We adapted TSP for people with ID – longer, simpler, more pictorial material (Oakes et al 2015)
- 3 modules: self-control, problem-solving, positive relationships (10, 5, 6 sessions), plus 3 x 1:1
- Own offence chain; emotions, thoughts, actions; red flag situations; planning; consequences; red flag & green flag people
- 3 prison trial for 24 men: improved locus of control & problem solving (n=23)
WHAT DO THE SERVICE USERS THINK?

• Very few studies ask people what they think of treatment.
• Taylor et al (2004): reported 83% enjoyed anger management sessions; 67% said they felt they had changed for the better; 83% felt less angry.
• Murphy et al (2004): reported most men could say why referred for sex offender treatment; what they learned; what best & worst things were; very positive on whole (2 other studies not yet published).
• Macdonald et al (2003): qualitative study of 9 people involved in psychoanalytical groups; valued group but found it painful; not aware of own progress.
CONCLUSIONS

• Prevalence needs no further study?
• Vulnerabilities need no further study; protections do!
• Treatment does need further study: RCTs, cost-benefit analysis
• Support needs further study: how best to do it; cost-benefit analysis
• We know very little about women with IDD in the CJS
• We know very little about adolescents with IDD in CJS
• We know very little about people with IDD in the CJS in countries other than USA, Canada, Europe, Australia
Thank you for listening!

Questions? .......