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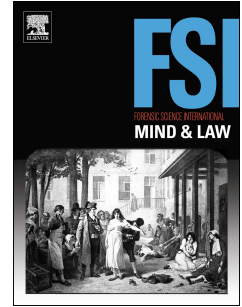
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Recognising & Responding to Defendants with Intellectual Disability in Court settings

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Authors' contributions

EC, JMc and AF designed the study and were responsible for drafting the manuscript. SA gained approval to use the data and DH, EC and KM-T were responsible for data management and analysis. All other authors made contributions to the editing and design of the manuscript during construction and approved the final manuscript for submission.

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The authors have no competing interests to declare.

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Abstract

Background

To date, there is little evidence on the characteristics of defendants with intellectual disability when presenting to the criminal court system. This study was developed to recognise and examine the characteristics related to gender, ethnicity, mental health and index offences of defendants with intellectual disability and compare these to defendants without intellectual disability within Court Liaison & Diversion Services in London, England.

Methods

This is a retrospective data analysis of routine administrative data collected by the Liaison and Diversion services across five Magistrates courts in London, England. Data were analysed on defendants identified through screening to have an intellectual disability and compared to defendants without an intellectual disability.

Results

9088 defendants were identified, of these 4%, (349) were screened as having an intellectual disability. The study found an overrepresentation of defendants of black ethnicity along with high rates of comorbid mental illness and personality disorder amongst both non-intellectual disability and intellectual disability defendants. Defendants with intellectual disability self-reported self-harm and suicidal behaviour at higher rates. For neurodevelopmental disorders (NDD), those with intellectual disability were over 4 times more likely to have comorbid ADHD and over 14 times more likely to have ASD. Index offences were mostly similar although defendants with intellectual disability had elevated rates of being charged with sexual offences and breach of the peace.

Conclusion

The findings confirm the presence of a small but significant number of defendants with intellectual disability presenting to the Court Liaison & Diversion services who have significant needs in terms of comorbidity and risk for suicide and self-harm behaviour. Further research is needed to understand the experiences of defendants with intellectual disability presenting to the Court including how best to deliver service models to improve recognition and respond to their high rates of health needs.

Keywords: Comorbidity, Court mental health services, Intellectual disability, Liaison and Diversion, Mental disorder, self harm.

Recognising & Responding to Defendants with Intellectual Disability in Court

People with borderline or mild intellectual disabilities are overrepresented in the criminal justice system (CJS) (Bradley, 2009; Jones, 2007) and it is argued that their characteristics are different to defendants without intellectual disability (Vinkers, 2013). Research has highlighted a significant number of adults with intellectual disability in prison have an increased risk of mental disorders (Chaplin et al., 2017). However, there is little evidence on the characteristics of defendants with intellectual disability when presenting to the criminal court system in England and Wales (Marshall-Tate et al., 2020), and broad recognition that most liaison and diversion (L&D) services provide limited specific expertise in identifying and managing intellectual disability and other neurodevelopmental conditions (Chaplin et al, 2022).

Intellectual Disability is characterised by cognitive (such as learning, problem solving, and judgement) and impairments in adaptive functioning (such as activities of daily life communication and social skills that occur in the developmental period. According to the level of functioning, intellectual disability is classified as either mild, moderate, severe or profound intellectual disability. A diagnosis of Intellectual Disability involves IQ (intelligence quotient) tests and clinical interviews. Diagnosis is evidenced by an IQ of or below 70, however a score between 70 to 75 will indicate a significant limitation in intellectual functioning. This means that the IQ score needs to be interpreted in the context of the person's difficulties and clinical presentation (American Association on Intellectual and Developmental Disabilities, n.d.). . Terminology differs between diagnostic manuals with ICD-11 using "Disorders of Intellectual Development" (DID), whilst "Intellectual Developmental Disorder" (IDD) is used by the DSM-5 (Girimaji, & Pradeep, A. 2018).

Those with moderate or severe intellectual disability usually with an IQ of or below 50 are unlikely to have criminal responsibility for their actions and will therefore be diverted

from criminal justice settings. In many countries, to be guilty of an offence requires an individual to be culpable in both thought (*mens rea*) and action (*actus reus*), given the degree of intellectual impairment in those with an IQ less than 50 this is unlikely. In previous eras 'due to high tolerance levels, overprotection and underreporting to the police by care and support staff meant that only the severest of offences were handled by the judiciary (Jones, 2007; Lyall et al., 1995).

Intellectual disability is poorly understood within liaison and diversion (L&D) settings. In 2009 interest in people with intellectual disability within L&D services resurfaced with the publication of the Bradley report (Bradley, 2009). What followed was a wider realisation that like those with mental illness, early recognition of intellectual disability can provide an opportunity for the judiciary to be made aware of their specific needs which may affect sentencing outcomes and disposal (Inspection, 2021). Common needs of defendants with intellectual disability include poor mental health status, cognitive and social deficits, which can impact an individual's engagement including the ability to advocate for themselves and to understand proceedings. This in effect can exclude an individual from informed and/or meaningful participation in the court setting. These issues are echoed by a study in Ireland involving a range of disciplines working with people with intellectual disability in their interaction with Law Enforcement Officials (LEOs). In this study three themes were identified including barriers to communication in the interaction of people with intellectual disability and LEOs, awareness and skills building for LEOs and the need for institutional and system change for example in police practice and the support available (Gulati et al, 2021). Early recognition of defendants is important so that appropriate responses can be put in place such as safeguards during the court proceedings and for legal aspects such as culpability to be considered to inform disposal (Marshall-Tate & Chaplin, 2019).

This study aimed to examine the characteristics related to gender, ethnicity, mental health and index offences of defendants with intellectual disability and compare these to court defendants without intellectual disability. An increased understanding of the individual needs and characteristics of defendants with intellectual disability presenting to the court system is required for health and social care services working with the court system to start to respond to and plan for this group of defendants.

1.0 Method

This is a retrospective data analysis of routine administrative data collected by the L&D services across five Magistrates courts within two London regions between September 2015 – April 2017. During this period, 9088 defendants were referred; of these 8739, (96.2%) did not have an intellectual disability while 349 (3.8%) had an intellectual disability. L&D services operate to identify defendants with mental health, intellectual disability, substance misuse or other vulnerabilities. Their role is then to assess and refer defendants to an appropriate treatment or support service. They also share information from assessments with the court, so that they can make informed decisions about court disposals, case management and sentencing.

1.1 Procedures

We obtained data from the National Health Service Minimum Data Set (MHMDS). The MHSDS is a secondary uses data set that collects clinical and operational data for commissioning, It provides comparable information across the population on those in contact with mental health, intellectual disability, autism or other neurodevelopmental services. Within the court, the MHMDS data reflects current clinical and custody records and is obtained directly from the front-line court and health service staff. Cases of intellectual disability inputted into the MHSDS, will have been identified by clinical interview and/or supported by specific screening measures available at the court such as the Learning Disability Screening Questionnaire (LDSQ) (McKenzie, et al; 2012) or the Rapid Assessment of Potential Intellectual Disability (RAPID) (Ali, & Galloway, 2016).

We analysed data on defendants identified through clinical interviews, clinical and legal reports and screening as having an intellectual disability. The intellectual disability group were compared to defendants without an intellectual disability to examine the characteristics of defendants with an intellectual disability offence type and mental disorder within the Court L&D Services. Due to the overrepresentation of certain groups in court (Sorsby, 2022), ethnicity and gender were recorded to examine how people with intellectual disability compared to non-intellectually disabled defendants.

1.1.1 Analysis

We analysed data using the Statistical Package for Social Sciences (SPSS 25). Descriptive statistics including chi-square, measures of association were conducted.

1.2 Ethical Considerations

This service evaluation, used existing data, routinely collected as a component of service delivery at South London and Maudsley and Central and Northwest London NHS Foundation Trusts.

2.0 Results

2.1 Gender

Of the 9088 referrals to the L&D services the intellectual disability group comprised, 3.8%, (349) and of this group, 292 identified as male and 55 as female. Males comprised 80.6% of non-intellectual disability defendants compared to 83.6 % of defendants with intellectual disability.

2.2 Ethnicity

Greater London is a diverse multicultural city with a population of 8.2 m in the 2011 census. In London 69.7% of the population were of white ethnicity according to the 2011 census, this compares to 86% in England and Wales (ONS, 2011). For this study of defendants attending court, those of black ethnicity were overrepresented for both defendants with or without an intellectual disability when compared to the census figures. Those of Asian ethnicity with or without an intellectual disability were underrepresented whilst those with intellectual disability of white ethnicity were seen at a similar rate to the census figures. Please see table 1.

Table 1

Ethnicity of Court defendants with and without intellectual disability

Ethnicity	No intellectual disability	intellectual disability	London Ethnicity *
White	4367, (53.4%)	199, (59.1%)	59.8%

Mixed	530, (6.5%)	28, (8.3%)	5%
Asian	1058, (12.9%)	30, (8.9%)	18.5%
Black	1762, (21.6%)	70, (20.8%)	13.3%
Other	438, (5.4%)	10, (2.2%)	3.4%

ethnicities

* ONS <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest>

2.3 Comorbidity

The rates of mental disorders between defendants with and without an intellectual disability were similar although defendants with intellectual disability were at a slightly increased risk for anxiety disorders. Defendants with intellectual disability were 4 times more likely to have a comorbid attention deficit hyperactivity disorder (ADHD) diagnosis and 14 times more likely for autism spectrum disorder (ASD). Although substance issue rates were similar, alcohol misuse was more likely in those with intellectual disability see table 2. The self-reported rate of risk of suicidal / self-harming behaviour for those with defendants with intellectual disability using available data from 8067 cases was 20.4% (67) compared to 13.7% without intellectual disability OR = 1.608 (95% CI: 1.220, 2.119).

Table 2

Mental Disorder in Court defendants with and without intellectual disability

Mental Illness	Cases	No intellectual disability N, (%)	intellectual disability N, (%)	Odds Ratios
Schizophrenia	9088	2042, (23.4%)	68, (19.5%)	OR = .794 (95% CI: .606, 1.039)
Depression	9088	1652, (18.9%)	71, (20.3%)	OR = 1.096 (95% CI: .840, 1.430)
Bipolar Affective	9088	431, (4.9%)	15, (3.4%)	OR = .866 (95% CI: .511, 1.465)
Anxiety	9088	804, (9.2%)	39, (11.2%)	OR = 1.242 (95% CI: .883, 1.746)

Mental Disorder				
Personality disorder	8966	1694, (19.7%)	55, (15.8%)	OR = .765 (95% CI: .570, 1.025)
Neurodevelopmental Conditions				
ADHD	9088	94, (1.1%)	16, (4.6%)	OR = 4.419 (95% CI: 2.572, 7.592)
ASD	9088	66, (0.8%)	34, (9.7%)	OR = 14.184 (95% CI: 9.238, 21.177)
Substance and Alcohol Misuse				
Substance Use	6499	2694, (43.4%)	119, (40.5%)	OR = .886 (95% CI: .698, 1.125)
Alcohol Diagnosis	6499	2004, (22.9%)	107, (30.7%)	OR = 1.172 (95% CI: .919, 1.495)

2.4 Index Offences

There were 9018 cases in which data were recorded for index offences. Rates of offences that individuals were charged with were similar between the two groups with the offence recorded at the highest being Violence against the person at 29.1%, (2519) for non-intellectual disability defendants v 28.7%, (100) defendants with intellectual disability. This was followed by Theft 12.9%, (1114) for non-intellectual disability defendants v 10.3%, (36) for defendants with intellectual disability. Sexual Offence rate was reported as 3.6%, (310) for non-intellectual disability defendants v 6.6%, (23) for defendants with intellectual disability whilst Breach Court Order was 10.0%, (866), for non-intellectual disability defendants and 13.2%, (46) for defendants with intellectual disability

3.0 Discussion

The study found an overrepresentation of defendants of black ethnicity along with high rates of comorbid mental illness and personality disorder amongst both non-intellectual disability defendants and defendants with intellectual disability. For neurodevelopmental conditions, those with intellectual disability were over four times more likely to have comorbid ADHD and over 14 times more likely to have ASD. Index offences were mostly similar although intellectual disability defendants had elevated rates of being charged with sexual offences and breach of the peace.

3.1 Recognising defendants with intellectual disability

One of the challenges within criminal justice settings is making a formal diagnosis of intellectual disability, and the criteria used can vary between and within countries. For example, in England and Australia intellectual disability is confirmed by an IQ of below 70 or through a clinical interview. Whereas in the USA there are, different cognitive thresholds for intellectual disability and the criteria between states may differ. In other countries, such as Norway, the criminal code, distinguishes those people with an IQ below 55 to have a significant degree of intellectual disability with a diminished ability to be proficient in the activities of daily living. This group are deemed not responsible for their actions, whereas those with an IQ between 55 and 70 are liable for incarceration in ordinary prisons. Over the last 10 to 15 years, there is evidence that clinical interview and screening tools for intellectual disability are being introduced and used in courts across the world (Hayes, 1997; McCarthy et al., 2021; Vanny et al., 2009).

Previously there has been little research into the prevalence of intellectual disability in Courts. In a sample of 60 defendants appearing at four Magistrate's Courts in Australia, 2 (3.5%) were estimated to have an intellectual disability which is a comparable finding to this study with this figure rising to 12% for those with an IQ up to 75 (Vanny et al., 2009). Those with intellectual disability were also more likely to present with mental health problems than those without intellectual disability. Despite the difference in IQ scores, defendants with mild and borderline intellectual disability in this study had similar characteristics (Hayes, 1997). Many defendants with intellectual disability are missed at the court stage, with 58% of probation detainees not being identified by police (Silva et al., 2015). Study comparisons can often be difficult as diagnosing and thresholds for intellectual disability can vary, as does the choice of psychometric tests to support diagnosis.

3.2 Recognition of comorbidity in defendants with intellectual disability

People with intellectual disability are more likely to experience multiple mental and physical health comorbidities across their lifespan (Cooper et al., 2015) which can deteriorate in the criminal justice system and cause difficulties for staff who are caring for them. As well as an increased risk of mental health problems, individuals with intellectual disability have an

increased risk of comorbidity with other neurodevelopmental disorders such as ASD and ADHD. In this study, we found that defendants with intellectual disability were more likely to have comorbid ASD and ADHD, as well as being more vulnerable to alcohol misuse and at increased risk of suicide/self-harm behaviours. This is consistent with previous studies of people with intellectual disability in prison, with one study reporting that 37.5% of prisoners with ID had thought about self-harm in the last month, compared to 6% of non-intellectual disability prisoners, with 19% of prisoners with intellectual disability reporting they had self-harmed in the past month compared to 1% of non-intellectual disability prisoners (Chaplin et al, 2017). Higher rates of self-harm behavior and suicide are also reported for prisoners with neurodevelopmental conditions (McCarthy et al, 2018) and in adolescents with intellectual disability (Nagraj, 2015) so indicating that people with intellectual disability in prison may be at risk for self-harm behaviour for several reasons including the presence of other neurodevelopmental conditions and previous attempts at self-harm behavior.

3.3 Offence characteristics

Historically, people with intellectual disability were associated with high levels of offending behaviours with studies suggesting proclivities toward arson sexual offences and violence (Murphy & Mason, 2014). In this study, the charge of arson was not reported as a common offence for defendants with an intellectual disability. This is consistent with other studies that have reported little evidence that people with intellectual disability are overrepresented as arsonists or sex offenders (Holland, Clare & Mukhopadhyay, 2002). The association between violent crimes by people with an intellectual disability is often poorly understood with highly variable rates being recorded, which has led to many findings being refuted due to significant flaws in methodology, including sampling methods and interpretation of the findings at the time (Murphy & Mason, 2014). The assumption that individuals with intellectual disability are more likely to be fire-setters or sex offenders is being challenged in the absence of sufficient evidence to support a clear association. In the current study, there were slightly elevated rates of defendants being charged with sex offences and breach of the peace for both intellectual disability and non-intellectual disability offenders. The offences both groups had been charged with, were in the main reported at proportionately similar rates. This may be due to increased inclusion within society, as previously only the most serious offence types

resulted in people with intellectual disability being charged and in many cases possible offences by people with intellectual disability would not have been reported due to a high level of tolerance of staff responsible for their support and care .

3.4 Developments in guidance following the study

The study does raise a number of issues around police practice and appropriate disposal of defendants with intellectual disability who have such high levels of comorbidity. Since the data collection period, new guidance for L&D services has been published in England and Wales (NHS England, & NHS Improvement, 2019), which includes a minimum requirement to access specialist staff such as intellectual disability practitioners, ensuring links to intellectual disability services, specialist awareness training on intellectual disability and the provision of a specialist intellectual disability assessment. Research published in other countries after the completion of this study has highlighted the need for change in police practice and the supports available for this group of defendants (Gulati et al, 2021). However, this study has added to the growing evidence on the health needs of defendants with intellectual disability and that the criminal justice system must take this into account in any future developments such as for example awareness training and the use of risk assessments with defendants.

3.5 Limitations

The current study is limited to an evaluation of routinely collected data that forms part of the operations of liaison and diversion services. The study was not designed as a prevalence study; however, this is one of the largest studies to identify defendants with intellectual disability within L&D services. One issue with large service data sets is incomplete data entry. There are several reasons why this can happen, including time pressures, clinical prioritisation, cases still ongoing and lack of expertise in data management. As with all clinical records it could not be guaranteed that records were complete in every case

3.5 Responding to the needs of defendants with intellectual disability

This study has given insight into the characteristics of defendants with intellectual disability. It has highlighted their complexity and shown increased vulnerability in terms of comorbid neurodevelopmental disorders and risk of suicide and self-harm, as well as confirming

elevated rates of mental illness, substance misuse and personality disorder. The issue of case identification within L&D services is an important one and highlights the need for screening to allow individuals to be recognised and so put in place appropriate future interventions within both healthcare services and the court system for example making a formal diagnosis, assessing and delivering on health and social care needs.

Future research is necessary to determine how best to develop future L&D services to be aware of the needs of this group to ensure reasonable adjustments occur to improve effective participation in court proceedings (Ryland et al., 2022). There is a need for multi centre studies that would allow us to know if the court we studied was typical of both London and the courts across the country, so we can understand the extent and similarity of experiences of defendants with intellectual disability and the impact of intersectionality such as ethnicity. Mental health services need to be resourced in the community and through the timely availability of hospital care to respond to those defendants with intellectual disability presenting at Court who are most at risk of mental disorder and self-harm behaviours. With similar offence histories, it is the case that, those with intellectual disability are being diverted away from the criminal justice system to a hospital setting (Chester et al., 2018). However, there needs to be more whole systems planning particularly given the current context in England with proposed changes to the Mental Health Act in terms of excluding learning disability (the term used for intellectual disability in the act) as a mental disorder and the implementation of the Transforming Care programme (Department of Health, 2012) which seeks to reduce the number of inappropriate hospital admissions. Any change if not managed carefully has the potential to make the situation worse. A study using the Penrose hypothesis which examined the impact of bed closures on the prison population reported that between 1960 and 2018–2019 for every 100 psychiatric beds closed, there were 36 more prisoners 10 years later (Wild et al., 2021). This is a complex issue and one with serious implications for offenders with ID many of who could face further marginalisation if not properly considered and their needs addressed.

4.0 Conclusion

The findings from this study confirm the presence of a small but significant number of defendants with intellectual disability presenting to the Court Liaison & Diversion services who have significant needs in terms of comorbidity and risk for suicide and self-harm behaviour. The increasing recognition of the issues faced by those with intellectual disability has prompted attempts to change the landscape to increase equity of service with the general population, However, caution is required as there is no one fit for all solution, for those with serious mental health issues or those who pose serious risk often not addressed. Further research is needed to understand the experiences of defendants with intellectual disability presenting to the Court including how best to deliver service models to improve recognition and respond to their high rates of health needs. This will need to include research on current court practice, ensuring these are adequate to meet the needs of defendants with intellectual disability with attention to identification, assessment, and awareness amongst court staff and wider stakeholders.

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Highlights for Review

The paper highlights include

- an under researched theme of intellectual disability (ID) accessing liaison and diversion services
- offers an insight and understanding of the characteristics related to gender, ethnicity, mental health and index offences of defendants with intellectual disability and compare these to defendants without intellectual disability within Court Liaison & Diversion Services
- Is one of the largest studies to date on this group and covers five London Courts
- Highlights different characteristics of non-ID and ID Defendants
- Identifies an over representation of black defendants
- Identifies high rates of comorbidity with mental illness for both groups
- Identifies high rates of neurodevelopmental comorbidity e.g., ASD and ADHD in the ID group
- Identifies an increased risk of self-reported self-harm or suicidal thoughts amongst ID defendants

Abstract

Background

To date, there is little evidence on the characteristics of defendants with intellectual disability when presenting to the criminal court system. This study was developed to recognise and examine the characteristics related to gender, ethnicity, mental health and index offences of defendants with intellectual disability and compare these to defendants without intellectual disability within Court Liaison & Diversion Services in London, England.

Methods

This is a retrospective data analysis of routine administrative data collected by the Liaison and Diversion services across five Magistrates courts in London, England. Data were analysed on defendants identified through screening to have an intellectual disability and compared to defendants without an intellectual disability.

Results

9088 defendants were identified. Of these 349 (4%) had an intellectual disability. The study found an overrepresentation of defendants of black ethnicity along with high rates of comorbid mental illness and personality disorder amongst both non-intellectual disability and intellectual disability defendants. Defendants with intellectual disability self-reported self-harm and suicidal behaviour at higher rates. For neurodevelopmental disorders (NDD), those with intellectual disability were over 4 times more likely to have comorbid ADHD and over 14 times more likely to have ASD. Index offences were mostly similar although defendants with intellectual disability had elevated rates of sexual offences and breach of the peace.

Conclusion

The findings confirm the presence of a small but significant number of defendants with intellectual disability presenting to the Court Liaison & Diversion services who have significant needs in terms of comorbidity and risk for suicide and self-harm behaviour. Further research is needed to understand the experiences of defendants with intellectual disability presenting to the Court including how best to deliver service models to improve recognition and respond to their high rates of health needs.

Keywords: Comorbidity, Court mental health services, Intellectual disability, Liaison and Diversion, Mental disorder

Dear Sir

I have checked with all authors and can confirm that they have no competing interests to declare.

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Kind regards

Prof Eddie Chaplin