



People with an intellectual disability and the criminal justice system

The Figures

People with an intellectual disability are being drawn into the criminal justice system at an alarming rate.

People with intellectual disabilities represent about 12-13% of the NSW prison population.ⁱ As many as 23% of people appearing before NSW Local Courts on criminal charges may have a mild intellectual disability or borderline intellectual disability.ⁱⁱ

What is intellectual disability?

Intellectual disability is a learning disability. An intellectual disability has traditionally been defined as an IQ score of under 70 (or 75 taking account of error factors in IQ tests) together with deficits in personal skills, such as independent living, communication and social skills. The disability must have occurred when the person was under the age of 18 years.ⁱⁱⁱ

Having an intellectual disability can mean that it takes a person longer to learn things. It may mean that the person has difficulty reading and writing. The disability may affect the way that the person talks. They may find it difficult to understand abstract concepts.

Intellectual disability can be caused by things like brain injury at birth, genetic causes or because of other conditions.

Is intellectual disability the same as mental illness?

Intellectual disability is very different from mental illness. Mental illness generally affects a person's perception and mood. It is often episodic and its onset tends to be in early adulthood.

Intellectual disability affects learning, not perception or mood. It is generally constant over a person's lifetime and happens to a person when they are born or during childhood.

Some people have dual diagnoses, that is both an intellectual disability and a mental illness.

Are people with an intellectual disability more likely to commit crimes?

No. The increased rate of contact with the criminal justice system is due to:

1. people with an intellectual disability being treated differently by police and the courts; and
2. the psychological and socio-economic disadvantage experienced by people with an intellectual disability.^{iv}



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Different treatment by police and courts

People with an intellectual disability are more likely to be arrested, questioned and detained for minor public order offences. People with an intellectual disability are more likely to admit to offences, including ones they did not commit, perhaps from a desire to please the police officer or because they do not want to acknowledge that they did not understand the police officer's questions. They are refused bail more often and are more likely to be given a custodial sentence because of a lack of adequate support in the community. People with an intellectual disability serve longer sentences or a greater part of their sentence before being granted parole.^v

Even though people with an intellectual disability are entitled under the law to have a support person present for any police interview, the reality is that it is not always possible to get a support person, especially someone who is well trained to support the rights of people with intellectual disability.

What can be done?

Changes are needed to the criminal justice system

People with an intellectual disability are less able to understand and protect their interests when dealing with police or the court system. They are disadvantaged because police interviews and court proceedings are based on verbal communication, an area in which people with an intellectual disability often have skill deficits.^{vi}

People with an intellectual disability are also often very vulnerable inside NSW prisons. Understanding the rules of prisons (the spoken and the unspoken rules) can be very hard for anybody who is not familiar with the prison system, and is often exceptionally difficult for

people who have an intellectual disability. Not following the official 'rules' can get prisoners with an intellectual disability into trouble with custodial staff, and not following the prison code, and the unofficial rules can get prisoners with an intellectual disability into trouble with other inmates.

Although there are some units specifically for people with intellectual disability within the NSW prison system, the majority of prisoners with an intellectual disability are not placed in these units. This is partially because these units are small, partially because intellectual disability is quite hard to screen for, and partially because it is often not identified by prison authorities when people are received into custody.

Prisons are often dangerous places, and can be especially dangerous for those who are disadvantaged by way of an intellectual disability. Quite aside from this, sending people to prison is a very expensive, and ineffective way to address the offending behaviour. For people with an intellectual disability, the experience of prison can be traumatic, physically dangerous, dislocating, and increase the chances of institutionalisation. This is not a good starting point for trying to address the causes of offending behaviour.

Some strategies that could reduce the overrepresentation of people with an intellectual disability include:

- time limits for how long police can hold a person with an intellectual disability for questioning after they have been arrested and adding a requirement that they have a lawyer present
- making sure the person understands the caution given by police (the statement police



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make before questioning a person which advises the person that they do not have to answer the questions)^{vii}

- disability related arrangements for the giving of evidence in court and allowing the court to hear evidence about how a person's intellectual disability affects them^{viii}
- better screening processes in prisons so that it is clear which people going in to prison do have an intellectual disability, and so that programs and operations can be designed to ensure that prisoners with an intellectual disability are safe.
- funding for post-release support services for people who are homeless and have an intellectual disability
- 'In-reach' support workers from the community to work with those people in custody with an intellectual disability
- *Whenever possible, alternatives to prison for people with an intellectual disability should be made available.*

Changes are also needed to the welfare and service system

Changes to the service system are key to preventing or reducing people with an intellectual disability being drawn into the criminal justice system.

They include:

- improved access to specialist disability services for offenders with an intellectual disability or those at risk of offending
- better co-operation across government and with community agencies, including between criminal justice system agencies and the welfare sector.
- schools, and child and family services provided by or funded by the Department of Community Services need to play a

key role in prevention and early intervention

- specialist workers are needed to provide individual casework, and also to provide their expertise to other professionals
- funded and supported community accommodation is needed for people with an intellectual disability who are at risk of being involved with the criminal justice system

What is the government doing about it?

There have been some useful first steps by government but more needs to be done. The problem of people with an intellectual disability getting drawn into the criminal justice system has been known since at least 1985.

The Department of Ageing, Disability and Home Care (DADHC) has determined that people with "forensic issues" are in the top level of priority for access to DADHC services. DADHC has also appointed 2 workers as forensic casework specialists as part of its specialist Behaviour Intervention Service.

The Intellectual Disability Rights Service has been funded to provide a network of support people for people with intellectual disabilities in police interviews and court appearances.

Much more needs to be done. The reasons why there are so many people with an intellectual disability inside NSW prisons are complicated and are related to socio-economic disadvantage as well as the personal and structural disadvantages directly associated with the disability.

There needs to be a whole of government approach to this issue. That is, government departments involved in areas of education,



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welfare, social security, prisons, policing, employment and community safety need to work together to ensure that people with an intellectual disability are treated fairly by the criminal justice system, and whenever possible kept out of prison.

References

Fowler,G, (2001),”Victims of Law” The Manly Daily 16th Mar,P1

Greenberg,D (2002) ‘Mental Health and the Criminal Justice System’ ,paper presented at a Public Seminar, Institute of Criminology, University of Sydney, September.

Walker,F (2002) ‘Mental Health and the Criminal Justice System’,paper presented at a public seminar.Institute of Criminology,University of Sydney,September.

Select Committee Inquiry into the Increase in the NSW Prisoner Population (2001) Final Report, NSW Government, Sydney

Select Committee Inquiry into Mental Health Service in NSW, (2002) Final Report, NSW Government, Sydney

Radioeye www.abc.net.au/rn/arts/radioeye/crime



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