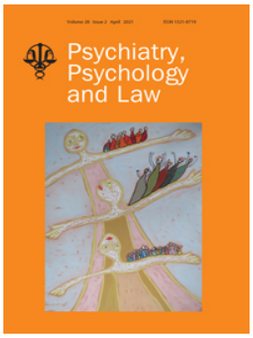

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Defendants with intellectual disability and autism spectrum conditions: the perspective of clinicians working across three jurisdictions

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The treatment of vulnerable defendants by criminal justice systems or correctional systems varies within and between countries. The purpose of this paper is to examine three legal jurisdictions – New South Wales in Australia; Norway; England and Wales – to understand the extent of variation in practice within the court systems for defendants with intellectual disabilities (ID) and/or autism spectrum conditions (ASC). Two of the jurisdictions had a process for screening in place, either in police custody or at court, but this was not universally implemented across each jurisdiction. All three jurisdictions had a process for supporting vulnerable defendants through the legal system. Across the three jurisdictions, there was variation in disposal options from a mandatory care setting to hospital treatment to a custodial sentence for serious offences. This variation requires further international exploration to ensure the rights of defendants with ID or ASC are understood and safeguarded.

Key words: Autism; autism spectrum condition; court; criminal justice system; developmental disability; forensic; intellectual disability; screening; vulnerable defendants.

Introduction

Individuals with intellectual disability (ID) or autism spectrum conditions (ASC) are over-represented in correctional or criminal justice systems (CCJS; Hellenbach et al., 2017). Prevalence estimates of ASD and ID vary within the pathway, and in prisons estimates have ranged between 1.5% and 7% (Fazel & Seewald, 2012; Mottram, 2007), in court 3–23% and in police stations between 2% and 9% (Murphy & Mason, 2014).

CCJS settings worldwide differ in their approach to individuals with ID and ASC with some countries having more than one jurisdiction – for example, the United Kingdom of

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Great Britain and Northern Ireland (UK), United States of America (USA) and Australia. The UK comprises three legal jurisdictions: namely, England & Wales, Scotland and Northern Ireland, whereas in the USA there are federal and state laws. In the federal court system, each state court system has its own jurisdiction, with the geographic distribution of courts dependent on the power of the court. There is one Supreme Court, 13 courts of appeal and 94 district courts.

Poor awareness and the lack of identification of ASC or ID within CCJS are reported to be associated with poorer outcomes (Chaplin et al., 2017; McCarthy et al., 2019; McCarthy, Chaplin, et al., 2016; McCarthy, Underwood, et al., 2016; Vanny et al., 2009), which may impact the referral and diversion of individuals to appropriate health services and sentencing. The basic function of the criminal courts is to determine guilt or innocence under the law. Once a case is heard, the judge is responsible for sentencing and the administration of any punishment or sanction. However, there are important differences between legal jurisdictions as regards what constitutes a crime and the management of vulnerable individuals who come before the courts. Neurodevelopmental disorders are a group of conditions with onset in the developmental period that frequently co-occur together (*Diagnostic and Statistical Manual of Mental Disorders, DSM–5;* American Psychiatric Association, 2013) and include intellectual disability and autism spectrum disorder (ASD). They are lifelong conditions and impact cognitive, social, language, motor and behavioural development. People with ID or ASC present to correctional systems (CS), or criminal justice systems (CJS), throughout the world. Evidence suggests that they are particularly over-represented in prisons and other places of detention (Hellenbach et al., 2017) and that their reported prevalence within the criminal courts varies widely, ranging between 10% and 20% (Marshall-Tate et al., 2020). This variation may be due to several factors, including what specific cut-off scores are used to determine intelligence quotient (IQ) and how diagnostic criteria are applied specifically to people with ID.

In some parts of the world, including England, Wales, Australia and New Zealand, court mental health liaison and diversion (L&D) schemes have been established (James, 2006). Their key aim is to identify people in the CJS who present with mental health needs, intellectual disabilities, substance misuse and other vulnerabilities, then facilitate their onward referral for appropriate treatment or support. To date, and despite wide-ranging service inclusion criteria (NHS England, 2019), L&D services in England and Wales have mainly focused on identifying defendants who present with severe mental illness, then linking them with health services and other agencies such as housing in the community wherever appropriate (Scott et al., 2013). There are, however, international differences between the policies underlying such services and how they operate.

Additionally, the management of people with ID or ASC within criminal justice systems varies considerably between jurisdictions. There is, however, relatively little research regarding defendants with ID or ASC within the criminal courts (Allely, 2020; Allely, 2016; Allely & Cooper, 2017; Chester, 2018; Cooper & Allely, 2017; Maras et al., 2017). Within the available literature, there is presently little understanding of how different jurisdictions act to assess and support people with ID or ASC through their criminal justice systems. However, the need to identify defendants with vulnerabilities such as ID or ASC is broadly in keeping with the human rights obligations of nation-states (Van Kempen, 2018) not least because it is known that outcomes can be particularly detrimental for this group (Jones & Talbot, 2010). Inadequate in-depth understanding and knowledge regarding autistic people may result in unjust outcomes (Cooper & Allely, 2017). To date, only a few studies have investigated the knowledge or understanding of judges and other criminal

justice professionals as regards autistic people, although mental disorder in general or the presence of disability or an ASC in particular can offer powerful mitigation within criminal proceedings (Berryessa, 2014, 2016; Hallett, 2020).

Approach to present study

This paper examines the services provided for defendants with ID or ASC who present to the criminal courts in England, Wales, Norway and New South Wales in Australia, and uses a cross-jurisdictions comparison, to examine four key areas relevant to defendants with ID and ASC. These areas are:

- The availability of formal screening/assessments at court to identify people with ID or ASC.
- The support provided for vulnerable offenders in attending court.
- The legal frameworks regarding fitness to plead/effective participation and criminal responsibility.
- Disposal options.

This article has been compiled by clinical academics, each with an international reputation for leading research into how persons with ID and autistic people experience the Criminal Justice System in their respective countries. The findings presented are drawn from their research and experience. Brief case examples have also been provided from each of the jurisdictions to illustrate pathways through the criminal justice system for people with ID or ASC. We have taken the perspectives of recognised experts due to their national and international profiles working as clinicians and researchers in the three jurisdictions. We chose two of the jurisdictions – namely, New South Wales with England & Wales – because of their shared legal traditions and Norway as another country in the same continental region as England & Wales but also a jurisdiction with an established research record of studying the needs of defendants with ID or ASC. The aim of the paper is not to provide a detailed critique of legalisation; the primary aim is to describe how health professionals working in a variety of court settings perceive the current arrangements on identification, support and disposal for this group of vulnerable defendants.

Results

New South Wales, Australia

Australia has nine jurisdictions, including six states and three internal territories (see Table 1).

Given that each of its states makes its own laws, there are considerable differences across criminal justice systems nationally, and, unsurprisingly, each has different approaches to the management of defendants with ID or ASC. This section will focus on the jurisdiction of New South Wales.

Formal screening/assessments at court to identify people with ID or ASC

Despite the evidence showing an over-representation of neurodevelopmental conditions amongst defendants, there is no system for the comprehensive screening of those with

Table 1. Australian legal jurisdictions.

States	Internal territories
New South Wales (NSW)	Australian Capital Territory (ACT)
Queensland (QLD)	Australian Commonwealth Government (ACG)
South Australia (SA)	Northern Territory (NT)
Tasmania (TAS)	
Victoria (VIC)	
Western Australia (WA)	

potential ID/ASC who come before courts in any Australian jurisdiction. In some states or territories, mental health nurses or other health personnel can be available at the court to conduct a brief evaluation of an accused person. In NSW, for example, the State-wide Community and Court Liaison Service, which is provided within Justice Health, can assist magistrates, solicitors and police prosecutors by undertaking a preliminary assessment of defendants who are suspected of having a mental health or ID/ASC condition, then referring them to appropriate community services. However, this intervention relies upon CJS personnel recognising that the accused person may have ID/ASC in the first place as no prior screening is undertaken.

Screening instruments have been developed in response to needs identified by police forces and other CJS agencies, including the Hayes Ability Screening Index (HASI; Hayes, 2000; Søndenaa et al., 2008), and the Hayes Ability Screening Index–Nonverbal (HASI–NV) (Hayes, 2015), both of which are widely used in Australia and internationally.[1] However, screening instruments do not diagnose ID/ASC per se, but instead indicate when a suspect *may* present with ID/ASC. Therefore, these instruments are used to signify a need for further in-depth assessment, as well as indicating when a third party person is likely to be needed to support the person during a police interview for potential vulnerabilities such as interrogative suggestibility during questioning. They can also indicate when an accused person will need to be referred for further full diagnostic assessment during court proceedings, or post sentencing.

Support provided for vulnerable offenders during a police interview or attending court

The implementation of supports or protections for vulnerable defendants largely depends upon the police being aware of the possible presence of ID/ASC or being informed about this by a third party, such as a family member or support worker.

The Law Enforcement (Powers and Responsibilities) Regulation 2016 (NSW), Division 3, is relevant to vulnerable persons, including a person with impaired intellectual functioning. The custody manager who is responsible for a vulnerable detained person must, as far as practicable, assist the person in exercising their rights under Part 9 of the parent Act, the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), including the right to make a telephone call to a legal practitioner, support person or another person. The custody manager must ensure that the caution and summary required by the Act are given to the person. A support person must be aged 18 years or over and, in the case of a vulnerable detained person, can be a guardian or any other person who is responsible for the care of the vulnerable person, or a relative, friend or any other person (other than a police officer) who has the consent of the detained person to be the support person or a person (other than a police officer) who has expertise in dealing with vulnerable persons of the category to which the detained person belongs. Further, the vulnerable suspect is entitled to have a support person present during any investigative procedure, and the detained person must be informed about this entitlement. The vulnerable suspect must be given reasonable facilities to arrange for their support person to be present, in circumstances in which, so far as practicable, the communication will not be overheard.

Legal frameworks – fitness to plead, fitness to participate and criminal responsibility

The legal parameters in Australia that are relevant to fit, continue to evolve as new case law emerges, and as some states and territories contemplate codification of fitness to be tried. The current basis for assessing fitness is a common law test that relies heavily on *R v Presser* [1958] VR 45, and subsequently

[1]The author of this section of the chapter developed the HASI and HASI–NV and declares an interest.

Kesavarajah v The Queen (1994) 181 CLR 230, the latter being concerned with concerning the accused person's condition during what can, in some circumstances, be a lengthy trial.

The *Presser* formulation requires that the accused can understand what it is that he/she is charged with, can plead to the charge and exercise the right to challenge a juror, and can understand generally the nature of the proceedings – that is, that it is an inquiry as to whether they did what they have been charged with. The accused needs to be able to follow the course of the proceedings, to understand what is happening in court, in a general sense, to understand the substantial effect of any evidence that may be given and to be able to make a defence or answer to the charge. They must also have the capacity to give any necessary instructions to legal counsel. The accused needs to be able to tell counsel their version of the facts and, if necessary, tell the court, as well as having sufficient capacity to be able to decide what defence will be relied upon, and to make their defence and version of the facts known to counsel and the court.

An examination for fitness can sometimes be a lengthy process, requiring a diagnostic assessment, followed by a detailed interview to determine whether the accused meets the Presser criteria.

The NSW Law Reform Commission (NSW Law Reform Commission, 2010) states:

> *Failure to meet any of these (Presser) standards renders the accused unfit to stand trial. The determination is made by reference to expert psychiatric evidence which addresses the standards and may also express an opinion about the overall ability of the accused to stand trial.* (p. 6)

In the USA a number of scales have been developed to evaluate 'competency to stand trial' (which is parallel to the concept of fitness in Australia), and each has some difficulties with classifying the client as competent or not (R. Rogers & Johansson-Love, 2009). No similar instruments have been standardised or validated to assess fitness to be tried in any Australian jurisdiction. Whilst intelligence and adaptive behaviour instruments are useful starting points in a fitness assessment, there is no direct correlation between standard scores on these or other psychological instruments and the client's fitness or unfitness. Factors such as attention or concentration, language development, processing speed, memory, challenging behaviour and executive functioning are important in determining fitness.

If an accused person is found unfit, he/she is referred to the NSW Mental Health Review Tribunal, which, amongst other issues, must determine whether the accused is likely to become fit within the following 12 months; if they are unlikely to become fit, the matter then goes back to the court for a 'special hearing', which determines whether, on the limited evidence available, the person committed the crime charged (Lerace, 2010). If the accused is found to have done the offence, the judge must determine whether, in a normal trial, a sentence of imprisonment would have been handed down; if so, the judge must indicate what the total sentence would have been. This 'limiting term' is the maximum period that the accused may be detained, thus avoiding the situation of indefinite detention.

Options for disposal

Sections 32 and 33 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) provide diversionary options for people with ID/ASC and/or mental health conditions. A magistrate has the option to dismiss the charge and discharge the defendant unconditionally, or subject them to certain conditions as set out in the legislation. In practice, a magistrate usually requests a treatment plan for the defendant, nominating community/disability services or medical/mental health facilities that would be beneficially involved in the ongoing support of the accused. If the defendant fails to comply with the conditions within six months of discharge, the magistrate may deal with the

charge as if the defendant had not been discharged, possibly resulting in a sentence.

Some states and territories have introduced specialist courts for dealing with accused persons with ID/ASC, an example being the WA Intellectual Disability Diversion Program Court (Magistrates Court of Western Australia (Producer), 2019). Referrals to this court are typically made by magistrates in general court lists, usually at the suggestion of a defence lawyer, supporting agency, carer or family member. One key condition is that the accused must have entered plea/pleas of guilty to at least a significant proportion of the magistrate court charges, which may have the unfortunate effect of encouraging defendants to enter a guilty plea to obtain care.

New South Wales case example. David, a 22-year-old man with ASC, mild ID and some obsessive-compulsive traits, was charged with common assault (domestic violence related), intentionally or recklessly destroying/damaging property (domestic violence related), and contravention of an Apprehended Violence Order, in relation to his then partner. His matter was dealt with under s 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW). The magistrate dismissed the charge and discharged David on condition that he continue to attend a youth community service where he was a client, and accept ongoing case management from his case manager. The case manager assisted David to have contact with other appropriate agencies, including an employment agency experienced in the field of preparing young people with ID/ASC to train for and locate employment. The case manager also supported David in accessing appropriate mental health interventions, and programmes to assist him with the development of the skills of daily living. David complied with the conditions and moved into independent accommodation by himself, where he was better able to manage the symptoms of ASC and obsessive-compulsive behaviour without coming into conflict with a live-in partner or flatmate.

England and Wales

Formal screening/assessments at court to identify people with ID or ASC

To date, hardly any research has considered defendants presenting with ID or ASC in the criminal court system in England and Wales (Department of Health, 2009; Srivastava et al., 2013). Accurate prevalence rates would depend upon the ID or ASC being perceived by court personnel, lawyers or existing court liaison and diversion services; however, this can be problematic, particularly in those with a high level of expressive and receptive communication (Archer & Hurley, 2013; Forrester & Hopkin, 2019). A lower likelihood of spontaneous identification exists for those without dysmorphic features, physical disabilities or specific syndromes, and thus whose ID or ASC is less visually obvious (S. Ali & Galloway, 2016; Smith et al., 2008). This has led to calls for the implementation of routine screening measures in criminal justice proceedings (Department of Health, 2009; McKenzie et al., 2012; Talbot, 2009). However, there are a lack of screening tools to highlight cases with ID or ASC (Hellenbach, 2012; Herrington, 2009; Mckinnon et al., 2015). Consequently, screening for ID and ASC is not well established in court in England, and research has indicated that even when screening systems are in place some people remain unidentified (Mckinnon et al., 2015) and therefore at risk of not receiving the support they require throughout their journey within the criminal justice system.

Support provided for vulnerable offenders attending court

In England and Wales, there are a number of initiatives that aim to support the specific needs of those with ID or ASC at court. Liaison and diversion (L&D) services have developed in England and Wales over the decade, with a remit to identify and support and provide alternative pathways for people who present with all types of vulnerabilities

Table 2. Eligibility criteria for liaison and diversion services in England and Wales.

Any person over the age of criminal responsibility (ten) who is suspected of having committed a criminal offence.
The service will be accessible to individuals irrespective of the nature or class of criminal offence under investigation.
Service users most likely to be referred to and benefit from the service include the following:
• those with complex, severe or persistent health needs
• those with learning disabilities
• those with substance misuse issues
• those with acquired brain injury
• those with autism spectrum disorder
• those with severe or complex emotional/behavioural difficulties requiring a mental health and social care support that require enhanced specialist community intervention as part of an integrated multi-agency package of care
• those with multiple sub-threshold needs
• repeat offenders
• veterans
• females
• those experiencing homelessness
• those at risk, including being at risk of domestic violence, Multi-agency public protection arrangements (MAPPA), safeguarding issues
• service users in acute crisis with eating disorder, depression, risk of suicide, psychosis, escalating self-harm, personality disorders
• service users from a minority ethnic or minority cultural background, including gypsies and travellers

Note: NHS England, 2019.

(Chaplin et al., 2017; Forrester & Hopkin, 2019; Forrester et al., 2020; NHS England, 2019). Coverage is national and centrally funded by the National Health Service (NHS) but, arguably, the availability of ID and ASC expertise in L&D teams varies geographically (Chester, 2018). Eligibility criteria for the service are detailed in Table 2. Clinicians are commonly mental health trained nurses, who do not necessarily have expert knowledge as regards ID and ASC, although some teams have access to learning disability nurses and speech and language therapists. The arrangement of support within the court is dependent on the initial identification of the defendant with ID or ASC by these clinicians, and this is most likely to occur through initial screening at an earlier stage of proceedings, in police custody.

A defendant can be assessed as fit to stand trial and to enter a plea but may nonetheless require assistance with understanding court proceedings (O'Mahony, 2012). For a defendant with ID or ASC, communication difficulties can impede effective participation in court proceedings (Talbot, 2009). These problems can be manifest both in a defendant's limited understanding of what is being said in court by the judge or magistrates, lawyers and others (i.e. receptive communication) and in making themselves understood (i.e. expressive communication; Talbot, 2009). In England and Wales, the role of the Registered Intermediary (RI) was introduced by the Youth Justice and Criminal Evidence Act 1999, and the RI can assist the police in communicating with witnesses at the investigation stage, take part in pre-trial meetings and court familiarisation visits and assist communication with the witness at trial (O'Mahony, 2010). The defendant does not by law have the right to an RI, and, as such, use of this service varies considerably

across England and Wales (Cooper & Mattison, 2017).

Legal frameworks – fitness to plead, fitness to participate and criminal responsibility

Further to the provision of courtroom support, before or during a trial, ID or ASC may be relevant in establishing whether the defendant has *mens rea* for the offence, assessing fitness to plead (Brown, 2019a, 2019b; Mudathikundan et al., 2014; T. P. Rogers et al., 2008; Taylor, 2011) and in considering the availability of an insanity defence (Baroff et al., 2004). Mens rea relates to whether the defendant intended a consequence (meaning to produce a result, or realising that the result is virtually certain), or recognised the risk of the consequence, and took the risk anyway. Ascertaining mens rea in a case involving a person with ID or ASC can be a core part of the case and its outcome (Chester, 2018).

In England and Wales, the concept of fitness to plead (FTP) refers to whether the defendant is mentally capable of fairly standing trial (Brown, 2019a, 2019b; T. P. Rogers et al., 2008; Taylor, 2011). A psychiatrist assesses this, and the main criteria used in determining FTP have been established by case law (*R v M (John)*, 2003; *R v Pritchard*, 1836) as follows:

- Understand the charges.
- Decide whether to plead guilty or not.
- Exercise the right to challenge jurors.
- Instruct solicitor and counsel.
- Follow the course of proceedings.
- Give evidence in their own defence.

In England, there is not a specific IQ level at which a person is considered unfit to plead, and in practice most people with mild ID (IQ 55–69) are found to be 'fit' (Taylor, 2011). The prosecution, defence or judge can raise the question of whether a defendant has FTP. The defendant may be remanded to hospital where the accused can be evaluated within a psychiatric setting using the *Mental Health Act 1983*. If a defendant is found to be fit to plead, the case will continue, and the judge may choose to make support available to the defendant (Talbot, 2009). If a defendant is found to be unfit to plead, a 'trial of the facts' may be held, where the jury decides whether or not the defendant had done the act of which they have been accused (Talbot, 2009). Following the trial of the facts, the court can make one of the following orders (Baroff et al., 2004):

- An admission order to such hospital as the Secretary of State specifies (Section 37 of the *Mental Health Act 1983* with or without restrictions);
- A guardianship order under the *Mental Health Act 1983*;
- A supervision and treatment order; or
- An order for the defendant's absolute discharge.

The defence of 'insanity' relies on principles created by judges in case law following the trial of Daniel M'Naghten (1843), where law was stated as follows:

> *the jurors ought to be told that in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.*

For an insanity defence to be available, the criteria described above must be met. In a case where an accused person presents with ID or ASC, and the possibility of an insanity defence has been raised, experts will be sought to provide evidence to the court (Baroff et al., 2004). This is done on a case-by-case basis, and if it is determined that the defendant is not guilty by reason of insanity, the judge has access to

the same range of options, under the *Domestic Violence, Crime and Victims Act 2004*, as that available to those who are found unfit to plead – that is, a hospital order (with or without a restriction order), a supervision order or an order for absolute discharge.

Diminished responsibility is a partial defence to murder, initially set out in the *Homicide Act 1957* and later amended by the *Coroners and Justice Act 2009*. For a successful defence, the Act states that a person who kills or is party to the killing of another is not to be convicted of murder if they were suffering from an abnormality of mind that: arose from a recognised medical condition; substantially impaired their ability to understand the nature of their conduct, form a rational judgment, or exercise self-control; or provides an explanation for their acts and omissions in doing or being a party to the killing. This defence may, in some circumstances, be available to defendants with ID or ASC, depending on the nature of their condition and the events under consideration.

Options for disposal

The first sentencing decision takes place when a defendant appears in court for the first time, and concerns whether to offer bail or to remand in custody (Chester, 2018). Research has suggested that those with ID or ASC have difficulties understanding basic criminal justice terms such as 'remand', 'plead' and 'bail' (Talbot & Jacobson, 2010), even if they are deemed 'fit to plead'.

If the defendant is found guilty following a trial, a number of sentencing options are available, depending on the seriousness of the offence. The court should be given access to information on a defendant's needs at the pre-sentence stage, to inform sentencing decisions through a pre-sentence report (PSR) prepared by a probation officer (Talbot, 2009). The PSR describes the offence, background and circumstances of the offender, can include sentencing recommendations, and should contain all the information necessary to inform an appropriate disposal or outcome for the defendant (Department of Health, 2009). In addition, for those whose cases are dealt with in the magistrates' courts, the court L&D service may provide a written report to court relating to the specific care and treatment history and needs of a person with ID or ASC, describing community support services that they are currently accessing as well as potential referral pathways as recently supported by new sentencing guidelines that include people with developmental disorders (Sentencing Council, 2020). As with all other convicted defendants, the person with ID or ASC can receive a prison sentence, a fine or a community order with or without a mental health treatment requirement. The court can also impose a hospital order for treatment under *Mental Health Act 1983* if two psychiatrists recommend this.

Research examining sentencing practices in relation to those with ID or ASC and those without is lacking in the UK. Those with ID or ASC are over-represented amongst remand prisoners, and this is thought to be because of lack of understanding or awareness of appropriate alternative care pathways, or limited staff skills in working with people presenting with offending behaviour (A. Ali et al., 2016). In addition, prisoners with ID or ASC may not have access to information that they can understand and therefore may not be aware of their rights, including their right to apply for bail. As regards people with ASC, it has also been suggested that the courts may misinterpret autism-related behaviours as lack of empathy, resulting in harsher sentences (Archer & Hurley, 2013). However, it has also been reported that people with ASC within inpatient forensic services are more likely to be subject to civil, rather than forensic, sections of the MHA, suggesting that their behaviour has been managed within the mental healthcare system, rather than being processed through the CJS (Esan et al., 2015).

The following are two case examples from England, in which one person received a

community order with supervision and the other person went to prison.

English Case Example 1. Mandy, a 30-year-old young woman with a mild learning diability (IQ low 60s) who had attended 'special' schooling, lived with her mother. She set fire to the house they lived in causing thousands of pounds worth of damage and putting people at risk of harm. She was identified by L&D screeening services in custody as having a probable learning disability, but it was found she was not receiving adult community serives at all. The L&D court report indicated that she would have difficulty following the court process. She completely denied the offence and following further psychiatric assessment she was found to be unfit to plead. A trial of the facts found her to have committed the act, and she was sentenced to a three-year community order supervised by a probation officer. She received community specialist forensic intellectual disability psychology services during her order.

English Case Example 2. Peter, a man of 30 with a very mild learning disability (IQ 69) and diagnosed ASC was living in supported housing for people with ASC. He had no history of sexual offences. He began communicating on a dating site with a person who claimed they were a girl of 14. He sent this 'person' a series of sexual images and arranged to meet her. At the meeting point it was revealed that an online vigilante group targeting paedophiles had been communicating with him using a fake profile; they met him, seized him and called the police. He was not picked up by L&D services in police custody, or at court, as there were no such services in the area at that time. His care staff considered that problems with social understanding linked to his autism were connected to his offence. Fitness to plead was not raised by the defence, and he was presumed fit to plead. He was convicted of sending indecent images to a child, was sentenced to 6 months in prison, and was put on the sex offenders register for five years.

Norway

Formal screening/assessments at court to identify people with ID or ASC

Screening assessments have rarely been used in Norwegian courts. The identification of both intellectual disabilities and psychiatric disorders has principally sat within the domain of forensic mental health; however, the information obtained from these examinations seldom influences court proceedings. Despite this, some benefits have been derived from certain screening tools. For example, after it was validated on Norwegian samples (Braatveit et al., 2018; Hayes, 2000; Søndenaa et al., 2010), the Hayes Ability Screening Index has been used by some experts in their assessments. However, in a recent study of the Norwegian prosecuting services, only 13% confirmed that they had used screening tools to identify cognitive dysfunction (Olsen et al., 2018). Interestingly, those who did use them also reported a more frequent flow of cases involving people with ID. However, the wide-scale identification of ASCs has not been a topic of interest among forensic mental health clinicians. A study of 48 offenders with diagnosed ASC (Helverschou et al., 2014) found that only 27% had received diagnoses using proper screening or diagnostic tools.

Support provided for vulnerable offenders during police interview or attending court

The Convention of the Rights of Persons with Disabilities (CRPD) places significant emphasis on the right to equality before the law, equal protection of the law for all persons and the benefit of the law for people with disabilities (Skarstad, 2018). It requires that nations secure necessary supports for people with disabilities undergoing legal proceedings, as outlined in Articles 5, 12 and 13. Having become concerned about its obligations to the CRPD, the Norwegian government (the

Directorate for Children, Youth and Family Affairs) has initiated an educational programme for courts (Søndenaa et al., 2019) as well as introducing some research projects focusing on people with ID who are charged with offences, or who have been convicted of crimes.

In 2011, Norway introduced a service called 'barnahus'. This service has been designed to perform the cross-examination of persons who need support because of their vulnerability in court settings. The name 'barnahus' refers to minors, and its focus and practices have chiefly concerned cases involving children. Although its target group is minors, people with ID and ASC also come under its expertise and responsibility (Bredal & Stefansen, 2017). However, the focus and priorities of the 'barnahus' have been victims of crime, and the large number of cross-examinations of children appears to have overshadowed the needs and knowledge of people with ID, especially those who have been charged with criminal offences (Dahl, 2018).

Legal frameworks – fitness to plead, fitness to participate and criminal responsibility

The framework for criminal responsibility in Norway is relatively restrictive. The level of intellectual functioning is set at an IQ of 55, and all defendants with an IQ of above 55 are considered fit to plead, fit to participate and to have criminal responsibility. Below this level, a person is not considered responsible but can be sentenced to mandatory care if the offence is considered very serious. Such convictions are very rare, occurring less than once a year (Søndenaa et al., 2019). Offenders with significant intellectual problems (i.e. with an IQ less than 55) have, in most cases, not been appropriately supported, and the contrast between the need for care and mandatory care is substantial. The agreed level of criminal responsibility has been debated in the last few years, resulting in proposed changes to the limit, from an IQ of 55 to an IQ of 60; however, these changes have not yet been fully implemented (Norwegian Department of Justice, 2019).

Options for disposal

Norwegian law gives convicted persons with a 'legally' mild ID (i.e. IQ 55–75) the opportunity to receive an altered or reduced sentence. This opportunity has been considered fewer than 10 times per year and has resulted in milder sanctions in a minority of these cases (Søndenaa & Spro, 2016). Interestingly, the milder sanctions were more common in cases of sexual offences than in all other types of offending behaviour. In one case, a 41-year-old man who had had sexual contact with a girl aged 14 was assessed to have an IQ of 71. The first judge said: 'In judging the mental condition of the man, I emphasise the fact that the age difference between the convicted and the offender will be an important factor for meting out the level of punishment. It must therefore be important that the convicted person's mental age is similar to that of the victim. This relationship, combined with the confession, means that I find it right to go below the minimum penalty for such offending.'

Norwegian case example. Per aged 22 years was living with his parents and siblings until he was convicted of a serious violent offence. Forensic experts concluded that he had an IQ <55 and was therefore not criminally responsible, and so he was transferred to mandatory care. The difference between living in a family with no professional care and living in a highly professional and expensive individually based service was enormous. After three years of mandatory care, structured habilitation and targeted treatment, the man was still considered to be a high risk for violent behaviour but no longer to have below-threshold intellectual functioning. A continuation of the sentence was therefore not relevant, and he moved back in with his family. Community services offered him residential care, but he wanted to live with his family.

Discussion

This paper highlights agreement between clinicians and researchers across jurisdictions as to what constitutes best practice. This includes supporting the rights of individuals with ID and ASC within the legal system by, for example, early identification, so ensuring access to safeguards during court proceedings and an emphasis on the least restrictive disposal options.

Screening

A lack of specialist clinical staff with expertise in seeing people with ID or autistic people has in part led to the development and use of specialist screening measures to identify this group within criminal justice systems or correctional systems over the last twenty years (Hayes, 1997, 2000). Prior to this the identification of ID and ASC was made using routine observation of behaviour and communication (Henshaw & Thomas, 2012). This has allowed non-specialists to assist the identification of ID or ASC, to act as an indicator of future assessment and support needs of those presenting. Although screening for ID or ASC is in evidence within criminal justice systems or correctional systems, its use has not been routinely standardised with no consolidation of the current evidence base nor synthesis of short-term or long-term outcomes for persons with ID or ASC. This was also the case across the three jurisdictions, where little evidence of fully established nationally adopted screening programmes to identify defendants with possible ID or ASC were found. In addition, there was no universal agreement as to which tool is most accurate and appropriate in these circumstances. In New South Wales, Australia, there is a history of research reporting on the development of screening instruments such as the HASI and HASI–NV, which were created in response to needs expressed by police forces and to estimate prevalence within CJS agencies. In the UK, new screening measures were developed, including the Learning Disability Screening Questionnaire (McKenzie et al., 2012) and Rapid Assessment of Potential Intellectual Disability (RAPID; S. Ali & Galloway, 2016). Each of these tools has been used where routine screening for identifying people with ID exists; however, their use in everyday practice remains aspirational in the UK. In Norway, screening is seldom employed, and instead there is a reliance on clinical examination. However, researchers in Norway have tended to use the HASI (Søndenaa et al., 2010). Adopting screening in a busy court can present challenges of its own, given the number of defendants being processed. In this busy environment, other assessments – for example, general mental health, self-harm and suicide – may take priority. In some mental health assessments, there is provision to screen for ID or ASC, but poor awareness and understanding of these conditions means staff may not know when they are indicated, instead of relying on previous clinical or prison records to identify individuals. As well as identification of ID and ASC, there have been other arguments for screening including highlighting those most likely to have or be at risk of developing a comorbid mental disorder, informing early intervention strategies for vulnerable individuals such as prisoners for self-harm behaviour, and the cost benefits – for example, screening can be administered by non-specialists and takes less time to administer than a diagnostic interview. There are some limitations to screening particularly when not administered correctly or outside of an agreed protocol. These include the difficulties of administering in busy settings such as the court, over screening (i.e. using multiple screens, rather than those indicated, to detect the condition of choice), or use of unvalidated screens not measuring the construct or not generalisable to other areas where the diagnostic threshold may differ, such as in the case of ID where arbitrary IQ cut-off points may be used to confirm a diagnosis within different legal systems.

Support in court

The Convention of the Rights of Persons with Disabilities, and Article 6 of the European Convention on Human Rights, advocate

equality before the law and safeguard the right to a fair trial (Council of Europe/European Court of Human Rights, 2019). Together, they have helped to ensure that defendants must be able to understand and effectively participate in criminal proceedings, and that people with ID or ASC, in particular, receive the supports they require to receive a fair trial. Support is dependent on the police or court being aware and identifying that the person has ID or ASC or are vulnerable, which is in part dependent on the resources for screening discussed above. The type of assistance available varies but includes support to understand and be able to meaningfully take part in court proceedings. In all three jurisdictions, there was the availability of a support person in some form prior to court proceedings. This may include help to understand and exercise their rights through additional support from services such as 'barnahus' or by an individual such as a solicitor, guardian or appropriate adults, particularly when being interviewed or questioned by police officers. Only Norway, through 'barnahus', and the registered intermediary system in England and Wales provide support during the actual court proceedings. In practical terms, several things can be put in place to help persons with ID and ASC in court. These include formal schemes such as 'special measures', which are used to help facilitate vulnerable and intimidated witnesses to give evidence. Eligibility for special measures includes, but is not limited to, those with significant impairment of intelligence and social functioning, as well as children and those with a mental disorder. Special measures are subject to the discretion of the court and may include giving evidence in private, the exclusion from the court of members of the public and the press, removal of wigs and gowns, a visual recorded interview examination of the witness through an intermediary or use of screens when giving evidence. In addition, other reasonable adjustments can be made to promote understanding and participation of persons with ID and ASC across criminal justice settings, including communication assistance to understand proceedings or to give evidence (this may be audio or written easily read materials or whatever communication medium is best understood by the person), preparing the person for an interview so the person can understand what to expect in the formal setting of the court, involving carers or advocates where appropriate and offering breaks and factoring in the possible need for extra time as necessary. For further advice on making reasonable adjustment the court can refer to specialists within the court setting – for example, court liaison nurses.

Legal frameworks

In New South Wales, new case law has meant that fitness to be tried is under scrutiny. The Presser formulation safeguards are similar to those operating in other countries and jurisdictions – that is, that the accused is able to understand what it is that he/she is charged with, can plead to the charge, can exercise the right of challenge (to a juror), and can generally understand the nature of and can follow the proceedings. The fitness to plead criteria in England and Wales are the product of case law and also require defendants to have the ability to instruct counsel. In England and Wales, the document 'Sentencing Offenders with Mental Health Conditions or Disorders' is now in place and puts forward issues of culpability be considered for all mental health and developmental conditions including ID and ASC (Sentencing Council, 2020; see Table 3).

Competing medicolegal definitions contribute to operational differences between countries where ID may be defined differently, with the emphasis anywhere between moderate to borderline ID. Those with moderate ID in Norway or England or Wales are unlikely to receive a custodial disposal, with a placement in supervised residential care the most likely outcome. For those in the mild to borderline range of ID, it is much more arbitrary as to whether a person is dealt with under a forensic section of the Mental Health Act or sentenced

Table 3. Considerations for culpability.

Did the offender's condition
• mean it impaired their ability to exercise appropriate judgement?
• impair their ability to make rational choices, or to think clearly?
• impair their ability to understand the nature and consequences of their actions?
• have the effect of making them disinhibited?
Were there
• any elements of premeditation or pre-planning in the offence, which might indicate a higher degree of culpability?
• attempts to minimise their wrongdoing or to conceal their actions, which might indicate a higher degree of culpability?
Did the offender
• have any insight into their illness, or did they lack insight?
• seek help, and fail to receive appropriate treatment or care?
If
• there was a lack of compliance in taking medication or following medical advice, was this influenced by the condition or not?
• the offender exacerbated their condition by drinking/taking drugs, were they aware of the potential effects of doing so?

Note: Adapted from the Sentencing Council (2019) Consultation, p. 9.

to prison as is the case in England and Wales (Morrissey, 2018; Taylor, 2011). However, diversion due a finding of unfitness to plead may result in a person spending many years in hospital rather than a shorter prison sentence, which raises significant concerns for breaches of the person's human rights (Arstein-Kerslake et al., 2017).

Options for disposal

We do know that once ID or ASC is identified, advice can be provided to court on the defendants' ability to understand and participate in the court process and make recommendations on disposal options based on risk, taking into account both mitigating and aggravating circumstances. Disposal for this group is increasingly based on the least restrictive option (Sentencing Council, 2020) following the appropriate consideration of factors such as risk and the need for assessment and treatment where it exists. Poor understanding of ID or ASC can nevertheless lead to an increased likelihood of being remanded to prison, or to inappropriate sentencing. A key benefit of liaison and diversion schemes, which can be developed to have expertise in working with defendants with ID or ASC, is that they are able to provide clinical advice to the magistrate or judge to inform appropriate disposal. In New South Wales, treatment plans or reports offering recommendations are requested by the magistrate to inform sentencing, which can recommend a community service or admission to hospital. In England and Wales there is also an option to send a person to hospital for further assessment although such an option is seldom used due to lack of available hospital beds. In Norway there is the opportunity to receive an altered or reduced sentence. The provision of support in the community following a court appearance is often under-resourced and an area that needs further consideration. For example, if the individual does not understand the conditions set by the court or future communications are not understood then this might lead to recall by the court (Talbot & Jacobson, 2010).

Implications for practice

In terms of implications for practice, we now recommend an agreed approach across and within jurisdictions to the identification of

defendants with ID or ASC both in the police custody and in court settings. In addition we recommend that guidance for health professionals working in court settings is developed to advise how defendants with ID and ASC should be supported through the court systems, with an emphasis on more therapeutic but least restrictive disposal options.

This lack of nationally adopted ongoing screening programmes, or universal agreement as regards the most accurate tools, are areas that need to be urgently addressed. This requires further international discussion on the best approach to implementation of screening but must include the views of autistic people and disabled people's organisations. Across the three jurisdictions, there was variation in disposal options from a mandatory care setting to hospital treatment to a custodial sentence for serious offences. This variation needs further exploration on whether internationally agreed guidelines for clinicians on how to advise the court on people with ID or ASC will impact on this variation across and within different jurisdictions. It is important to address this ongoing variation in order to ensure that the rights of defendants with ID or ASD are understood and safeguarded.

There is also a need for judges, lawyers, barristers and legal practitioners to become adept at asking appropriate questions and at identifying signs of possible cognitive or developmental difficulties in their clients (Alley, 2020). Advice for lawyers and other criminal justice professionals is available online from The Advocate's Gateway, a website providing free access to practical, evidence-based guidance on vulnerable witnesses and defendants in the form of toolkits (Cooper & Allely, 2017).

Future research directions

The findings from this paper emphasise the need for more research in this area, to assist with the creation of an evidence-base across different jurisdictions that is capable of supporting the development of criminal-justice-based mental health services, specifically in relation to the needs of defendants and offenders with ID or ASC (Forrester & Hopkin, 2019; Scott et al., 2016). Future research could also investigate the adequacy of referral pathways for defendants with ASC or ID from L&D services and the criminal trajectory of those with ID or ASC. Lastly, empirical studies investigating which types of support and interventions would be most effective for individuals with ASC or ID who are referred to L&D services, using appropriate ID or ASC specific outcome measures, are also required (see Morrissey, Geach, et al., 2017; Morrissey, Landgon, et al., 2017).

Conclusion

There is agreement between clinicians and practitioners, across countries and jurisdictions, that the screening and identification of defendants with ID or ASC at the earliest stages of the criminal justice system pathway is likely to be beneficial. Ideally, best practice would indicate the use of internationally validated and culturally sensitive tools, to be applied universally to allow comparison between countries and jurisdictions as regards the identification of defendants with ID or ASC. There is also broad agreement that support for a defendant with ID or ASC is required throughout the legal processes, leading to attendance at court and also during court proceedings. However, there is divergence around disposal options with an approach that can be hospital focused or mandated secure care, or indeed prison sentences, for those who have committed serious offences or community services for those deemed to commit less serious offences. This divergence of approaches needs further investigation to lead to a more evidence-based approach to the care and treatment of defendants with ID or ASC.

Ethical standards

Declaration of conflicts of interest

Susan Hayes has declared no conflicts of interest

Erik Søndenaa has declared no conflicts of interest
Verity Chester has declared no conflicts of interest
Catrin Morrissey has declared no conflicts of interest
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Ethical approval

This article does not contain any studies with human participants or animals performed by any of the authors. This review paper was written as part of a project approved by the relevant local research clinical governance ethics committee at the South London and Maudsley NHS Foundation Trust (BDP/ROSE 200), London, UK, which confirmed that full ethical approval was not necessary.

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References

Ali, A., Ghosh, S., Strydom, A., & Hassiotis, A. (2016). Prisoners with intellectual disabilities and detention status. Findings from a UK cross sectional study of prisons. *Research in Developmental Disabilities*, *53–54*, 189–197. https://doi.org/10.1016/j.ridd.2016.02.004

Ali, S., & Galloway, S. (2016). Developing a screening tool for offenders with intellectual disabilities – the RAPID. *Journal of Intellectual Disabilities and Offending Behaviour*, *7*(3), 161–170. https://doi.org/10.1108/JIDOB-01-2015-0001

Allely, C. S. (2016). Autism spectrum disorders in the criminal justice system: police interviewing, the courtroom and the prison environment. In *Recent advances in autism* (pp. 1–13). SM Group.

Allely, C. S. (2020). Autism spectrum disorder in the courtroom: Perceptions and understanding of defendants with autism by judges and jurors. In Elizabeth Kelley (Ed.), *Representing people with autism spectrum disorders: A practical guide for criminal defense lawyers*. American Bar Association (ABA) Book Publishing.

Allely, C. S., & Cooper, P. (2017). Jurors' and judges' evaluation of defendants with autism and the impact on sentencing: A systematic Preferred Reporting Items for Systematic Reviews and Meta-analyses (PRISMA) review of autism spectrum disorder in the courtroom. *Journal of Law and Medicine*, *25*(1), 105–123.

American Psychiatric Association (2013). *Diagnostic and statistical manual of mental disorders*. American Psychiatric Publishing.

Archer, N., & Hurley, E. A. (2013). A justice system failing the autistic community. *Journal of Intellectual Disabilities and Offending Behaviour*, *4*(1/2), 53–59. https://doi.org/10.1108/JIDOB-02-2013-0003

Arstein-Kerslake, A., Gooding, P., Andrews, L., & McSherry, B. (2017). Human rights and unfitness to plead: The demands of the convention on the rights of persons with disabilities. *Human Rights Law Review*, *17*(3), 399–419.

Baroff, G. S., Gunn, M., & Hayes, S. (2004). Legal issues. In W. R. Lindsay, J. L. Taylor, & P. Sturmey (Eds.), *Offenders with developmental disabilities*. John Wiley & Sons, Ltd.

Berryessa, C. M. (2014). Judiciary views on criminal behaviour and intention of offenders with high-functioning autism. *Journal of Intellectual Disabilities and Offending Behaviour*, *5*(2), 97–106.

Berryessa, C. M. (2016). Brief report: Judicial attitudes regarding the sentencing of offenders with high functioning autism. *Journal of Autism and Developmental*

Disorders, *46*(8), 2770–2773. https://doi.org/10.1007/s10803-016-2798-1

Braatveit, K. J., Torsheim, T., & Hove, O. (2018). Screening for intellectual disabilities: A validation of the Hayes Ability Screening Index for in-patients with substance use disorder. *Nordic Journal of Psychiatry*, *72*(5), 387–392. https://doi.org/10.1080/08039488.2018.1468923

Bredal, A., & Stefansen, K. (2017). Barnahus for adults? Reinterpreting the barnahus model to accommodate adult victims of domestic violence. In *Collaborating against child abuse: Exploring the Nordic Barnahus Model* (pp. 311–330). Palgrave Macmillan. https://doi.org/10.1007/978-3-319-58388-4_15

Brown, P. (2019a). Modernising fitness to plead. *Medicine, Science, and the Law*, *59*(3), 131–134. https://doi.org/10.1177/0025802419863937

Brown, P. (2019b). Unfitness to plead in England and Wales: Historical development and contemporary dilemmas. *Medicine, Science and the Law*, *59*(3), 187–196. https://doi.org/10.1177/0025802419856761

Chaplin, E., McCarthy, J., & Forrester, A. (2017). Defendants with autism spectrum disorders: What is the role of court liaison and diversion? *Advances in Autism*, *3*(4), 220–228. https://doi.org/10.1108/AIA-08-2017-0018

Chester, V. (2018). People with intellectual and developmental disorders in the United Kingdom criminal justice system. *East Asian Archives of Psychiatry: Official Journal of the Hong Kong College of Psychiatrists = Dong Ya jing shen ke xue zhi: Xianggang jing shen ke yi xue yuan qi kan*, *28*(4), 150–158. https://doi.org/10.12809/caap1844

Cooper, P., & Allely, C. (2017). You can't judge a book by its cover: Evolving professional responsibilities, liabilities and judgecraft when a party has Asperger's Syndrome. *Northern Ireland Legal Quarterly*, *68*(1), 35–58. https://doi.org/10.53386/nilq.v68i1.21

Cooper, P., & Mattison, M. (2017). Intermediaries, vulnerable people and the quality of evidence: An international comparison of three versions of the English intermediary model. *The International Journal of Evidence & Proof*, *21*(4), 351–370. https://doi.org/10.1177/1365712717725534

Council of Europe/European Court of Human Rights (2019). *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)*. https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf

Dahl, N. C. (2018). *Rett forstått? - Politiets erfaringer fra avhør av mennesker med utviklingshemming*. NTNU.

Daniel, M. (1843). UKHL J16, 8 ER 718. http://www.bailii.org/uk/cases/UKHL/1843/J16.html

Department of Health (2009). *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*. Department of Health.

Esan, F., Chester, V., Gunaratna, I., Hoare, S., & Alexander, R. (2015). The clinical, forensic and treatment outcome factors of patients with autism spectrum disorder treated in a forensic intellectual disability service. *Journal of Applied Research in Intellectual Disabilities: JARID*, *28*(3), 193–200. https://doi.org/10.1111/jar.12121

Fazel, S., & Seewald, K. (2012). Severe mental illness in 33 588 prisoners worldwide: systematic review and meta-regression analysis. *The British Journal of Psychiatry: The Journal of Mental Science*, *200*(5), 364–373.

Forrester, A., & Hopkin, G. (2019). Mental health in the criminal justice system: A pathways approach to service and research design. *Criminal Behaviour and Mental Health : CBMH*, *29*(4), 207–217.

Forrester, A., Hopkin, G., Bryant, L., Slade, K., & Samele, C. (2020). Alternatives to custodial remand for women in the criminal justice system: A multi-sector approach. *Criminal Behaviour and Mental Health: CBMH*, *30*(2–3), 68–78. https://doi.org/10.1002/cbm.2144

Hallett, N. (2020). To what extent should expert psychiatric witnesses comment on criminal culpability? *Medicine, Science, and the Law*, *60*(1), 67–74. https://doi.org/10.1177/0025802419872844

Hayes, S. C. (1997). Prevalence of intellectual disability in local courts. *Journal of Intellectual & Developmental Disability*, *22*(2), 71–85. https://doi.org/10.1080/13668259700033311

Hayes, S. C. (2000). *Hayes Ability Screening Index (HASI) manual*. Department of Behavioural Sciences in Medicine, University of Sydney.

Hayes, S. C. (2015). *Hayes Ability Screening Index (HASI-NV) Manual*. HASI Publications.

Hellenbach, M. (2012). Learning disabilities and criminal justice: Custody sergeants'

perceptions of alleged offenders with learning disabilities. *British Journal of Learning Disabilities*, *40*(1), 15–22. https://doi.org/10.1111/j.1468-3156.2011.00677.x

Hellenbach, M., Karatzias, T., & Brown, M. (2017). Intellectual disabilities among prisoners: Prevalence and mental and physical health comorbidities. *Journal of Applied Research in Intellectual Disabilities: JARID*, *30*(2), 230–241. March 1). https://doi.org/10.1111/jar.12234

Helverschou, S. B., Søndenaa, E., Steindal, K., Rasmussen, K., Nilsson, B., & Nøttestad, J. A. (2014). Rettspsykiatrisk undersøkte med autismespekterdiagnoser: Alder ved identifisering og diagnostisk historie. *Tidsskrift for Norsk Psykologforening*, *51*(4), 282–285. https://psykologtidsskriftet.no/fagbulletin/2014/04/rettspsykiatrisk-undersokte-med-autismespekterdiagnoser-alder-ved-identifisering

Henshaw, M., & Thomas, S. (2012). Police encounters with people with intellectual disability: prevalence, characteristics and challenges. *Journal of Intellectual Disability Research : JIDR*, *56*(6), 620–631.

Herrington, V. (2009). Assessing the prevalence of intellectual disability among young male prisoners. *Journal of Intellectual Disability Research : JIDR*, *53*(5), 397–410. https://doi.org/10.1111/j.1365-2788.2008.01150.x

James, D. V. (2006). Court diversion in perspective. *Australian & New Zealand Journal of Psychiatry*, *40*(6–7), 529–538. https://doi.org/10.1080/j.1440-1614.2006.01835.x

Jones, G., & Talbot, J. (2010). No one knows: the bewildering passage of offenders with learning disability and learning difficulty through the criminal justice system. *Criminal Behaviour and Mental Health: CBMH*, *20*(1), 1–7. https://doi.org/10.1002/cbm.746

Lerace, M. (2010). *Fitness to be tried*. https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Papers by Public Defenders/public_defenders_fitness_ierace.aspx

Magistrates Court of Western Australia (Producer) (2019). *Intellectual disability diversion program court*. Magistrates Court of Western Australia.

Maras, K. L., Crane, L., Mulcahy, S., Hawken, T., Cooper, P., Wurtzel, D., & Memon, A. (2017). Brief report: Autism in the courtroom: Experiences of legal professionals and the autism community. *Journal of Autism and Developmental Disorders*, *47*(8), 2610–2620.

Marshall-Tate, K., Chaplin, E., McCarthy, J., & Grealish, A. (2020). A literature review about the prevalence and identification of people with an intellectual disability within Court Liaison and Diversion Services. *Journal of Intellectual Disabilities and Offending Behaviour*, *11*(3), 159–169. https://doi.org/10.1108/JIDOB-10-2019-0023

McCarthy, J., Chaplin, E., Forrester, A., Underwood, L., Hayward, H., Sabet, J., Young, S., Mills, R., Asherson, P., & Murphy, D. (2019). Prisoners with neurodevelopmental difficulties: Vulnerabilities for mental illness and self-harm. *Criminal Behaviour and Mental Health: CBMH*, *29*(5-6), 308–320. https://doi.org/10.1002/cbm.2132

McCarthy, J., Chaplin, E., Underwood, L., Forrester, A., Hayward, H., Sabet, J., Young, S., Asherson, P., Mills, R., & Murphy, D. (2016). Characteristics of prisoners with neurodevelopmental disorders and difficulties. *Journal of Intellectual Disability Research : JIDR*, *60*(3), 201–206. https://doi.org/10.1111/jir.12237

McCarthy, J., Underwood, L., Chaplin, E., Hayward, H., Mills, R., & Murphy, D. (2016). Screening for autism spectrum disorder in prison. *Journal of Intellectual Disability Research*, *60*, 7–8.

McKenzie, K., Michie, A., Murray, A., & Hales, C. (2012). Screening for offenders with an intellectual disability: The validity of the Learning Disability Screening Questionnaire. *Research in Developmental Disabilities*, *33*(3), 791–795. https://doi.org/10.1016/j.ridd.2011.12.006

Mckinnon, I., Thorp, J., & Grubin, D. (2015). Improving the detection of detainees with suspected intellectual disability in police custody. *Advances in Mental Health and Intellectual Disabilities*, *9*(4), 174–185. https://doi.org/10.1108/AMHID-04-2015-0015

Morrissey, C. (2018, October). *Offenders with intellectual disabilities in the criminal justice system* [Paper presentation]. 5th Bergen International Conference on Forensic Pychiatry, Bergen.

Morrissey, C., Geach, N., Alexander, R., Chester, V., Devapriam, J., Duggan, C., Langdon, P. E., Lindsay, B., McCarthy, J., & Walker, D.-M. (2017). Researching outcomes from forensic services for people with intellectual or developmental disabilities: A systematic review, evidence synthesis and expert and patient/carer consultation. *Health*

Services and Delivery Research, *5*(3), 1–102. https://doi.org/10.3310/hsdr05030

Morrissey, C., Langdon, P. E., Geach, N., Chester, V., Ferriter, M., Lindsay, W. R., McCarthy, J., Devapriam, J., Walker, D.-M., Duggan, C., & Alexander, R. (2017). A systematic review and synthesis of outcome domains for use within forensic services for people with intellectual disabilities. *BJPsych Open*, *3*(1), 41–56. https://doi.org/10.1192/bjpo.bp.116. 003616

Mottram, P. (2007). *HMP Liverpool, Styal and Hindley Study Report*. Available from the author from the University of Liverpool, The School of Population, Community and Behavioural Sciences, University of Liverpool, Liverpool.

Mudathikundan, F., Chao, O., & Forrester, A. (2014). Mental health and fitness to plead proposals in England and Wales. *International Journal of Law and Psychiatry*, *37*(2), 135–141.

Murphy, G., & Mason, J. (2014). Forensic and offending behaviours. In *Handbook of psychopathology in intellectual disability* (pp. 281–303). Springer.

NHS England (2019). www.england.nhs.uk/wp-content/uploads/2019/12/national-liaison-and-diversion-service-specification-2019.pdf

Norwegian Department of Justice (2019). *Endringslov til straffeloven og straffeprosessloven [Changes in the Penal code and the Criminal proceedings code]*. Norwegian Department of Justice.

NSW Law Reform Commission. (2010). *People with cognitive and mental health impairments in the criminal justice system: criminal responsibility and consequences*. NSW Law Reform Commission.

O'Mahony, B. M. (2010). The emerging role of the Registered Intermediary with the vulnerable witness and offender: Facilitating communication with the police and members of the judiciary. *British Journal of Learning Disabilities*, *38*(3), 232–237. https://doi.org/10.1111/j.1468-3156.2009.00600.x

O'Mahony, B. M. (2012). Accused of murder: supporting the communication needs of a vulnerable defendant at court and at the police station. *Journal of Learning Disabilities and Offending Behaviour*, *3*(2), 77–84. https://doi.org/10.1108/20420921211280060

Olsen, T., Kermit, P., Dahl, N. C., Søndenaa, E., & Envik, R. (2018). *Rettssikkerhet–likeverd og likeverdig behandling*. Bodø.

R v M (John) EWCA Crim 3452 (2003).

R v Pritchard (1836). 7 C. & P. 303.

Rogers, R., & Johansson-Love, J. (2009). Evaluating competency to stand trial with evidence-based practice. *The Journal of the American Academy of Psychiatry and the Law*, *37*(4), 450–460.

Rogers, T. P., Blackwood, N. J., Farnham, F., Pickup, G. J., & Watts, M. J. (2008). Fitness to plead and competence to stand trial: A systematic review of the constructs and their application. *Journal of Forensic Psychiatry & Psychology*, *19*(4), 576–596. https://doi.org/10.1080/14789940801947909

Scott, D. A., McGilloway, S., Dempster, M., Browne, F., & Donnelly, M. (2013). Effectiveness of criminal justice liaison and diversion services for offenders with mental disorders: A review. *Psychiatric Services (Washington, D.C.)*, *64*(9), 843–849. https://doi.org/10.1176/appi.ps.201200144

Scott, D., McGilloway, S., & Donnelly, M. (2016). A prospective comparative evaluation of a Criminal Justice Liaison and Diversion Service in Belfast. *The Journal of Forensic Psychiatry & Psychology*, *27*(2), 198–214. https://doi.org/10.1080/14789949.2015.1102313

Sentencing Council (2019). *Overarching principles: Sentencing offenders with mental health conditions or disorders consultation.* Sentencing Council. www.sentencingcouncil.org.uk

Sentencing Council (2020). *Overarching principles: Sentencing offenders with mental disorders, developmental disorders, or neurological impairments*. Response to consultation. www.sentencingcouncil.org.uk/wp-content/uploads/Mental-Health-guideline-response-to-consultation.pdf

Skarstad, K. (2018). Human rights through the lens of disability. *Netherlands Quarterly of Human Rights*, *36*(1), 24–42. https://doi.org/10.1177/0924051917753251

Smith, T., Polloway, E. A., Patton, J. R., & Beyer, J. F. (2008). Individuals with intellectual and developmental disabilities in the criminal justice system and implications for transition planning. *Education and Training in Developmental Disabilities*, *43*(4), 421–430. https://eric.ed.gov/?id=EJ819934

Søndenaa, E., & Spro, M. (2016). Lettere psykisk utviklingshemmede i strafferettslig forstand – En gjennomgang av alle registrerte saker fra Lovdata 2002– 2014. *Lov Og Rett*, *56*(08), 504–516. https://doi.org/10.18261/issn.1504-3061-2016-08-04

Søndenaa, E., Linaker, O., Bjørgen, T. G., & Nøttestad, J. A. (2010). Screening for intellectual disability among adults. *Tidsskrift for Den norske legeforening*, *130*(15), 1475–1477. https://doi.org/10.4045/tidsskr.09.0643

Søndenaa, E., Rasmussen, K., Palmstierna, T., & Nøttestad, J. (2008). The prevalence and nature of intellectual disability in Norwegian prisons. *Journal of Intellectual Disability Research*, *52*(12), 1129–1137. https://doi.org/10.1111/j.1365-2788.2008.01072.x

Søndenaa, E., Friestad, C., Storvik, B., & Johnsen, B. (2019). Criminal responsibility and challenges in the criminal justice system for people with intellectual disability in Norway. *Bergen Journal of Criminal Law & Criminal Justice*, *7*(1), 97–109. https://doi.org/10.15845/bjclcj.v7i1.2882

Srivastava, S., Forrester, A., Davies, S., & Nadkarni, R. (2013). Developing criminal justice liaison and diversion services: Research priorities and international learning. *Criminal Behaviour and Mental Health: CBMH*, *23*(5), 315–320. https://doi.org/10.1002/cbm.1888

Talbot, J. (2009). No One Knows: Offenders with learning disabilities and learning difficulties. *International Journal of Prisoner Health*, *5*(3), 141–152. https://doi.org/10.1080/17449200903115797

Talbot, J., & Jacobson, J. (2010). Adult defendants with learning disabilities and the criminal courts. *Journal of Learning Disabilities and Offending Behaviour*, *1*(2), 16–26. https://doi.org/10.5042/jldob.2010.0416

Taylor, I. L. A. (2011). *Fitness to plead and stand trial: The impact of mild intellectual disability*. UCL (University College London).

Van Kempen, P. H. (2018). *The Right to Fair Preliminary Investigation and Trial for Vulnerable Defendants*. The law of the European Convention on Human Rights, European Union Law and the Case of the Netherlands (July 12, 2018). In Ronnie Mackay & Warren Brookbanks (Eds.), *Fitness to plead: International and comparative perspectives* (pp. 231–253). (Oxford: Oxford University Press 2018) (Oxford Monographs on Criminal Law and Justice). Available at SSRN: https://ssrn.com/abstract=3287898

Vanny, K. A., Levy, M., Greenberg, D., & Hayes, S. (2009). Mental illness and intellectual disability in magistrates courts in New South Wales, Australia. *Journal of Intellectual Disability Research: JIDR*, *53*(3), 289–297.