SMGroup

Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment

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INTRODUCTION

Autism Spectrum Disorders (ASD) and Offending Behaviour

Research suggests that the prevalence of Autism Spectrum Disorders **(ASD)** is higher in the prison population when compared to the general population (e.g., [1]). However, there is relatively little empirical research investigating the association between violent crime and ASD with most peer reviewed literature exploring offenders with ASD involving case reports and criminal groups (e.g., [2-12]). Empirical research with this group of offenders is limited (e.g., [13,14]). Importantly, compared to the general population, follow-up studies suggest that there is no increased likelihood of committing violent crime in individuals with ASD [15,16] and, in fact, they are less likely to commit violent crime [17,18]. Additionally, a review of studies investigating violent offending in individuals with ASD found that a significant factor contributing to the offending was the existence of co-morbid psychiatric disorders [19]. Crucially, studies suggest that individuals with developmental disabilities such as ASDs are actually more at-risk of being the victim rather than the perpetrator of crime (e.g., [20,21]).

AUTISM SPECTRUM DISORDERS AND POLICE INTERVIEWING

During the police interview, individuals with high functioning ASD may not immediately be considered vulnerable as they can present as intellectually able and display a good use of language, which masks any underlying social impairments (e.g., R v Maxwell, 2007). Individuals with ASD

may experience significant difficulties in their ability to understand and cope with the demands the police make of them. Given the context of the closed social situation of an interrogative interview, the individual with ASD may also experience high levels of distress [22] which is then negatively misinterpreted. The National Autistic Society (2005) [23] carried out a study where the findings indicated that over 90% of police and solicitors have had no training to help them recognize and understand the behavioral symptoms of ASD [24]. It has been recommended that mental health professionals should provide expert evidence on ASD [25]. Compared to other interviewees without ASD, those with ASD may be more compliant and deferential than other interviewees, despite being intellectually able to understand questions and provide articulate responses [26]. Individuals with ASD may also have a heightened fear of authority figures that put them in situations where the interviewer's questioning style and manner is experienced as pressurizing [27]. For instance, the individual with ASD upon hearing the statement made by the investigating officer (police interviewer) "just admit it and it will all be over" may produce an inadvertent confession to a crime [28] just simply in order to get away from the situation that is causing them so much distress.

Research supports the view that individuals with ASD may be at increased risk of developing anxiety disorders [29,30] and are more at risk of developing depression and having low levels of self-esteem [31,32]. Higher levels of suspicion or mistrust of others may be exhibited in individuals with ASD [33]. These factors in some individuals with ASD may result in them questioning and resisting police demands and to exhibit responses which are considered 'rigid and unwavering' [22]. Moreover, changes to routine or a novel situation (such as being taken to a police interview room or being taken in for questioning in a police car) can produce significant distress in many individuals with ASD and these reactions may be considered by police officers as being hostile, strong indicators that the individual has criminal intent, or indications of substance abuse. There is guidance for the police when interviewing an individual with ASD which also lists ten common ASD behaviors which an officer may encounter including behaviors such as: impaired or no ability to speak; lack of eye contact; an insistence on sameness; an attachment to objects which is considered obsessive; self-stimulating behavior such as hand flapping, body rocking, or attachment to objects; inappropriate behavior (for instance, laughing during a serious situation such as a police interview or during court proceedings); no sense of fear in response to danger; hypo- or hyper sensitivity in response to pain; tantrums (often referred to as 'meltdowns') or escalated behavior for no apparent reason and a preference to be alone [34]. A description of some of these behaviors is also provided:

"One characteristic of ASD poses a particular problem in encounters with law enforcement. 'Escalation,' or meltdown, describes the response of a person with ASD under stress or in an unfamiliar situation. Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down. The individual may 'cover [] his or her ears and shriek [], not knowing how or where to get help.

”This expression of fear, frustration, and confusion frequently appears like a child’s tantrum that has ‘escalated’ out of the control of adult caregivers”. [Excerpt originally from “What Happened to ‘Paul’s Law’?: Insights on Advocating for Better Training and Better Outcomes in Encounters Between Law Enforcement and Persons with Autism Spectrum Disorders, by Elizabeth Hervey Osborn, 79 Univ. of Colorado Law Review Issue 1, 333 (Winter 2008)] [34].

Advice is provided on not only identifying behaviors commonly exhibited in individuals with ASD but also on how police should respond to a call, restrain and interview potential suspects (or witnesses) [34]. The advice on how to respond to a call helps ensure the safety of not only the police officers involved but the individual themselves. Advice includes the following:

- Make sure the individual is unarmed and maintain a safe distance
- Model the behavior you want the person to display
- Use a quiet non-threatening voice
- Use simple language
- Avoid touching, if possible
- Allow for delayed response
- Turn off lights and sirens, if possible
- Talk to people who know the person with autism, such as caregivers
- Allow an agitated individual with ASD to calm down without your intervention, if possible, and give them extra personal space [35].

An example of a scenario would be when an individual with ASD is stopped by police for speeding. They may unintentionally “communicate defiance and lack of respect in the mind of the officers.” [36]. For instance, after being pulled over and asked by police “Do you know how fast you were going?”, an individual with ASD may respond “Yes” [37].

Memory in Individuals with Autism Spectrum Disorder

Over the last half a century, there have been a growing number of studies which have found that individuals with ASD experience specific memory impairments which ultimately influences the way they perceive, understand, interpret and also reconstruct everything around them [38]. Interestingly, there have been a few studies which have also found that some individuals with ASD exhibit some difficulty in remembering the temporal order of events. Therefore the ability to recall the temporal sequence and relationship between events is impaired while recall is unimpaired. Empirical investigation of the ability of individuals with ASD to recall complex sequences of events or detail is sparse [39].

Recently, researchers have highlighted the unique memory profile of individuals with ASD

in that some memory processes are impaired while others appear to be spared [40]. So while some of the memory processes are intact including: cued recall (e.g., [41]), priming (e.g., [42]), recognition (e.g., [43]) and memory for facts (e.g., [44]) others are impaired [40] such as source monitoring (e.g., [45]) episodic recollection and the ability to recall personally experienced events (e.g., [46,47]). One study found an impaired ability to consciously recollect events in individuals with ASD and that this group has a tendency to guide their memory based on feelings of familiarity [46]. This may lead to something being incorrectly judged to have been witnessed when that suggested detail creates a feeling of familiarity. A predisposition towards complying with the interviewer in order to please them may also be more likely in individuals with ASD [48] as a result of, for instance, their potential increased social anxiety stemming from their impaired social skills (e.g., [49]).

Interviewing Techniques

One of the most popularly used forms of interviewing techniques is the Cognitive Interview **(CI).** One of the main elements of CI is referred to as 'context reinstatement'. Context reinstatement involves the interviewer providing the witness with verbal instructions in order to aid the witness in mentally recreating what they experienced during the actual event (both the personal and physical context). The effectiveness of this technique led to the United Kingdom's Home Office (2002) publishing guidelines which recommend the use of the CI when interviewing witnesses who are considered vulnerable (which include individuals with ASD). However, studies have indicated that the CI is not particularly effective for individuals with ASD. In the first study to investigate the CI for use with ASD individuals, Maras and Bowler (2010) [50] investigated 26 adults with ASD compared to 26 matched typical adults. Participants were asked to watch a video of an enacted crime, and were then interviewed using either the CI method, or a Structured Interview **(SI)** without the CI mnemonics. Findings suggested that individuals with ASD, when interviewed using the SI method, are as accurate and report similar level of details when compared to the group of typical adults. There were no differences between the groups on the quantity or quality of their reports when interviewed with a SI. However, the ASD group was significantly less accurate (reporting more incorrect details) and failed to increase the number of correct details when interviewed with a CI when compared to their typical counterparts. One suggestion for this may be that the instructions given during the 'context reinstatement' (e.g., when asked to recall all the contextual details surrounding the event) 'overloads' witnesses with ASD who already have significant difficulties with filtering out information which is relevant from all the irrelevant information they experience [51]. This study highlights that the CI should be used with caution on individuals with ASD [50].

Another study found that, in some contexts, individuals with ASD may exhibit greater levels of compliance which may mean that they are at greater risk of complying with interrogative pressures. In their study, North and colleagues (2008) [22] compared 26 individuals with high functioning

ASD with 27 gender- and IQ-matched controls on measures of interrogative suggestibility (The Gudjonsson Suggestibility Scale 2, GSS 2; [52]) and compliance (The Gudjonsson Compliance Scale **(GCS**; [53]). In addition they measured levels of anxiety, depression, the extent to which they feared negative evaluation by others and also trait suspiciousness/tendencies to mistrust others using the Paranoia Scale [54]. Findings revealed no significant differences between the groups on the measure of suggestibility (individuals with ASD were not found to yield more readily to misleading information or to respond to direct negative feedback by the interviewer). However, the group with ASD had higher scores on measures of depression, anxiety, fear of negative social evaluation and paranoia. Importantly, the group with ASD was rated as significantly more compliant than the controls based on both parental and self-report. In a police interview this may lead the individual with ASD to make statements which are erroneous and self-incriminating [55]. The high compliance score, when compared to the gender-and IQ-matched controls, in the ASD group members may also suggest that they would be more easily led, manipulated, or coerced into engaging in criminal behaviors by others [56]. This theory would be consistent with Howlin's (1997) [57] taxonomy theory of deliberate exploitation by others as one possible explanation for why individuals with ASD engage in criminal behavior [22]. A small number of studies have investigated suggestibility to misinformation (e.g., hearing false details about a previously witnessed event) and suggestive questioning styles (e.g., 'Describe her pink jumper?') in both children and adults with ASD. Findings across all the studies were consistent in that individuals with ASD were not found to be any more suggestible than those individuals without ASD on the same intellectual level [58-60].

The Self-Administered Interview **(SAI)** technique is a modified version of the CI. With the SAI, unlike the CI, there is no interactive social element of the interview. This allows the interviewee to record their memories themselves, guided by specific instructions and questions and this interviewing process might be more effective in facilitating the recall in individuals with ASD. Empirical research does not support this however. For instance, Maras and colleagues (2014) [51] found that SAI is not effective for witnesses with ASD. Interestingly though, they found that the component of the SAI which involves the 'sketch plan' did elicit more correct details from the ASD group, although compared to the comparison group, to a lesser degree. Participants are asked, in the 'sketch plan' component, to generate a graphical representation of the general layout of the scene they had previously seen [51]. Moreover, Mattison and colleagues (2014) [61] also explored this in their study comprising of 45 children with ASD and 45 matched typically developing children. They found that 'articulated sketching' (which involves asking the child to sketch anything that they feel would aid them in their ability to remember what they saw) in order to reinstate the context does appear to aid children with ASD in their recall of an event. Specifically it increased how much information they could recall without increasing the number of inaccurately reported details [61].

AUTISM SPECTRUM DISORDER IN THE COURTROOM

Relatively little research in the United Kingdom and across the world has focussed on investigating the prevalence of learning disabilities in defendants. Defendants with learning disabilities may be particularly vulnerable during court proceedings [62]. The existence of two components are required to determine an individual's criminal responsibility, namely, criminal act (actus reus) and criminal intent or intent to cause harm (mens rea). In a criminal case, the prosecution is required to evidence that these two components are present in order to substantiate their argument that the offender is criminally responsible. Current standard practice for the defense of mental illness in the majority of Anglo-American jurisdiction is based on the McNaughten rules which states that: "A person is not responsible for criminal conduct if at the time of the act he was laboring 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" [63,64].

In Australia, forensic psychiatrist, Dr Sale instigated forensic attention to ASDs following his conclusion that Martin Bryant, the murderer of 37 people at Port Arthur in Tasmania in 1996, had Asperger's Syndrome **(AS)** [65]. Following this case, there have been increasing attempts in courts in Australia and in other countries to argue for the individual with Asperger's lack of criminal responsibility or to argue that their culpability is not equal to neuro-typical defendants [27]. Understanding and recognising the potential impact that ASD has on criminal responsibility, mental capacity, fitness to plead and the ability to bear witness is important [66]. There is a paucity of studies and literature relating to this which has resulted in an inadequate understanding of the importance of considering ASD in relation to these different legal aspects. For instance, regarding mens rea, it could be considered that some individuals with ASD have an impaired understanding of the consequences of their actions to such a degree that they cannot be considered to be morally (or criminally) responsible for their offending behavior [6,67]. The broad capacity which is required by United States courts to determine fitness to plead would be significantly complicated (if not impossible) to establish in many individuals with ASD, particularly those with AS [6]. This difficulty is also the case when applying the criteria in British courts to this particular group of defendants which further emphasises the need for research in this area to aid clinicians when making decisions about fitness to plead [13].

Individuals with ASD can have impaired impulse control and empathy which results in the individual failing to appreciate the consequences of their behavior and act ''without thinking'' [68,27] and have reduced ability or none to inhibit inappropriate behavior [69,39]. Despite these well-known impairments, individuals with ASD or AS are usually considered fit to stand trial due to the fact that the threshold for fitness to stand trial, in the majority of jurisdictions, is fairly low [25]. However, there are many features of ASD that may have a negative impact on the judge and jurors' perception of the individual. For instance, the language of individuals with ASD

can be easily misinterpreted and viewed as eccentric, tangential and unnecessarily formal [27]. They may inadvertently give the impression that they are not interested and/or arrogant during court proceedings. Understanding that these behavioral characteristics stem from autism traits is important in order to reduce the negative impact this could have on the individual in terms of how they are interpreted and treated in the criminal justice system [70], or how they are judged during the court proceedings [39] by both the judge and the jury. In some individuals with high functioning ASD, they may exhibit a lack of inter subjective resonance, or empathy given their impaired ability to understand the subjective experiences of others [71,72]. Numerous neuro-imaging studies indicate that there are a variety of brain regions which are considered to underlie social cognitive processing. Specifically, brain regions which are believed to be impacted by ASD include: the amygdala, the prefrontal cortex and the fusiform gyrus [73,74]. Information on the possible neuropsychiatric abnormalities associated with the social cognitive impairments often exhibited in individuals with ASD, such as Theory-Of-Mind **(ToM)** deficits, may be important information for understanding some criminal behavior [68] and may potentially be of relevance for determining culpability. ToM refers to the ability to attribute mental states (such as beliefs, intents, pretending, desires, or knowledge) to themselves and others and to understand that others have beliefs, desires, intentions, and perspectives which are different from their own.

Lastly, The Advocacy Training Council and the Legal Education Foundation funded the development of a toolkit which brings together policy, research and guidance on: memory issues in autism; witness testimony in autism; questioning someone who has autism and sensory issues in autism [75]. For instance, some of the guidance includes avoiding complex questions which may cause confusion. One of the advice points suggests avoiding stacked and multi-part questions (e.g. 'Was Paul at the park when you arrived and did he stay there?') and instead recommends that the interviewer asks one point per question (e.g., 'Was Paul at the park when you arrived? Did Paul stay in the park?') [75].

THE IMPACT OF THE PRISON ENVIRONMENT ON INDIVIDUALS WITH ASD

Relatively few studies have investigated the difficulties experienced by offenders with ASD when they enter the prison system (e.g., [68]). It is yet unknown what the prevalence rate of ASDs in prisons are [76]. Hostility, violence, gang activity are just some of the negative aspects of the prison environment [77,78]. The prison environment can be more complex and challenging for individuals with ASD due to a number of different autism traits (e.g., obsessions, compulsions, difficulties in communicating with others) that can result in problems in their day-to-day living. It has been suggested that individuals with ASD may be more vulnerable to experiencing bullying, exploitation, social isolation and altercations with other inmates [23]. Having a developmental disability has also been indicated to increase the risk of sexual victimization in prison [79] and to reduce levels of empathy from the prison staff [80,81]. The sensory sensitivities that many

individuals with ASD experience may be compounded in the prison environment. In prison there is harsh lighting and it is usually very noisy [82].

A recent review of studies investigating the services and experiences of individuals with neurodevelopment disorders (particularly ASD) identified a paucity of studies in this area - only four [83] but two did not focus on the experience of the prison environment on individuals with ASD. One was an evaluation of a screening instrument for autism spectrum disorders in prisoners [84] and the other explored the knowledge and understanding of the autism spectrum amongst prisoners [85]. Allely (2015) [86] even more recently, conducted a thorough review of the literature and only four studies were identified which looked at the experiences of individuals with ASD in prison. One of the studies which specifically looked at the experience of individuals with ASD [87] was identified in the earlier review by Underwood and colleagues (2013) [83]. The other three studies identified in this recent review were not in the previous review [88-90]. In 1977 Ross Gordon (2002) [88] started a life sentence in an English prison for committing murder. After almost 25 years in prison, Gordon wrote an account of his prison experience. He came to prison with a diagnosis of schizophrenia and antisocial personality disorder. However, when evaluated by the prison psychiatrist for informing parole, he was told he actually met the diagnostic criteria for AS. Identifying his misdiagnosis was considered by Gordon to be one positive aspect of prison. However, he wrote about a number of negative aspects of prison such as how he frequently felt scared and found it difficult to understand the non-literal language used by other inmates [88]. Another study carried out by Allen and colleagues (2008) [89] involved a qualitative approach to exploring the experiences of four participants with ASD who had served some time in prison. All four participants reported general difficulties including: missing their family, having difficulties making friends with other inmates, or problems with roommates and prison staff. Arguably these negative experiences are reported by all prisoners. However, these experiences potentially have a greater detrimental impact on individuals with ASD compared to individuals without a diagnosis of ASD. Positive aspects of prison were reported such as the structure it provided. In response to what could be improved on, participants primarily suggested an increased understanding of AS among prison staff to increase quality of support. In another study, Paterson (2008) [87] explored two cases of prisoners with AS in the United Kingdom to investigate difficulties faced and the perceptions of prison life in individuals with ASDs. Limited resources available for inmates with ASDs were highlighted in this study. This study provided insight into how ASDs traits such as obsessive compulsive traits, poor social skills, poor empathy ability, and difficulty with reading social situations can impact on how the offender is able to cope in the prison environment. Additionally, Morris (2009) [90] carried out the only study to date which explored the experience of inmates with ASD (specifically AS) while they were in prison rather than retrospectively. Qualitative interviews were conducted with five inmates (four male and one female, all Caucasian), from the Oregon Department of Corrections. Relational problems (relationship difficulties with both inmates and prison staff) and the lack of freedom were the two main areas where the individuals experienced difficulties. Some of the perceived benefits

included reduced financial stress, increased safety, more time to reflect on and appreciate life, access to medication and the routine/structure provided in prison [90].

The National Autistic Society (2007) [91] and The Royal College of Psychiatrists (2006: 24) [66] both highlighted that for individuals with ASD, the routine and familiarity provided by secure establishments are reassuring and may even be seen as a relief. Upon their release this may lead to difficulties as their routine and what they considered reassuring is taken away. Therefore, appropriate support and attention is required to prevent the revolving door effect [91].

Knowledge and Understanding of the Autism Spectrum Disorder amongst Prison Staff

To date, there has only been one study which has explored prison staffs' knowledge and understanding of ASD [92]. In part of a review of the literature, Allely (2015) [86] identified only one peer reviewed study which explored the knowledge and understanding of ASD amongst prison staff [85]. McAdam [85] identified five prisoners with a diagnosis of an ASD (four with a diagnosis of AS and one with autism) over six months in one of the largest prisons in England. Two of the five seemed to need little support but the other three struggled significantly with the prison environment. Overall, the study by McAdam (2009) [85] emphasised that in prison, many individuals with ASD do not receive the appropriate care that they need.

SUMMARY

Overall, there is a growing recognition of ASD within the criminal justice system [93]. There is increased recognition that the ability to negotiate the criminal justice process may be particularly complex and difficult for individuals with ASD. This can be exacerbated by the hidden nature of their impairments in that their relatively good verbal abilities may mask their underlying socio-communicative impairments [89]. Therefore, when being interviewed by police or while being questioned during court proceedings, vulnerabilities in adults are not always identified [94]. Additionally, Mayes (2003) [95] and Freckelton (2012; 2013) [96,97] argue that some autism traits almost certainly impact on a individual's fitness to plead, their culpability, their criminal responsibility and also their ability to cope with custodial disposals. Nevertheless, not all Courts take into consideration expert witnesses' statements regarding the impairments faced by their clients with ASD [98]. Lastly, studies indicate that in the prison environment, individuals with ASD are more vulnerable to bullying and social isolation. However, very few studies to date have investigated this and there has been no empirical investigation, only case reports involving very small samples investigated primarily using questionnaires and/or observation.

RESOURCES

Autism: A guide for criminal justice professionals: This guide provides background information about ASDs and is useful for professionals working in the Criminal Justice System (such as police officers, solicitors, barristers, magistrates, justices of the peace, the judiciary and the courts) who may come into contact with individuals with ASD.

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