

Persons with Intellectual Disability in Prison

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The closure of mental hospitals over the past 60 years has seen the census of these programs decline from about 560,000 in 1955 to about 40,000 in 2014 (Lutterman & Manderscheid, 2017). Mental health deinstitutionalization was not accompanied by investments necessary to ensure the successful community integration of individuals with mental health disorders. Many people discharged from state hospitals without sufficient supports ended up homeless and sleeping on the streets. This brought them into contact with the justice system, and introduced the justice system to its new role as asylum (Goffman, 1956) for individuals with mental health challenges. The justice system now houses 3-4 times as many people with mental health conditions than do the remaining state mental hospitals (Lutterman & Manderscheid, 2017). It is estimated that one in five current prisoners has some form of mental illness.

In contrast with the deinstitutionalization in the mental health area, deinstitutionalization in the intellectual disability area has generally been implemented with significantly greater attention to ensuring the provision of necessary supports and services. Conroy and Bradley (1985) describe in detail both the planning and the outcomes associated with court ordered transfer of individuals with intellectual disability from Pennhurst Developmental Center to small homes in the community. The deinstitutionalization of persons with intellectual disability stands as one of the few social programs with demonstrable empirical support for attaining goals.

Despite the planning and despite the provision of additional resources and supports for people with intellectual disability in the community, we find that people with intellectual disability are overrepresented in the criminal justice system. An IQ score below 70 is one of the key determinants of a classification of intellectual disability (Schalock, et al, 2010). Approximately 2% of the general population has an IQ score below 70. A second key determinant of intellectual disability (Schalock, et al, 2010) is adaptive behavior deficits (i.e., activities of daily living), and the inclusion of this second determinant is thought to reduce the overall prevalence of intellectual disability to somewhere between 0.5% and 1% of the population.

A variety of studies have attempted to estimate the proportion of current prison/jail populations that is comprised of persons with intellectual disability. Results vary considerable, with most estimates placing the prevalence of intellectual disability in the justice system between 4% and 10% (Weiss, 2013; Davis, 2019; Veneziano & Veneziano, 1996; Murphy, Chiu, Triantafyllopoulou, Barnoux, Blake, Cooke, Forrester-Jones, Gore & Beecham, 2017). This phenomenon is not solely an American problem (Cockram, Jackson, & Underwood, 1998)., with similar values being reported in Spain (Tort, Duenas, Vicens, Zabala, Martinez,& Romero, 2016), Wales (Hayes & McIlwain, 1988), England (Hayes, Shokell, Matron, & Lancaster, 2007), Ireland (Gulati, Clarke, Delcellier, Meagher, Kennedy, Fistein, Boque, & Dunne (2018), Norway (Sondenaa , Rasmussen, Palmstierna, & Nottestad, 2005) and Australia (Brolan & Hurley, 2018). If one accepts the midpoint prevalence estimate of 7%, this would suggest that the number of individuals with intellectual disability currently in prisons and jails exceeds expectations by about 700%! Some theorize that, as other institutions for people with

disabilities have closed their doors or lost funding, they have been replaced by prisons as a place to segregate more challenging people with disabilities (Russell & Stewart, 2001).

According to U.S. Bureau of Justice Statistics there were 2,298,300 individuals incarcerated in prisons or jails in 2016. Applying the 7% prevalence rate of intellectual disability in prisons to this population, one can estimate that there may be as many as 160,881 individuals with intellectual disability living in prisons and jails in the United States. The 1% intellectual disability prevalence would suggest that a figure of about 23,000 would be expected.

Why So Many?

Snell, et al. (2009) noted that people with intellectual disability often have a desire to please others, and this can lead them to agreeing to risky or inappropriate behavior in order to please another. Along these lines, Davis (undated) suggested that criminals will often lure persons with Intellectual disability into their criminal ventures. People with intellectual disability are sometimes accepting these offers, seeking support, friendship, and pay. This tendency to non-critically accept directives may be compounded by naiveté/suggestibility that lead the individual to accept a suggestion or command from another because that person is perceived of as having power. It is precisely these personality characteristics, typically evident in persons with intellectual disability and relatively higher IQ scores (Snell, et al, 2009), that make the individual vulnerable to coercion into criminal activity.

Systems factors must also be considered. According to a recent ANCOR report (2019), there are currently over 400,000 individuals with intellectual disability who are listed on waiting

lists for services and supports. For some, the lack of adequate funding for needed supports and services results in homelessness (Savage, 2015). Living on the streets, these individuals are victimized by criminals, and some engage in criminal behavior themselves as a means to address their absence of supports. Transgressions, even of a minor nature, can result in incarceration, with the root cause being the lack of funding for needed supports and services., rather than something inherent in the individual who has intellectual disability.

Perske (1991) reviewed problems related to the interactions between police and individuals who have intellectual disability. He noted that police often misunderstand the responses of individuals who have intellectual disability, and the individuals with disability themselves misunderstand the situation in which they find themselves. Individuals with intellectual disability who are arrested may exhibit an inordinate desire to please authority figures, an inability to participate in abstract thought, failure to observe interrogators for clues regarding responses, a longing for friendship, memory gaps, impaired judgment, and problems with receptive and expressive language. In addition, they often lack understanding of rights, court proceedings, or punishment. They may confess to crimes they did not commit. Weiss (2013) noted that once arrested, individuals with intellectual disability are more likely to be convicted and sentenced than other individuals. Once time has been served and release to a halfway house would be expected, persons with intellectual disability are often denied this release because no halfway house wishes to accept them.

While the above three paragraphs focus on the possible victimization of the person with intellectual disability who is involved in criminal behavior, another explanation for the link

between intellectual disability and criminal behavior is that the individual with intellectual disability may have learned the instrumental value of criminal behavior. Whether this involves stealing needed supplies or forcing others to engage in behavior, it must be recognized that individuals who have intellectual disability do understand the utility of criminal behavior. This awareness may be compounded by personal characteristics such as impulsivity, low social skills, or difficulty reading social cues (Mallett, et al. 2011). Other contributing characteristics may be short attention span, and hyperactivity (Evans, Clinkinbeard, and Simi 2015).

A number of studies have examined the linkage between significantly subaverage IQ and criminality. Moffitt, et al. (1994) reported that reduced cognitive functioning predicted criminal behavior. Hawkins, et al (2000) reported that low IQ was a predictor of violent behavior. None of these studies suggest a causal linkage between low IQ and criminality. It is likely that other factors associated with low IQ (impulsivity, poor judgment, desire to please, etc.) drive the causal relationship, however, even this statement is conjecture. It is likely that factors other than intellectual disability itself that lead individuals to criminal behavior. Ultimately, there are a multitude of reasons that individuals with intellectual disability may engage in criminal behaviors. Some are instrumental, some are situational, and some are simply a function of limited cognitive skills to understand and resist dangerous situations.

Jail is not a place to live for people with Intellectual Disability

When one considers various sets of state intellectual disability regulations governing the support and treatment of persons with intellectual disability, several commonalities emerge. There should be a treatment team comprised of professionals with specialized knowledge of disabilities, the individual being supported or treated, and friends and family members as the individual wishes. That team, with input from the individual, should establish goals and treatment/support methodologies with which to attain those goals. These goals may be habilitative, behavioral, social, vocational, and on and on. Strategies should be implemented, and progress should be monitored in an objective manner. These standards pertain to programs specifically licensed as providers of intellectual disability services; they do not pertain to prisons. There is no right to habilitative treatment in prison (although there appears to be a strong expectation if not a right for treatment of mental health conditions). A prisoner with intellectual disability must be accorded the same degree of access to services and activities as all other prisoners, but no specialized services are mandated.

Prisons have a limited set of responsibilities towards individuals who have disabilities. The Americans with Disabilities Act has repeatedly been applied to prison conditions, and it is now clear that prisons must ensure equal access to offered supports and services for individuals who have disabilities (Weiss, 2013). It is not clear, however, what those services are to be, and there is little to suggest that these services might include habilitative instruction.

Regardless of one's opinion regarding the societal role of prisons, it seems reasonable to conclude that a prison is a less than ideal place to treat a person who requires substantial

supports and services to function. Intellectual disability is essentially defined as a condition that requires such supports. To place that individual in a setting that is devoid of such needed supports and habilitative services neither benefits the person nor extracts appropriate retribution for the individual's offenses. In many cases, one might argue that it was the absence of these needed supports and services that were the root cause of the criminal behaviors that led to imprisonment.

What can be done?

Provision of Supports and Services - It must be recognized that for most individuals, intellectual disability is a chronic, life-long condition. The impact of intellectual disability is ameliorated by the provision of supports and services. The provision of supports and services as determined by the individual's treatment team (including the individual) will develop skills to resist solicitations to participate in criminal behavior, develop socially acceptable ways to meet wants and needs, and occupy time. The provision of supports and the elimination of waiting lists should reduce the number of people with intellectual disability in prison.

Provision of legal supports – Perhaps the greatest contribution that a disabilities rights organization might make would be to directly advocate for the legal rights of individuals who have been arrested. As noted above, individuals with intellectual disability often fall victim to the justice system because they don't understand the ground rules. They have need for an advocate from the moment of arrest. Along the same line, police need training in how to interview and collect reasonably accurate information from individuals who have intellectual disability.

Meaningful Days –Society needs to ensure that people with intellectual disability are actively engaged in some sort of meaningful endeavor each day. Despite current efforts to close sheltered workshops, it must be recognized that endeavors such as those do provide meaningful day activity for individuals. Certainly alternatives to workshops exist, but it should be recognized that meaningful activity minimizes the opportunity for criminal activities.

Socialization - Gullibility is a defining characteristic of people with less significant forms of intellectual disability. Individuals must be taught suspicion and how to develop meaningful relationships with others.

Community is not for everyone – Over the past 50 years, America has made tremendous strides towards the integration of people who have intellectual disability. It must be recognized that there are individuals whose behavior functions as a significant barrier to placement within the community. In the general population, these individuals are sent to jail. Among persons with intellectual disability, prison seems to be an inappropriate option because it doesn't provide needed supports and services. Instead, individuals with extreme forms on intellectual disability need to be supported/served via a population health management approach that focuses on the specific population and the interrelated conditions and factors that influence health (broadly construed) over the course of a lifetime (Kindig and Stoddart,, 2003)

Funding - Underfunded and insufficient services for individuals with intellectual disability and/or mental health needs result in a greater likelihood of incarceration. Ultimately, society is paying to support these individuals in prisons and hospitals. One must ask whether

society would be better served by funding the supports and services that individuals need. This might not only reduce the need for incarceration, it could improve quality of life, maintain safer living environments, and preserve humane freedom while avoiding taxing an already overwhelmed and underprepared criminal justice and medical system.

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