A Review of Non-custodial Interventions with Offenders with Intellectual Disabilities

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Introduction

People with intellectual disabilities are over-represented in the criminal justice system in every Western jurisdiction in which research has been conducted, compared with the community prevalence of intellectual disability, which is estimated to be 1-3% (Hayes & Craddock 1992). The American Association on Mental Retardation (AAMR 2002) definition of intellectual disability (referred to as mental retardation by the AAMR) indicates that the disability is characterised by significant limitations both in intellectual functioning and in adaptive behaviour as expressed in conceptual, social, and practical adaptive skills, a standard score of 70 (two standard deviations below the mean) usually being accepted as the cut off for intellectual disability. Thus, in order to make a diagnosis of intellectual disability, both cognitive and adaptive skills must be assessed.

In New South Wales, recent figures indicate that about 19-20% of the prison population has an intellectual disability, an increase of nearly 8% since the late 1980s when research was first conducted (Hayes 2000). In the USA, the prevalence is estimated as being between 4-14% of the prison population (Petersilia 1997), although the prevalence rates are mainly based on administrators' estimates rather than samples of prison populations. Petersilia (1997:36) maintains that the numbers appear to have doubled in the USA in a decade, and are likely to increase further, owing to a number of factors including an apparent increase in the prevalence of intellectual disability in low income populations, greater numbers of young people (especially minority groups) coming under 'correctional control', continuation of de-institutionalisation along with a lack of properly resourced community and mental health services, and inadequate diversionary programs at all points throughout the criminal justice process.

In the United Kingdom, low rates of intellectual disability amongst the prison population are reported, whereas rates of offenders with intellectual disability incarcerated in secure psychiatric hospitals and units are fairly consistent with imprisonment rates in other nations, at 16% (Taylor et al 1998). Thus, in the UK, over-representation of people with intellectual disabilities in the criminal justice system is occurring, but precise statistics cannot be established until coordinated research occurs in psychiatric hospitals, secure units and prisons.

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Complicating the general issue of over-representation is the finding that the recidivism rate for this group is high, and for sex offenders with intellectual disability lies between 40–70% (Klimecki et al 1994; Lindsay & Holland 2000). Given this level of recidivism, a longitudinal study of prevalence, or research involving a number of different services, may include the same offender serving a sequence of brief sentences either in prison or community-based services, and therefore the true prevalence could be over-estimated.

Two important issues arise from research into the disposition of offenders with intellectual disabilities in Western jurisdictions. First, the design of research studies, including clear definition of the term 'intellectual disability', is important in determining an accurate rate of over-representation. One well-designed research study (Carey et al 2000), conducted with full cooperation from Irish corrective services, sampled 10% of the total prison population in every prison, and found that 28.8% of the sample scored below 70 on intelligence tests. This study avoids many of the usual pitfalls that be-devil research in this area, such as the inclusion of inmates pre-selected according to some criteria or nominated for participation by corrective services officers, non-random samples of inmates that might favour inclusion of non-disabled inmates, omitting to sample some prisons in a system (prevalence rates of intellectual disability can vary in different prisons or even amongst sections of one prison), administration of group tests of intelligence (individual tests usually indicate a higher rate of intellectual disability), use of un-normed and un-validated assessments of intelligence (including estimates by administrators), administration of tests by non-psychologists, and exclusion from the sample of some problem groups such as protection prisoners, non-English speakers and psychiatrically disturbed prisoners. Even this study had a major limitation, however, in neglecting to assess adaptive behaviour skills. Only through well-planned and thorough research can an accurate picture of the prevalence of intellectual disability in criminal justice populations be obtained, which is essential in planning resources and services. Furthermore, information about the prevalence of intellectual disability at various points in the criminal justice system is vital, if equitable treatment within the system and in respect to sentencing is to be achieved (Hayes 1996).

Secondly, diversion from the criminal justice system is not always the best option for people with intellectual disabilities who commit crimes. The checks and balances built into any diversionary scheme need to be carefully examined in order to ensure that human and civil rights are not violated when people with intellectual disabilities are held in hospitals and secure units without trial, without regular reviews, and without a finite term of incarceration (Hayes & Craddock 1992).

Opportunities for intervention with offenders with intellectual disabilities

Preventative intervention

The New South Wales Parliamentary Committee on Law and Justice conducted an enquiry into crime prevention through social support (NSW Parliament 1999: Chapter 8), devoting some attention to crime prevention and people with intellectual disabilities. Strong evidence supports early intervention strategies targeting behavioural disturbances, and aimed at preventing involvement with crime; such strategies are cost-effective for the potential offenders, families, victims and the community (Rand Research Brief 1997). An example of an effective early intervention is provision of training for parents in strategies for managing challenging behaviours. Other strategies which reduce the incidence of offending and are cost-effective include incentives for young people to remain at and graduate from high school, close supervision of delinquents by juvenile justice services, early home-visit

and day-care programs, early intensive programs to identify and address behavioural difficulties that occur at pre-school age, and prevention of violence and abuse in families, which is emulated by the children in the family. These types of early intervention must be implemented in a comprehensive and thorough manner, and be available to every family and young person requiring assistance (Rand Research Brief 1997).

At time of arrest

Police generally receive little training about intellectual disability, and often experience difficulty interviewing a person with an intellectual disability who is a suspect or victim of crime. One approach to assisting police has been trialled by the Illawarra Disability Trust (Shaddock & Shaddock 1998), which established the Intellectual Disability Expert Assistance Line (IDEAL). IDEAL provides a 24-hour emergency support service for people with intellectual disabilities who become involved with police, and utilises support persons to attend police interviews with the interviewee who has an intellectual disability; a similar scheme is operated by the Victorian Office of the Public Advocate (Office of the Public Advocate 2003). The Illawarra scheme offers diversionary options where appropriate and possible, so that the offender can attend social and educational skills programs, and counselling. The scheme also incorporates a police training component. A review of the project indicates the service is under-utilised, a major reason being the inability of police to identify an interviewee who has an intellectual disability. Police are reluctant to involve a third party in the interview, and claim that there are time constraints in 'getting a result' when investigating a crime. The turn-over of police officers means that many police new to the area are unfamiliar with the service. Lack of awareness of the scheme is not confined to police, as many families of accused persons with an intellectual disability surveyed indicate that they have not heard of the service and therefore do not access it on behalf of their family member. Finally, the service is under-resourced, with too few professional staff supporting the volunteers who attend police stations or court hearings with the clients.

Police in-service training about intellectual disability and appropriate resources tends to be plagued by difficulties (Shaddock & Shaddock 1998), especially when training days are not mandatory and there is no reward for officers in terms of contribution to pay increases or promotion. Recalling complex information is difficult, and alternative forms for conveying information, including video presentations and articles in police journals, are needed for those who do not participate in the courses, and to reinforce information for those who do. On-going in-service training has significant cost implications if all police officers are to be involved.

Difficulties with under-utilisation of third party support schemes during police questioning, and with police training in the area of intellectual disability are not confined to Australian jurisdictions (Bean & Nemitz 1995), and yet such schemes must become an integral part of police procedure if the rights of people with intellectual disabilities in the criminal justice system are to be maintained.

A consequence of inadequate police training in disability issues is the inability of police to identify the presence of intellectual disability, which is an important issue in the context of legislation that attempts to ensure that people with intellectual disabilities have their rights recognised during the police interview and arrest process, for example, the *Crimes Amendment (Detention after Arrest) Act* 1997 (NSW) and Regulation (1998). People with intellectual disability become adept at disguising their disability, and recognising the condition is hampered further by dual diagnoses of psychiatric disorder and substance abuse. Police prosecutions have been sometimes unsuccessful because of faulty police

questioning of suspects, coerced confessions and violation of rights, especially the right to remain silent, and the right of a vulnerable suspect to have a third party present during the police interview. Even these failed prosecutions have not yet encouraged police forces to improve training in recognising and dealing appropriately with this 'at risk' group.

Whilst police services complain that they have no way of identifying the suspect with an intellectual disability, a brief screening instrument (the Hayes Ability Screening Index – HASI) has been designed for this purpose and could be comprehensively adopted by police services in Australia (Hayes 2000) and elsewhere.

The trial process and diversion

In addition to issues of fitness to be tried, inability to understand the charge and lack of comprehension of the charge and courtroom processes, the accused with an intellectual disability faces practical difficulties including getting to court on time, accessing legal assistance, and understanding the outcomes of the case. Whilst court assistance services have been trialled (Shaddock & Shaddock 1998) service providers working in the area of intellectual disability may not be suitable to act in the role of court supporters, because the services and the skills required are different. Carers can find it difficult to maintain care for their other clients because the unpredictable nature of court appearances makes scheduling difficult; workers might spend many days at court before a case is concluded. In addition, ethical issues can arise, for example, conflict of interest between being a carer and an advocate in the criminal justice system, or where the victim of a crime is a client of the same service as the accused. Over-taxed legal aid services often mean rushed and last minute conferences with legal aid solicitors, with the solicitor having little opportunity to arrive at an understanding of the client and their disability. Establishing and adhering to service boundaries can prove problematic, with clients expecting continuity of services from the court support worker after the court appearance, not understanding why support has been withdrawn at the conclusion of the case.

The NSW Justice Health Court Liaison Service provides early intervention mental health services at Sydney metropolitan and rural Local Courts. The service provides psychiatric expertise and advice to magistrates when people with mental illness first appear in court. The aim is to divert mentally ill offenders to appropriate treatment programs and to prevent inappropriate incarceration. Mental health nurses are available to make an immediate assessment and provide a report on options for further assessment and treatment. The Service's capacity to identify and divert people with intellectual disabilities has not been evaluated, however.

The forensic diversion service established at the Birmingham (UK) court complex provides a further example of the network of facilities required for court support schemes to be effective (Chung et al 1998). Although the main focus of the Birmingham service is upon identifying and diverting offenders with psychiatric symptoms, features of the scheme could be readily adapted for offenders with an intellectual disability. The service provides a community psychiatric nurse at the police station who interviews the offender, gathers information about the alleged offence and the accused's history, identifies whether the person is mentally disordered, and recommends hospital or out-patient treatment. A parallel scheme exists in the remand prison where liaison occurs between the courts, police and nursing personnel. The community psychiatric nurse attends the prison to interview all new receptions, and identify those who need the support of the service. A bail hostel established specifically for these prisoners provides an alternative to remanding the accused in custody, and in addition, a boarding house scheme provides a range of accommodation facilities and resources, whilst maintaining contact with psychiatric hospitals and mental health teams. The various components are closely networked.

Programs and facilities for diversion from the criminal justice system for offenders with an intellectual disability have been also established in various states and towns in the United States of America (Petersilia 1997). Although there are few formal outcome evaluations, the available evidence suggests that the important factors in reducing recidivism among clients of such services include residential programs that are staffed on a 24-hour basis and have the flexibility to accept new referrals immediately, the provision of living skills programs and vocational preparation courses, establishment of halfway houses to stage re-integration into the community, and development of personalised justice plans that are monitored until the individual completes their sentence. Petersilia (1997:42) comments that 'persons who operate and fund the programs believe that they protect the public, teach the [intellectually disabled] offenders to obey the law, and save tax dollars'.

Non-custodial sentencing options

Non-custodial sentencing options include probation and parole supervision, home detention, and referral to special programs or units as described above. A major reason for imprisonment of this group is the lack of secure and supervised community residential placements, including bail hostels and secure units, and specialised programs. Once the important issue of stable accommodation is resolved, there is a wide range of effective community-based options that can be implemented for offenders with an intellectual disability.

Probation and parole

Probation and parole can be used effectively with offenders with an intellectual disability. The Lancaster County, Pennsylvania, USA, Office of Special Offender Services (SOS) (Wood & White 1992) was the first of its kind in the United States to address the special needs of offenders with intellectual disability, and is a model for other similar projects. A ten-year evaluation shows a consistently low recidivism rate of 5%. The SOS programme utilises a cooperative approach between the criminal justice and human services systems, through which individual probation/parole clients are intensively supervised. In addition, SOS acts as an educational resource to members of the legal, educational, and intellectual disability communities regarding the issues and concerns specific to these offenders, accomplished through conference, seminar and classroom presentations. Inter-agency cooperation is vital to the success of the program, which incorporates aspects such as intensive supervision, medication monitoring, personal and family counselling, substance abuse programs, psychometric assessments, and vocational training and placement assistance

Specialist programs

An offender may receive a non-custodial sentence on condition that s/he attends a specialist program that can target substance abuse or other behavioural problems. Research indicates that, like non-disabled offenders, between two-thirds and three-quarters of defendants with intellectual disability indicate that they had consumed alcohol at the time of the offence (Hayes 1994; Hayes 1996), and they are also likely to have a history of abusing other substances. Specialist substance abuse programs for offenders with an intellectual disability require trained staff, and other resources including supervised accommodation. This group of offenders tend not to be successful in verbally based group-work programs because of their poor verbal skills and short attention spans. Individual therapy and counselling which takes their communication and adaptive behaviour deficits into account are more effective interventions (Lindsay 2002).

Multi-systemic therapeutic interventions for juvenile offenders consider all of the social systems in which a delinquent child functions, including home, school, neighbourhood, and peer group. Ideally, all of these systems need to be involved in consistent treatment strategies derived from family therapy, behavioural parent training and cognitive-behavioural therapy (Bourdin 1999). Therapy must be comprehensive and flexible in addressing the multiple determinants of delinquent behaviour. Such therapies are costly in terms of expertise (Master's level therapists need to be utilised) and caseloads (four to eight families per therapist), in order to demonstrate long-term reductions in criminal activity, violent offences, drug-related arrests and incarceration.

Sex offender programs for people with intellectual disabilities can be offered in the community (Lindsay & Smith 1998) or in custodial environments. Sex offenders with intellectual disability typically have confused self-concepts, poor peer relations, a lack of sexual and socio-sexual knowledge, negative early sexual experiences (including a history of childhood sexual abuse), lack of empathy, poor self-esteem and a lack of personal power (Lindsay 2002). An important diagnostic issue in assessing and treating this group is to determine whether the behaviour is diagnosed as paraphilia, or is instead a reflection of the individual's functional age and modelling on dysfunctional behavioural patterns they have experienced (Hayes 1991).

Problems facing professionals conducting programs for these offenders include high recidivism rates, and withdrawal from the program, the latter being linked to re-offending (Law et al 2000). Lengthy treatment programs of two or more years (Lindsay & Smith 1998) have been shown to be more successful than short programs, although there are corresponding cost implications. According to Lindsay and Smith (1998) many sex offenders with an intellectual disability lack strong motivation for change, which makes engaging them in a two-year program a challenging exercise. Most programs focus on the lack of ability to empathise with victims (Haut et al 2000), the need to build up cohesion within the treatment group and encouragement of insight into the offending behaviour. Poor completion rates can be improved through conditions establishing compulsory attendance for treatment, although imposing conditions can in turn create an escalating problem for the offender. If, for example, the individual fails to attend for reasons related to intellectual disability, including inability to tell the time or to travel independently on public transport, and the conditions are breached, the offender may then receive a custodial sentence. Critical to long-term non-offending is the need for on-going support for these offenders after their attendance at the program ceases (Lindsay 2002).

Preventative interventions for people with intellectual disabilities at risk of being charged with sexual offences tend to be inadequate (Hudson et al 1999). Preventative programs with young people with an intellectual disability include sex education and case plan development. Secondary prevention, aimed at preventing problem behaviours from escalating, includes training teachers and others to identify the potential problem behaviours, and to provide education and immediate intervention. Lastly, prevention of recidivism for those who have already engaged in illegal behaviours includes placement in facilities or programs designed to limit further opportunities for offending, development of a case plan, appointment of a case manager, and consistent protocols across all services involved with the client. Hudson and colleagues (1999) emphasise the need for evidence-based programs.

Group treatments for sex offenders with an intellectual disability based on a broad cognitive-behavioural model and continuing for one year, over a total of 50 sessions, are successful in changing the attitudes of offenders and reducing re-offending (Sinclair &

Murphy 2000; Hordell et al 2000). Using baseline measures that include both mainstream sex-offender and specific intellectual disability tests, the results indicate that treatment is effective in impacting on cognitive and social skills measures relevant to the commission of sex offences.

The likelihood of having been the victim of abuse is high amongst sex offenders with intellectual disability (Hayes 2004). The related issue of peer abuse, either sexual or physical or both, of one person with an intellectual disability by another, is a widespread problem, which many service agencies have failed to address; repeated offences are frequent and lack of appropriate intervention is the norm (Brown & Stein 1997). Therefore, in any program for sex offenders with intellectual disability, one of the major aims must be to protect participants against ongoing abuse from other participants, or residents in the same accommodation, and to ensure that they are not residing in, or returning to an abusive environment. Prevention of violence in families and residential settings is a primary way of avoiding the development of violent behaviour, and yet this is a much under-estimated factor in managing challenging behaviour. Violence prevention programs for people with intellectual disabilities must be a priority (Brown & Stein 1997).

Research focusing on the most effective strategies for programs for sex offenders with intellectual disabilities is inconclusive, partly owing to the diverse aetiology of the problem behaviour, and partly owing to methodological problems with research, including the ethical dilemma of having a 'no treatment' group. The few clear findings that emerge indicate that brief interventions are unlikely to be effective, cognitive behavioural techniques are useful, and multi-disciplinary approaches, together with long-term support and follow-up, are essential (Lindsay 2002).

Apart from sexually offending behaviour, other behavioural problems occur at higher rates amongst offenders with an intellectual disability, compared with non-offenders who also have an intellectual disability (Hayes 2002), and compulsory attendance at a behaviour management program can be an effective non-custodial option. Interpersonal aggression is clearly a major cause of charges of assault, manslaughter or murder. Programs to manage aggressive behaviour in people with intellectual disability can, however, encounter difficulties owing to the disparate nature of the causes of the aggression, ranging from effects of organic brain damage, to substance abuse, to modelling on familial violence and abuse, or poor socialisation. Research exploring the differences between aggressive and non-aggressive people with intellectual disability indicates that a vulnerable sense of self contributes to aggression (Jahoda et al 1998). If individuals perceive that they are being treated as if they are stupid or intellectually disabled, they are more likely to respond aggressively in interpersonal situations. Understanding the nature of the individual's self-perceptions provides valuable insights into what may otherwise be regarded as unpredictable outbursts, and this topic needs to be included in training programs for police, court personnel, probation and parole services and the judiciary.

Challenging or offending behaviour can be altered, through implementation of programs that are evidence-based and designed, implemented and monitored by specialist staff experienced in the area (Simpson, Martin & Green 2001). Collection of appropriate baseline data for every client is vital, and participation in the program needs to continue for as long as is necessary to address the behaviours, rather than being time limited according to waiting lists and cost. Furthermore, the program must be reinforced periodically, on a long-term basis. All of the systems and services which assist the individual must be involved in the program in a consistent and integrated fashion.

A large proportion of offenders with intellectual disability have co-existing psychiatric or substance abuse problems; depression, post-traumatic stress disorder, psychotic illness and organic brain damage are amongst the most frequent dual diagnoses, necessitating thorough and appropriate psychiatric and psychological assessment and intervention by mental health professionals experienced in the field of intellectual disability (Taylor et al 1998). Whilst medication is frequently used to control challenging behaviour, there is no clear evidence as to its effectiveness for offenders with intellectual disability. A study of anti-psychotic medication for people with intellectual disability and challenging behaviour provides no evidence as to whether anti-psychotic medication does or does not help these clients (Brylewski & Duggan 1999). Because of the limited data on this important issue, good quality research is urgently needed.

Conclusion

Accused persons and offenders with an intellectual disability in the criminal justice system have not been well served in terms of the diversionary or non-custodial sentencing options that are available for them, and courts and the community have rightly tended to be wary of services and programs that lack rigorous evaluation. Increasingly, evidence is emerging as to the effectiveness of various treatment and intervention programs (Law et al 2000; Lindsay & Smith 1998; Simpson, Martin & Green 2001). The research indicates that interventions need to continue for longer periods than has been previously considered necessary. Longer programs are more effective than brief interventions, and need to be more intensive for those clients whose risk level is higher (Simpson, Martin & Green 2001). Inter-agency cooperation is vital, and there must be effective protocols developed so that the offender with an intellectual disability, especially the dually diagnosed individual, does not become lost in or between the systems. Funding emphasis should be on early intervention and prevention of offending behaviour, rather than occurring at the end-point of the criminal justice system, the prison system. Coordinated and ongoing training of personnel from all government and non-government agencies is essential, and must include police, lawyers, the judiciary, probation and parole, and corrective services personnel. Effective non-custodial interventions are expensive, but not as expensive as repeat incarceration of offenders with an intellectual disability (Rand Research Brief 1997). Lastly, many offenders with an intellectual disability have been the victim of violence and crime (Hayes 2004) and therefore addressing their experiences as a victim and preventing further victimisation are essential pre-cursors to interventions aimed at their offending behaviour. Service provision for this group to date has tended to be fragmented, difficult to access, not based on rigorous outcome evaluation, and unavailable in many areas. Given the level of over-representation of offenders with intellectual disabilities in the criminal justice systems of many jurisdictions, preventative and treatment services must be improved.

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