

2017-05-17

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Recommended Citation

McNamee, Gillian and Staunton, Ciara T. Dr (2017) "Supports for Offenders with Learning Disabilities in the Irish Judicial System: A Critical Review," *Irish Journal of Applied Social Studies*: Vol. 17: Iss. 1, Article 8.
Available at: <http://arrow.dit.ie/ijass/vol17/iss1/8>

Supports for Offenders with Learning Disabilities in the Irish Judicial System: A Critical Review

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Vol. 17(1), 2017, 94-105.

Abstract

There is increasing focus on the prevalence of learning disabilities in the criminal justice system. The aim of this paper is to examine the supports and resources currently in place to support people with learning disabilities through each stage of the Irish judicial process. A review of international literature regarding people with disabilities was conducted specifically in relation to the methods used to identify those who are risk of becoming offenders, the process in place when an individual comes in contact with the criminal justice system, other professionals and practitioners who undertake criminal work, their incarceration into a rehabilitation setting and the supports in place to successfully integrate offenders back into their own community. As a result of this review, the present paper highlights the prevalence of learning disabilities among offenders and the pre-existing risk factors that identify a person with a disability in their pathway to becoming an offender. The existing literature calls for the introduction of training and education in relation to disabilities for those working in the judicial system in addition to more appropriate rehabilitation settings and effective support in assisting those returning to their own communities. Overall, this paper finds that a multidisciplinary and multi-agency approach is vital and should be governed by national guidelines.

Key words: Supports for offenders, learning disabilities, Irish judicial system.

Introduction

People with learning disabilities are largely over-represented within the criminal justice system (Hayes, 2006; Noble & Conley, 1992). This paper will concentrate on the lack of assessments in place to adequately identify people with learning disabilities who may be at risk of offending, the insufficient information and training provided to the Gardaí and those working in the criminal justice system, and the lack supports and training provided to those leaving prison and returning to their community. Despite a substantial body of research in this area (e.g., Carey, & Mulrooney, 2000; Hayes 2007; Holland, Clare, & Mukhopadhyay, 2002; Frson 2007; Murphy, Harrold,), little has been conducted in Ireland and as far as the current authors are aware, no research has focused on all stages of the criminal justice system from those at risk of becoming an offender to those being released from prison.

Primary research into learning disabilities and offending in the late nineteenth and early twenty century suggested a strong correlation between the two and resulted in the view that individuals with a disability were a threat to society and to their communities (National Offender Management Service, 2013). This perception reinforced the notion that individuals with disabilities belonged in institutions and asylums. In fact, early theorists believed that “the

greatest single cause of delinquency and crime is low grade mentality, much of it within the limits of feeble-mindedness” (Goddard, 1920, p.810). With developments and advances for the provision of services for people with learning disabilities, such overgeneralised theories and perceptions have been challenged and discarded. This is also evidence in the change of terminology used when referring to people with disabilities. In Ireland and the United Kingdom, “learning disability” is the suggested replacement term for individuals with mild “mental handicap” (Murphy et al., 2000).

In recent years there has been a move away from this approach with the introduction of the non-congregated settings strategy (Health Service Executive, 2011), the New Directions Programme (2012) and the implementation of the Health Information Quality Authority (HIQA). The Health Act (2013) espouses that vulnerable people are to be integrated appropriately into their own communities and viewed as valued persons in society. Such supports and services have been introduced and developed to help people with disabilities lead good quality lives, be empowered and supported to achieve their goals through a person centred and individual approach.

While embracing this approach, there appears to be recognition, particularly in the United Kingdom, that individuals with learning disabilities that come into contact with the judicial system have specific needs that should be addressed. Therefore, the rationale for conducting the present review is based on the following five identified issues:

1. A lack of programmes and supports to help identify those with a learning disability who may be at risk of becoming an offender;
2. A lack of identification of people with a learning disability amongst offenders;
3. Inadequate training and education about learning disabilities for professionals working in the judicial system;
4. A lack of alternative rehabilitation settings for those with a diagnosed learning disability;
5. Insufficient preparation and supports in place to assist offenders with learning disabilities to integrate back into their own community.

Lack of Programmes and Supports to Help Identify Those with a Learning Disability Who May Be at Risk of Being an Offender

Studies have found that the prison population will generally have below average IQ and therefore this method alone is insufficient to identify or diagnose a person with a learning disability (Hayes, 2000). Additional and more specific risk factors have been identified by researchers and these should allow the relevant services adapt a proactive approach to help prevent a pathway into criminal behaviour. Murphy et al., (2000) found that the average age of school drop out for Irish prisoners with a learning disability was 13.7 years in comparison to 14.7 years for those who do not have a learning disability. This corresponds with research conducted by O’Mahony (1997), in Mountjoy Prison, which found 50% of the offenders with a learning disability had left school before the age of fifteen and 80% before the age of 16 and

one third had never attended a school beyond primary or special school level. These characteristics can be used to identify those in school who may be at risk of dropping out and providing them with the relevant supports and resources to encourage them to stay in school or direct them to a more appropriate training setting.

People with learning disabilities may have reduced social skills and therefore can be alienated from their peer groups. This may result in the person seeking acceptance from people that may take advantage and use them to commit offences on their behalf. Winter, Holland, and Collins (1997) state that characteristics such as low intelligence, behaviours that challenge, poor problem solving, disability and substance abuse can predict delinquent behaviour. Individuals that present with these challenges may be identified by the teachers and the introduction of multiagency work at this early stage may identify preventative programmes suitable to addressing the needs of such individuals. Hayes (2006) argues that the relevant risk factors may often be identified while the individual is in school and there may be supports put in place but these tend to fall away when the person leaves school, leaving them again vulnerable and at risk of becoming an offender.

Studies have found that offending behaviour in adolescents can be predicted by characteristics such as low intelligence, behaviours that challenge, disability, substance abuse, dysfunctional family background and poor family background (National Crime Prevention 1999; Winter et al., 1997). These also highlight risk factors and characteristics for someone with a learning disability that may become an offender and therefore this should provide those tasked with diversion programmes with the relevant knowledge and evidence to intervene and put the relevant programmes and supports in place. The United Kingdom Home Office strategy (2006) highlighted the inconsistencies in the diversion programmes for people with learning disabilities as a result of a lack of national guidance for the best practice approach. Investing in a person at a young age would generate more value for money than incarceration at a later date and therefore a cost benefit analysis of early intervention would be a practical endeavour. Evidently, early detection of the risk factors that may predispose an individual to becoming an offender is essential for allowing the appropriate measures be put in place thereby supporting the person and preventing future offending behaviour.

Lack of Identification of People with a Learning Disability for Professionals Working in the Judicial System

Psychological practice in Ireland uses the following standards for establishing a diagnosis of learning disability:

1. A history of development difficulties before the age of 18;
2. Evident impairments in adaptive functioning in comparison to peers;
3. A score below 2 standard deviations from the mean on a validated test of intelligence.
(Murphy et. al., 2000).

In today's society many people with learning disabilities may also have additional diagnoses, such as mental health difficulties or addictions and these need to be taken into consideration as they could be masking or exacerbating the learning disabilities (Clarke & Wilson, 1999). This concurs with a report carried out by Talbot (2012) in the United Kingdom which found that

75% of adult prisoners have a dual diagnosis of mental health difficulties and alcohol or drug addictions and that approximately one quarter of children that offend have an IQ of 70 or less, 7% adult prisoners have an IQ of 70 or less while 25% had an IQ between 70-79.

The needs of people with learning disabilities within the criminal justice system are being increasingly recognised (McKenzie, Michie, Murray, & Hales, 2012). Irish data for the prevalence of offenders with a learning disability within the Irish Prison system is limited but the literature reviewed suggests it may be in line with international statistics. Murphy et al. (2000) conducted research on behalf of the Department of Justice, Equality and Law Reform on a random selection of 264 prisoners from fourteen Irish prisons, representing 10% of the total prisoner population at the time. They found that 28.8% of the sample population had an IQ below 70%, based on their psychological assessment (KBIT test), which is an indication of the presence of a disability. These figures make up a significant proportion of the prison population however the literature does not stipulate if these inmates had been previously identified as having a learning disability while within the system. If not, then it raises the question as to how an individual made it through the system without the relevant supports and whether at each stage the person understood what was happening to them and if their rights were adhered to and respected.

The Prison Reform Trust in the United Kingdom explored the experiences of offenders who have come into contact with the criminal system from 2005-2008 (Loucks, 2007). This review identified 20-30% of offenders with learning disabilities which interfered with their ability to cope within the criminal justice system. Valuing People, a research project carried out by the Department of Health in the United Kingdom in 2001 acknowledged that a shift in attitudes and approaches to supporting people with a disability was required. This piece of work also recognised that a social inclusion approach would incorporate supporting those with learning disabilities to report crimes but also to be more familiar with the overall judicial system and have a better understanding and what is involved.

People with learning disabilities face numerous difficulties once they enter the judicial system. As a result of a lack of support, screening and assessments in the community they are unlikely to come to the attention of the police until their actions or behaviours have given cause for concern (Prison Reform Trust, 2007). This is unfortunate given that there are clear and concise risk factors identified to determine the likelihood of individuals to becoming offenders as discussed above

Without their disability being identified and appropriately accounted for the individual is likely to misunderstand police questioning and cautions, which may result in them incriminating themselves and/or giving false confessions (Murphy & Mason, 2005). Individuals with disabilities may have a need to please those in positions of authority and this may also result in false confessions (Gudjonsson, 2002; Perske, 1994, 2005). This came into the limelight recently in the U.S with the Stephen Avery case, depicted in the Netflix Documentary, *Making a Murder*, (Riccardi, Demos, Nishimura, & Del Deo, 2015). In 2005 Stephen Avery and his nephew, Brendan Dassey were convicted of the murder of 25 year old Teresa Balach. Mr. Dassey was video-recorded clearly giving the police officers the answers they are searching for along with reporting numerous inconsistencies to his answers and what appears to be an attempt to please the interviewers. His lawyers insisted his confession was coerced and that he had a low I.Q. (Carswell, 2016). Mr. Dassey's conviction was overturned in August of this

year, when the Judge ruled that the guilty verdict was based on a coerced confession, from a person with a learning disability, (Making a Murder, 2016). A study by Perske (2011) also found cases of 75 individuals with an intellectual disability who had falsely confessed to felonies in the U.S.

Article 6 of the European Convention on Human Rights advocates for each person's right to a fair trial, however, if a person with a disability is not supported appropriately they are left vulnerable within the judicial system and therefore unable to participate effectively in their defense. The Irish College of Psychiatrists (2007) state that Gardaí present the detained person with a written caution yet this can prove difficult for people with a learning disability as written cautions often require a reading age beyond their capabilities and the individual may not understand their right to remain silent. This concurs with research carried out by Baroff, Gunn, and Hayes (2004) which found that people with learning disabilities may not understand the police when they are being read their rights, particularly their right to remain silent and therefore are more likely to self-incriminate themselves at the time of their arrest.

An inability to identify the accused as a person with a learning disability also impacts on the wider judicial system. Hayes (2006) highlights the importance of early intervention in the judicial process, not only for the individual but also for the cost implications and due process which may result in a court case having to be aborted. It may cause longer processing times as a defendant with a learning disability would require more time in processing the information presented, requiring assistance to carry out any written documentation and possibly require repeated clarification on various issues.

The challenges to complete a full assessment in conjunction with the imminent requirement to identify those that have a learning disability at the early stage of the judicial system has resulted in the need for screening tools (Bradley 2009; Talbot 2008). The introduction of an assessment tool that can be delivered by non-professionals would allow for an initial screening, higher levels of identification of possible disabilities and less cost on services as those administering them would be carrying out the assessment as part of their roles. One assessment tool proposed in the literature is the Hayes Ability Screening Index (HASI; Hayes, 2000). It is designed to be used by non-psychologists and although it does not identify the presence of a learning disability, it detects those that require further assessment or in the police setting identifies those that need to have appropriate supports put in place to assist them through the process (Sondenaa, Palmstierna, & Inversen, 2012). It is an individually administered screening tool that examines the participant's intellectual abilities. It is designed to be used on people aged between 13 and late adulthood. It is a short assessment that screens for speech and learning disabilities which includes backwards spelling, a clock drawing test and a join-the-dots puzzle. As it only takes 5-10 minutes it would also be appropriate for those with limited concentration.

Adapting the use of assessment tools by professionals working in the judicial system would allow them to identify a person as possibly having a disability early in the process and allow them to refer the individual for further assessment. It would also result in the appropriate and suitable supports being put in place to ensure that the accused is afforded due process and facilitate their right to a fair trial.

Inadequate Training and Education About Learning Disabilities for Professionals Working in the Judicial System

The lack of training and education for those working in the judicial system, particularly those that have initial contact with the individual, results in a lack of referrals for pre-trial assessments (Gardner, Graeber, & Machkovitz, 1998). Talbot (2012) found that while there are people appointed to support vulnerable witnesses and are subject to rigorous training, selection and monitoring, the same is not afforded to vulnerable offenders.

Bailey, Barr, and Bunting, (2001) highlighted the need for police officers to develop their awareness around learning disabilities as they found an incorrect perception can impact on how offences are investigated. In the criminal justice system, professionals often mistake a person's mental health issues as a learning disability and vice versa due to their lack of training and education (Hayes, 2007).

Talbot (2012) identifies the need for those working in the court system to be aware of how the characteristics and traits of someone with a learning disability may manifest during the course of court proceedings. This literature also highlights the need for routine and methodical procedures to ensure that criminal justice and diversion liaison services provide the courts with adequate and appropriate information so they can be aware of the best approach. Talbot recommends that all who are employed in the criminal justice system should have a mandatory requirement to undertake disability, mental health, learning disability and behavioural disorder awareness and training. The Advocacy Training Council also identifies and calls for the implementation of disability training for professionals and practitioners in the judicial system stating:

“The time has come for the Bar to draw upon expertise available from medical, psychiatric, psychological and other disciplines. The key elements of training should be three-fold:

- How to identify witnesses and defendants who may be vulnerable;
- How to consider and obtain measures in terms of procedure;
- How to make adjustments in practice” (Advocacy Training Council, 2011, p. 36).

McKenzie, Michie, Murray, and Hales, (2012), also clearly and strongly identify the urgent need for those working in the judicial system to be educated and adequately trained to be able to recognise an individual with a disability who enters the system.

Lack of Alternative Rehabilitation Settings for Those with a Learning Disability

The Irish College of Psychiatrists (2007) determined that offenders with learning disabilities do not fit into the existing services available in Ireland.

Those working in the criminal justice system may believe someone to have a mental health difficulty rather than a learning disability and therefore misplace them in a psychiatric or a secure unit which will restrict the person from getting the supports they need to rehabilitate (Myers, 2004). This placement can result in the offender displaying behaviours that challenge

as they struggle to cope in this environment and may cause these behaviours to escalate causing further difficulties for all involved (Hayes, 2007).

Talbot (2007) reports that those working in the prison services question the adequacy of resources available to support prisoners with learning disabilities, including lack of identification of those with a disability and they are therefore often as a result excluded from rehabilitation programmes, have limited access to prison information, diminished insight into their circumstances and are often then victims of abuse while in prison. This was found in a case in Utah in the United States where a convicted sex offender was awarded \$60,000 after he was ineligible for parole as a result of not completing the sex offender treatment programme. The offender successfully argued that he could not understand the workbooks and was not given adequate support and therefore was unable to complete the course. The prisoner should have been eligible for parole after 5 years, once the treatment programme was completed but subsequently ended up serving 18 years (Cortez, 2016).

Another consideration impacting on people with learning disabilities is their ability to qualify for bail. Petersilia (1997) highlights that those with a learning disability are more likely to be unemployed and living in an unstable environment, which is likely to impact on the decision to grant bail.

The role of the prison service is to provide and maintain a secure, efficient and progressive pathway for rehabilitation for those committed into their custody (Murphy et al., 2000). There is currently no alternative system or rehabilitation system in place for those with a learning disability and therefore, all those remanded into custody or sentenced by the courts enter the Irish Prison System. For people with learning disabilities the daily routine of prison and living activities can prove difficult, as a result of poor literacy and communication skills. Having to rely on fellow prisoners and/or prison officers to complete forms can leave the person open to additional vulnerabilities (Talbot, 2008). They are also more vulnerable to abuse and exploitation by other prisoners. Riches, Parmenter, Wiese, and Stancliffe (2006), found that people with learning disabilities in prison are more likely to be a victim of emotional, physical and sexual abuse. Talbot (2008) also found that people with disabilities may try to conceal their impairments as they may fear ridicule or intimidation from other prisoners if they show their weaknesses.

Community based orders can cause problems for people with learning disabilities. Research carried out by the British Institute for Brain Injured Children (2005) found that people with autistic spectrum disorder or learning disabilities often did not understand the terms of the order imposed or the reason for it. Therefore, it can be questioned how effective their rehabilitation programme is.

The Irish College of Psychiatrists (2007) found that some offenders that were unfit to stand trial as a result of their learning disability were admitted to the National Forensic Mental Health Service's Central Mental Hospital, Dundrum rather than in an appropriate facility for people with a learning disability. Correctional facilities carry out personal examinations of each individual in custody before they are admitted and Sondenaar et al., (2010) suggest that this time could be utilised to carry out screenings, assessments and checklists to identify those that may have a learning disability.

There are limited numbers of alternative and appropriate rehabilitation settings for people with learning disabilities available (Alexander, Crouch, Halstead, & Piachaud, 2006) and this has resulted in the increasing need for services to be able to meet the needs of offenders with learning disabilities in forensic settings and incorporating multidisciplinary teams and services (Bradley, 2009). Talbot (2008) found that a person with disabilities in prison are five times more likely to be subject to restraint and control techniques, three times more likely to have been in segregation and three times more likely to have clinically significant depression or anxiety. The general health of a person with a learning disability tends to be poorer, particularly their mental health (Rickford & Edgar, 2005).

Insufficient Preparation and Supports in Place to Assist Offenders with Learning Disabilities to Integrate Back into Their Own Community

Deb and Weston (2000) state that people with learning disabilities are more susceptible to various other difficulties such as poverty, poor physical health, mental illness and poor communication skills. There needs to be adequate supports in place to prepare the offender cope and manage these difficulties before reintegrating into their community to help reduce the likelihood of recidivism. After being released from prison, a person with a learning disability required additional supports, such as supported accommodation, with levels of supervision that can be adapted to correspond with the required support through times of crisis and to encourage independence (Hayes, 2007). Generally, when a person is leaving prison there is no distinction made between those who have or have not got a learning disability (Sendenaa et al., 2010). Those with a learning disability often find it difficult enough to find employment, however the addition of a criminal record will only further exacerbate the challenge. Studies have found that those with a learning disability have high recidivism rates (Sendenaa, Rasmussen, Palmstierna, & Nottestad, 2008). Common difficulties people with disabilities face are lack of community support, social isolation, homelessness and an unstructured life which researchers believe influence the high recidivism rates (Hodgins, 1992; Lindsay & Taylor, 2005). Many prisoners with a learning disability have experienced disadvantage and social exclusion prior to their incarceration, in fact these factors are likely to have contributed to their offending and these factors will also be present upon their release (National Offender Management Office, 2013).

Upon release, those with a learning disability are more likely to experience more difficulties than their peers and their limitations in adaptive behaviour and poor problem solving skills are likely to contribute significantly to their recidivism rate (Clare & Murphy, 1999). To effectively support the individual with the learning disability integrate back into their community a post-release support service with specialised skill sets is needed. This would include a case manager with specific training and qualifications in learning disabilities, development of existing learning disability services to provide work opportunities, training and accommodation for ex-prisoners and specialised training for their probation officers (Murphy et al., 2000).

Conclusion

There are very clear and concise risk factors in place to identify a person that may have a disability and who may engage in criminal behaviour resulting in contact with the criminal justice system. The literature highlights that those in the school setting may be in the best position to determine those children that require a referral for an assessment and the

introduction of possible diversion programmes. By incorporating the appropriate supports for those that are vulnerable at an early stage may prevent some of the pathways into criminal behaviour.

Numerous articles have highlighted the difficulties for the various agencies to source the appropriate professionals to carry out assessments along with the need to have a universal tool to support the relevant agencies to identify people that may have learning disabilities. Having the ability to identify a suspect as a person that may have a learning disability would enable the Gardaí to refer the person for further assessment and to source the relevant supports to ensure the person has a clear understanding of each stage. The utilisation of the HASI screening tool appears to be an applicable universal mechanism that can be administered by the professionals and as it is a quick assessment that would allow the officer to err on the side of caution without being intrusive. It must be considered that if a person with a learning disability is not afforded the right supports to have a fair trial this could result in the conviction of an innocent person and therefore providing no justice for the victim.

All the literature reviewed identified the need for training and education for professionals and practitioners that are involved in the judicial system in the area of disabilities. This should include mental health, behavioural disorders, communication difficulties, learning and intellectual disabilities. This training would allow for understanding the traits and characteristics that may be present, appropriate ways to build rapport, to adjust techniques to allow for the person's disability and communication methods resulting in a more effective approach.

There is evidently a significant lack of alternative rehabilitation settings for those with learning disabilities. The current Irish Prison system leaves those that are already identified as vulnerable adults open to further physical, financial, sexual, psychological and emotional abuse. Researchers postulated that those with a learning disability may not understand the process from the beginning and therefore, they may often not understand why they are incarcerated resulting in minimum likelihood of them being rehabilitated. There is limited literature available on pilot projects in Ireland to accommodate those with a learning disability and this type of research would inform the justice system of possible alternatives to best promote rehabilitation and to decrease the high recidivism rates. Learning disability services are rarely party to local health and criminal justice policy and service planning and as the literature demonstrates, a more universal, multiagency approach may prove a more beneficial approach for all the stakeholders.

The literature identifies the lack of resources in place to support the prisoner with a learning disability to integrate back into their own community. A person with a learning disability is likely to have limited social skills, be unemployed, come from a dysfunctional home and their conviction will add to their list of challenges. Perhaps the introduction of a support worker to start working with the individual while they are in prison to help them develop their social skills, provide support around training skills to equip them for possible employment when they are released would help prepare them for integration back into their own communities. Having an awareness of learning disabilities would allow the support worker enhance the offender's existing traits and enable them to approach an employer with the relevant information about the person's presentation, skills, abilities etc. For example, a person diagnosed with Asperger's syndrome often likes things in order, straight and in line. These skills would be effective for someone working in a library, stacking shelves in a supermarket, or working on a production

line for example. An employment placement would enable the individual to build their self-esteem, recognise their value within their community and reduce their chances of recidivism.

The interventions identified all have their own merits but none of them would be successful in isolation. Each stage requires training, investment, interagency collaboration, co-operation and further research to identify the most effective approach. However, this approach can only be adapted under national guidelines and governance.

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