Dual Diagnosis and the Law: Part I

SE Community Networks of Specialized Care
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Outline

- Overview of the literature regarding offenders with developmental disabilities (DD)
  - prevalence, characteristics and type

- Introduction to the prevalent issues for this population in the CJS
  - at arrest, interview, court

Case examples

- Susan lives in a group home and has a history of aggression due to low frustration threshold and impulsive behaviour. She has assaulted another resident on numerous occasions and staff who have tried to intervene.

1. Should she be charged with physical assault? Y/N
2. If so, should she be diverted from court?
Case examples

- John lives at home with his parents and has history of anxiety and poor communication skills. He has recently met a girl at work and sexually grabbed her on their first date.

1. Should he be charged with sexual assault? Y/N
2. If so, should he be diverted from court?

Why important to identify?

- Increased recognition that individuals with DD and/or mental health needs who offend should be dealt with differently from the general population
  - high prevalence of psychiatric disorders
  - sheltered experiences and poor learning
- Present specific challenges and vulnerabilities within the mainstream CJS for police, courts and corrections (treatment vs punishment)

Why important now?

- Process of deinstitutionalisation and bed closures suggest period of resettlement is often difficult
  - increased exposure to risk situations
  - new legal pathways
- Present specific service implications for caregivers and agencies
  - caregiver tolerance threshold
  - system culture change i.e. custody to community
Risk Factors

- **Biomedical:**
  - Higher likelihood of neurological disorders/cognitive deficits
  - Higher likelihood of impulsivity and inattention
  - Increased risk of mental illness

- **Psychological:**
  - Poor attachment, empathy and social inhibition
  - Faulty or poor consequential learning and insight
  - Increased risk of childhood sexual trauma

- **Socio-environmental:**
  - Restrictive and/or repressive attitudes of others
  - Punishment for normal sexual behaviour
  - Lack of knowledge of the law or relevance of the law to their sexual misbehaviours

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Prevalence

- Offending behaviour is much more common than is actually reported to police

- Individuals with ID due to the bio-psycho-social vulnerabilities and neuropsychiatric impairments are generally over-represented in the CJS

- Estimates vary (2-40%) due to narrow or broad definitions of diagnosis and offending

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Prevalence through the CJS

- ARRESTED: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit NCR Conv
- CHARGED: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit Guilty NCR Hosp Conv
- FITTED: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit Guilty NCR Hosp Conv
- NOT FITTED: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit Guilty NCR Hosp Conv
- NCR: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit Guilty NCR Hosp Conv
- CONVICTED: ID (Cog/MH) DD (Diag MR) DD Fit/Unfit Guilty NCR Hosp Conv
Characteristics

- Very few individuals with moderate/severe DD
  - Less likely charged or found competent
- Most offenders with DD are within the mild to borderline range of intellectual impairment
- General risks similar to non-disabled population
  - young, male, psychosocially disadvantaged, familial offending, mental health/substance abuse, history of academic/emotional/behaviour difficulties

Characteristics

- More likely to have history of ADHD and/or conduct disorder
- More likely to have history of personality disorder and anti-social traits
- More likely to have a history of childhood environmental and emotional deprivation

Offence Type

- Majority are misdemeanors and public nuisance offences
- Less likely to commit ‘white collar’ crime
- Higher rates of verbal threats and physical aggression
- Over reporting of sexual offences and arson due to biased sampling of convicted individuals
- Victims more likely to be other individuals with disabilities or staff and family
Sexual Offences and DD

- Risk similar to the general population given a ‘normative’ learning experience
- People with DD are more likely to experience abusive sexual events and are less likely to have experiences and knowledge that enhance sexual health
  - higher risk of developing sexually inappropriate behaviour
- Sexual deviance or paraphilia is distinctly different, rare and often misdiagnosed

Sexually Inappropriate Behaviour

- Offenders more likely to exhibit less violent but more sexually inappropriate behaviours (i.e. public masturbation, exhibitionism, voyeurism)
  - ‘counterfeit deviance’ refers to the unusual and inappropriate sexual behaviour that is more likely to occur in persons with DD
- Product of experiential, environmental, or medical factors (i.e. lack of privacy, poor sexual knowledge, inappropriate partner selection, or medication effects)

Aggression and DD

- Offenders more likely to have difficulties with anger dyscontrol and management then premeditated violence
- May be ‘symptom’ of broader challenging behaviours
- Internally driven
  - presence of neurological disorders or behavioural phenotypes
  - Dual Diagnosis e.g. anxiety, depression, psychosis, ASD
  - history of childhood abuse influencing adult interactions
- Environmentally driven
  - restrictive or repressive attitudes of others and ‘over-control’
  - punishment for ‘normal’ anger behaviours and expression
  - lack of knowledge of the law or relevance of the law
Inequities of justice throughout the CJS
- Poor recognition
- Lack of advocacy
- Minimal court accommodations
- Poor service planning following legal outcome
- Limited understanding by police, lawyers and judges throughout the process

Vulnerabilities in the CJS
- **ARREST**
  - most relate to understanding of legal rights
  - more suggestible and more likely to comply
- **INTERVIEW**
  - difficulties in understanding basic legal terms and criminal process
  - more likely to acquiesce and confabulate in interviews to gain approval of authority figures
- **COURT**
  - issues regarding capacity as a witness/fitness to plead
  - culpability or responsibility as an offender

Capacity/Culpability
- Competence/capacity based on an individual's fitness to plead or ability to follow the courtroom process
- Culpability/criminal responsibility based on knowledge of right and wrong at the time of the offence and ability to control oneself

* (it is more common for individuals to be judged not competent than not culpable and most individuals judged not culpable will also be not competent)
Identifies what is offending behaviour and against criminal law

Does NOT teach 'right from wrong' but what the rules of behaviour are

Provides a message of punishment NOT support

Provides a deterrent IF understanding and insight is present

Entering the CJS

CJS & Dual Diagnosis

DD Red Flags in the CJS

Wide range of variability 'when, why and what for'
CJS is accessed due to:
- agency policies & philosophy of care
- behavior tolerance & risk management approach

Most individuals have different experiences of contact with the law as most move around service system

SO no clear message of what to expect

CJS not accommodating to DD as they are 'square peg in a round hole'

CJS has a 'cookie cutter' approach to offenders

Limited training for police about DD and/or mental health

Seen as not part of their job so choose 'least time' option

Vicious cycle of breach of probation – 3 strikes your out

Message of punishment not treatment

Rarely a teaching opportunity to change behaviour

Misused as 'leverage'
Clinical Issues

- Who is your client and their support system (CoFC)
- Avoid mixed messages in protocols (TB is MH not beh)
- Use your MH system first (crisis teams & court diversion)
- Need to be clear what law is broken
- Involve client in treatment planning including various outcomes
- Clear risk assessment and management protocols
  - Define tolerance, expectation threshold and safety for each client