

# Intellectual disabilities and offending behaviour: the awareness and concerns of the police, district attorneys and judges

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## Abstract

**Purpose** – The purpose of this paper is to examine the awareness of intellectual disabilities (ID) amongst professionals in the criminal justice system (CJS) and their knowledge of those persons, either as victims, witnesses, suspects, accused or defendants.

**Design/methodology/approach** – A survey of the professionals in the CJS ( $n = 388$ ), combined with a series of focus group interviews with experienced professionals ( $n = 20$ ), was conducted.

**Findings** – One out of three respondents (police, district attorneys and judges) reported that they have regular contact with suspects who have an ID. Differences in knowledge of ID amongst professionals in the CJS can explain awareness and detection of persons with ID.

**Research limitations/implications** – Non-responders may represent professionals with no knowledge or less interest in these issues.

**Originality/value** – Reflections on ID have not previously been studied in the Norwegian CJS. The findings serve as a basis and status quo for further research.

**Keywords** Awareness, Intellectual disability, Police, Criminal justice system, Detection, Judges

**Paper type** Research paper

Professionals in the criminal justice system (CJS) report regular contact with suspects or alleged offenders with intellectual disabilities (ID). They agree on the need to identify the ID in these persons at an early stage in the criminal proceedings. However, the cases are occasionally dealt with by the prosecutor after the disability has been identified. What makes this issue increasingly relevant is that people with ID are more highly represented amongst sexual offenders, which is the fastest growing category of offenders in the Norwegian CJS.

## Introduction

A large body of research has been produced in the recent decades indicating that people with disabilities may be at risk of offending (Bradley, 2009; Chan *et al.*, 2004; Hayes, 2018; Lindsay and Taylor, 2018; Segeren *et al.*, 2018). Many of these persons also present with other co-occurring conditions such as mental health issues, neurodevelopmental disorders or acquired brain injury (Hellenbach *et al.*, 2017; Lindsay and Taylor, 2005; Murphy *et al.*, 2017; O'Brien, 2002). The offending behaviours committed by these individuals are often serious and may range from violence against others, damage against property, arson, murder and sexual offending (Clare, 2003; Hellenbach *et al.*, 2017; Jones, 2007; Søndena, Rasmussen and Nøttestad, 2008). In addition, people with an ID who offend are often disadvantaged by a wide range of physical, psychological and social factors, such as having experienced a long period of institutionalisation, a history of being abused and neglected, disruptive familial history, belonging to a minority group, social instability, loneliness, a history of alcohol or substance misuse, a history of mental health problems or a loss of appropriate support services (Hayes, 2018; Murphy and Mason, 2007; Rose *et al.*, 2008; Søndena, Rasmussen, Palmstierna and Nøttestad, 2008). The histories and profile of these individuals often add to the complexity of

providing timely and appropriate services to people with disabilities, since there is a paucity of services that leads to many of them often falling between the gaps in service delivery (Bradley, 2009; Lindsay *et al.*, 2010; O'Brien, 2002). While there is emerging research investigating how best to support people with disabilities who offend (Hayes, 2004, 2007; Holland *et al.*, 2002; Lindsay and Taylor, 2005), the legal issues are often complex (Baroff *et al.*, 2004). People with learning disabilities also often experience further disadvantage when they come into contact with the CJS as there is a lack of knowledge about them on the part of professionals in the CJS (Hayes, 2007).

The increased research into and knowledge of ID offenders in recent decades has resulted in broad nationwide programmes and projects (Bradley, 2009; Jones and Talbot, 2010; Olsen *et al.*, 2018). There has been a growth of adaptive instruments to identify and separate those suspects who may have ID at an early stage of the criminal proceedings.

Two of Lord Bradley's recommendations that are significant for magistrates were to:

1. increase their awareness of vulnerable defendants who present to the courts and may have mental health or learning disability disorders; and
2. provide teams of healthcare specialists that would work in police stations and the courts to assess and divert people away from the CJS.

However, a recent report of a joint inspection into people with ID in the CJS said that the needs of many people with ID are still going unnoticed when they are arrested by police, go to court and are sentenced (Hardy *et al.*, 2016). The awareness session described by Hardy and colleagues included: the role of the vulnerable persons in court focus group; statistics regarding vulnerable adults; a brief description of the Bradley report; how to recognise vulnerability; the support available for magistrates; and appropriate sentencing options.

Participants reported feeling better able to recognise vulnerable adults, and they were more likely to look for information during the pre-court briefing, ask for a professional opinion, and use more appropriate sentencing and community options (Hardy *et al.*, 2016). A similar programme has been presented to Norwegian judges with a 5-h presentation of the topic including a brief presentation of the legal framework, the psychology of ID, cases, communicative problems and possible improvements (Rett På Sak, 2017).

A range of empirical studies confirm that suspects with ID are "vulnerable" in the sense that compared to their non-disabled peers, they are: less likely to understand information about the caution and legal rights; more likely to make decisions that would not protect their rights as suspects and defendants; and more likely to be acquiescent and suggestible (Clare, 2003).

The police have a duty to investigate any criminal offence that is reported to them. That investigation may lead to the arrest of an individual who is suspected of having committed the offence. If the suspect has a learning disability or learning difficulty, this is unlikely to have a bearing on how any arrest is carried out. Whatever the suspect's psychological state and capacity, an arrest is only one of several possible outcomes when an offence appears to have been committed by an identifiable individual. As Murphy and Mason (2007) observe, "people with intellectual disabilities who break the law generally enter the criminal justice system much as other people would, though perhaps with more confusion and less appreciation of their circumstances than most".

The right to silence and the three legal rights apply to all suspects, regardless of any learning disability or difficulty. The particular consideration with respect to suspects with intellectual impairments is whether they are able to understand and thereby exercise their rights.

This paper examines how – and to what extent – professionals in the CJS recognise the presence of people with ID as involved in criminal court cases. The research questions discussed are:

- RQ1. Is there a pattern of characteristics among professionals who are involved with the care and treatment of people with ID in the CJS?
- RQ2. Are there differences between professionals who experience contact with clients with ID and professionals with no such contact?

The research questions are discussed based on empirical data from a recently accomplished study carried out in Norway. The paper is structured in this way: first, the paper goes more closely into the implications of the United Nations' Convention of the Rights for Persons with Disabilities (CRPD). Second, the methodological approach is accounted for. Third, the paper discusses the main findings and, fourth, discusses the implications of these.

## CRPD and its implications

The CRPD has a very high impact for the treatment of people with a disability who come in contact with the CJS, and for other people who show behaviours of concern. The CRPD may be a useful instrument to inform the interpretation of state-legislated rights with respect to persons with disabilities.

The CRPD places significant emphasis on the right to equality before the law and equal protection of the law for all persons, and the benefit of the law for people with disabilities (Digranes, 2016; Skarstad, 2018). These additional dimensions aim to ensure substantial – rather than merely formal – equality of protection and benefit of the law. The CRPD calls for the law to protect persons with disabilities from the specific types of harm they may be exposed to. Additionally, the CRPD significantly extends the right to equality before the law in two further dimensions. First, it calls nations to ensure that the disability-related needs of persons with disabilities are reasonably met by the legal process as clearly articulated in Article 5. Articles 12 and 13 of the CRPD specifically address the barriers faced by those with disabilities in legal contexts.

Through their contributions, participants described numerous conflicts that exist between the justice system and the aims of the Convention. Conflicting perspectives between the legal system and the CRPD have been presented in four dimensions (O'Leary and Feely, 2018): the legal system is described as inflexible, which is in conflict with the flexibility needed for individual responses to disability; the legal system is concerned with objectivity, in contrast to a more interpretative nature of the CRPD; while the CRPD aims to empower those with disabilities, the legal system errs on the side of protection of perceived vulnerability; and the legal sphere feels the provision of courtroom accommodations is an additional service that should only occur in the event that sufficient resources are available in the legal sphere. However, the CRPD views these accommodations as a right, and they therefore should be as part of basic legal services.

The presence of individuals with ID as victims and witnesses of crime is also challenging to the CJS. There is a risk of inappropriate questioning and missing or erroneous information caused by a magnitude of factors (Beckene *et al.*, 2017; Gudjonsson and Henry, 2003; Milne and Bull, 2006; Richardson *et al.*, 2018). Policy developments aimed at protecting vulnerable victims and witnesses also need to be improved as a result of the commitments to the CRPD.

Norway ratified the CRPD in 2013. Little was known about ID in the CJS from empirical studies. As part the Convention's implementation, the government requested more knowledge on the situation for vulnerable groups in the CJS. The Norwegian Directorate for Children, Youth and Family Affairs commissioned this study in order to develop knowledge on the situation for persons with ID in contact with the CJS. The study's aim has been to examine the awareness of ID amongst professionals in the CJS and their knowledge of those persons, either as victims, witnesses, suspects, the accused or the defendant. We examined these questions by issuing a survey to the professionals in the CJS combined with a series of focus groups interviews with experienced professionals in the matters discussed here. A total of 20 persons were interviewed. The survey and the interviews were carried out during 2017 and 2018 (Olsen *et al.*, 2018). This paper is based mainly on the empirical data from the survey.

## Methods

The structured survey presented here was developed in close collaboration with the three dominant parts of prosecuting criminal justice: the police, district attorneys and judges. Initiating contact at the

management level, the research team invited the participation of all three offices. Methodologically, we proposed an approach where police officers, attorneys or judges entered the research team as full members. After some deliberation, the participants from the police and the attorneys decided that they wanted to assist the research team in a more advisory fashion, whereas the representative from the courts joined the team. Thus, the research team comprised both members with intimate practical experience from, and knowledge about, different parts of the Norwegian CJS, as well as members representing the academic subjects and research traditions of both sociology, psychology, disability studies and applied linguistics. From the outset, the premise was that all team members would cooperate on an even footing, with mutual recognition for individual specialties and competence. This proved to be a very fruitful way of collaborating and working with the instruments of the survey; a decisive factor was that different members could assess different aspects – everything from language and phrasing, to the construction of the different items.

Police officers, district attorneys and judges were asked to respond to the structured questionnaire. The questionnaire was distributed electronically to 3,264 potential responders, with one reminder. We received 389 responses (216 from the police, 142 from judges and 30 from district attorneys), which make an overall response rate of 11.9 per cent.

### *Measure*

The final questionnaire consisted of 34 questions covering different themes. Experience and attention in these cases was one issue; management and adaptation was another. Detection and screening was the third, and the qualitative aspects of these cases was the fourth issue. Most questions were dichotomous or ordinal.

### *Procedure*

The national police authorities sent the questionnaire to all employees in four police districts in order to ensure representability; the authorities of judges invited all judges in an e-mail containing a link to the questionnaire, and the authorities of the attorneys sent the link to all the district attorneys' offices with a request that it was further distributed. The survey was opened on 10 October 2017; a reminder was sent one month later. The survey was closed at the end of November 2017.

### *Statistics and data management*

Data were analysed using SPSS version 23. Descriptive analysis was obtained and statistics included  $\chi^2$  analysis and ANOVA tests when comparing different groups of responders.

### *Ethics*

The study is approved by the Norwegian Centre for Research Data. The police officers, district attorneys and judges who joined the research team did not combine their roles as researchers with any formal roles as gatekeepers when the survey was distributed.

## **Results**

The respondents were asked about the frequency of their contact with suspected offenders with ID. In general, one in three responded that they were exposed to such cases on a monthly basis or more frequently. The difference between the professional groups was not significant, with the police 32.4 per cent, the district attorneys 33.3 per cent, and the judges 26.1 per cent, ( $\chi = 2.93$  (2),  $p = 0.227$ ). Contact with persons with ID as witnesses or victims of crimes was reported less frequently. Regular meetings with witnesses were reported by 14.7 per cent of respondents, and regular meetings with victims by 18.3 per cent.

The respondents ( $n = 388$ ) suggested what offending pattern that was most frequent in cases in which people with ID were involved. They had the opportunity to register several types of offence. Table I shows the criminal offence, the number and the proportion of the cases.

**Table I** Pattern of offending behaviour reported by the responders

	<i>n</i>	<i>Valid %</i>
Sexual offence	189	49.2
Violent offence	123	32.0
Public order offences	91	23.7
Damaging behaviour including arson	83	21.6
Burglary	70	18.2
Drug-related crime	63	16.4

Identification of offenders with ID has been addressed in recent reports, and was often necessary to produce a fair trial. A minority – 26.3 per cent – of the respondents reported having any routines at all in how to discover an ID, and only 2.3 per cent had written routines to treat such cases. Available screening tools to detect ID were reported by 13 per cent of the respondents.

#### *Professionals who have reported experienced the contact with clients with ID*

The majority of the respondents reported no or less than annual contact with clients who had an ID. Of the whole sample ( $n = 388$ ), 108 (27.8 per cent) reported regular contact with accused people with ID, 57 (14.7 per cent) reported regular contact with witnesses with an ID, and 71 (18.3 per cent) reported contact with victims. In total, 117 professionals (30.2 per cent) reported having been regularly involved with clients with ID. These 117 professionals were compared to professionals with no or less than annual contact with clients who had an ID. There were no significant differences in age or gender of the two groups. No significant differences were found between the professional groups. However, three main findings confirmed that:

1. established routines for identification of ID were more frequent when the professionals reported frequent contact ( $\Sigma = 5.99$ ;  $p = 0.014$ );
2. better knowledge of the content of an ID was reported by professionals who had reported contact ( $\Sigma = 6.7$ ;  $p = 0.01$ ); and
3. adaptation and adjustments for plain communication were more frequently reported in professionals who had reported contact ( $\Sigma = 7.98$ ;  $p = 0.005$ ).

When asked about the status of clients with ID, the respondents identified ID amongst suspects more frequently compared to victims and witnesses. A detailed presentation of the self-reported contact between different professional groups and the three requested client groups in the CJS (suspects, victims and witnesses) is presented in Table II.

## Discussion

This study aimed to identify the awareness of ID among clients in the early stages of criminal cases. One out of three respondents (police, district attorneys and judges) reported having regular contact with suspects who have an ID. They observed ID amongst the clients

**Table II** The respondents' ( $n = 388$ ) subjective reports of treating cases in which people with an intellectual disability were involved during the last year

	<i>Police (n = 216)</i>				<i>State attorneys (n = 30)</i>				<i>Jurors (n = 142)</i>			
	<i>Contact</i>		<i>No contact</i>		<i>Contact</i>		<i>No contact</i>		<i>Contact</i>		<i>No contact</i>	
	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>
Suspects	63	29.2	153	70.8	10	33.3	20	66.7	35	24.6	107	75.4
Victims	46	21.3	170	78.7	4	13.3	26	86.7	21	14.7	121	85.2
Witnesses	35	16.2	181	83.8	1	3.3	29	96.7	21	14.7	121	85.2

twice as frequently in suspects than in witnesses or victims. This may be linked to a hypothesis that the impact of the suspects' functioning is both validated and assessed more frequently in these cases.

The findings also showed differences in knowledge about offenders with ID compared to victims and witnesses with ID. This result may be related to intellectual deficiencies being more highly represented in offenders; however, deeper contact between the suspected person and the CJS is a more plausible reason behind this. The impact of having an ID as a suspect mandates an assessment of the person's competence to stand trial. There is an absence of a similar emphasis on suitability for the judicial process in the case of witnesses and victims.

The offences that respondents supposed were most frequent in suspects with ID were crimes of a sexual or violent nature. The high proportion of sexual crimes among these persons is not surprising; it does, however, confirm the traditional views about ID offenders (Jones, 2007; Søndena, Rasmussen and Nøttestad, 2008). It is plausible that ID will be discovered in criminal cases that attract the most attention and are thus automatically granted a forensic examination, as violent and sexual offences often are. A significant number of prison inmates with ID go unnoticed (Holland *et al.*, 2002; Søndena, Rasmussen, Palmstierna and Nøttestad, 2008), and the attention from the media and forensic experts will uncover the knowledge of a more aberrant intellectual functioning.

About one in three respondents reported being in regular contact with clients with an ID. These respondents also reported having better identification routines, better knowledge of ID and practical tools for adapted communication. All this information can depend on professional priorities. It is self-explanatory that the introduction of identification tools will increase identification. However, the very limited use of formal routines for identification reveals practices with concerns other than caring for this vulnerable group of people. There is also a problem linked to the very limited response rate (about 10 per cent), and the validity of these results may be questionable. Non-respondents may represent professionals with no knowledge or less interest in these issues.

The casual awareness and random concerns of professionals in the CJS may be a problem to the number of people who go undetected and uncared for in the system. As long as the disabilities go unrecognised, national commitments in the wake of the CRPD are not succeeding. Research in recent decades has proven that people with ID struggle through all phases of the CJS, regardless of their diagnostic status. The larger group of people with borderline ID (IQ 70–79) is usually not included as persons with ID in studies of the CJS. These persons may have severe communicative and adaptive problems without being understood as vulnerable people. The rigorous formality of the initial stages of the criminal procedures could detect such problems, but it seldom does.

Article 12 outlines the right to equal recognition before the law and the right to exercise legal capacity. In practice, it signals a move away from disabling guardianship arrangements to supported decision-making processes and enables those with disabilities to become participants in legal decisions about their own affairs. The Article has been described as “the beating heart of the Convention” and the issue of legal capacity has gained the attention of legislative reformers (O’Leary and Feely, 2018). The complexity of bringing domestic legislative frameworks into conformity with Article 12 of the CRPD is obvious, as the concept of legal capacity is intertwined in so many aspects of domestic legal systems (Arstein-Kerslake and Flynn, 2016). A one-size-fits-all approach, developed from some overarching notion of human rights, may not be a good fit in any particular local application.

In comparison to Article 12, Article 13 has received little attention. Article 13 outlines the responsibility of the parties to ensure effective access to justice for persons with disabilities on an equal basis with others (Chan *et al.*, 2012; O’Leary and Feely, 2018).

Based on the results of this paper, further research might be on practical implications of the CRPD in the CJS. The attention of the decision makers in legal decisions needs to shift towards safe and transparent practices in which all parts of the services can work together. Such practice would need a multidisciplinary approach in future research.

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## Appendix

### Questionnaire (translated from Norwegian)

1. Age?
2. Gender?
3. Professional sector?
4. Geographic area?
5. What part of the criminal justice service do you belong to?
6. What is your work-position?
7. What is your level of education?

8. In your workplace, how often do you treat cases where people with ID are involved?
9. In your workplace, how do you make special arrangements in such cases?
10. In your workplace, is the knowledge of communication problems in people with ID known?
11. In your workplace, do you apply any identification tools to identify people with ID?
12. In your workplace, how do you handle cases in where it is a doubt about a client's understanding?
13. In your workplace, do you have routines for identifying people with ID?
14. In your opinion, at what stage of the criminal justice proceedings is a most critical point of identification?
15. In Your opinion, how do the prosecutors adapt and take into account a person's ID?
16. The answer can be elaborated here.
17. In your opinion, what routines would be most effective to identify a person with ID?
18. In your opinion, what type of criminal behavior is most common in offenders with ID?
19. In your opinion, to what degree does the criminal justice system have a unified practice in facilitating for vulnerable people?
20. In your opinion, to what degree do you serve vulnerable people sufficiently today?
21. In your workplace, are there given any adaptations to clients with a known vulnerability?
22. In your workplace, do you have routines for ordering an interpreter/?
23. Within the police, to what degree do you audio-/videotape your interviews of vulnerable people?
  - In your opinion, why do you audio-/videotape more or less often?
24. Within the district attorneys, to what degree do you examine audio-/videotaped interviews from the police?
  - In your opinion, why do you examine audio-/videotape more or less often?
25. Within the judges, to what degree do you review audio-/videotaped interviews from the police?
  - In your opinion, why do you review audio-/videotape more or less often?
26. In your workplace, to what degree do you apply audio-/videotaped police interviews with vulnerable people?
27. In your opinion, why do you use audio-/videotape more or less often?
28. Within the police, to what degree do you apply audio-/videotaped material from former interrogations?
29. Within the district attorneys, to what degree do you examine audio-/videotaped interviews from former interrogations?
30. Within the judges, to what degree do you examine audio-/videotaped interviews from former interrogations?
31. In your workplace, to what degree do you examine audio-/videotaped interviews from former interrogations?

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