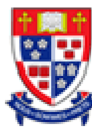
Developmental Disability, Crime, and Criminal Justice: A Literature Review

Criminology Research Centre
Occasional Paper #2003-01



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Developmental Disability, Crime, and Criminal Justice: A Literature Review

[Revised, May 2003]

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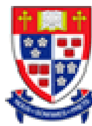

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British Columbia Association for Community Living
Vancouver, B.C.
May 2003

Published by
Criminology Research Centre
Simon Fraser University,
Burnaby, British Columbia
Canada, V5A 1S6
2003

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ISBN 0-86491-231-5

Canadian Cataloguing in Publications Data
Main entry under title: Developmental Disability, Crime, and Criminal Justice: A Literature Review

INTRODUCTION

The study of the link between developmental disabilities and crime, and the consequent development of policies and legislation, has evolved significantly over the past 100 years. The idea that individuals with developmental disabilities were predisposed to criminal activity was of considerable interest to the fledgling field of criminology throughout the early 1900s (Endicott, 1991; Hahn-Rafter, 1997). This particular idea made such an impact on the legislators and policy-makers of the time that special eugenics programs and legislation were developed, and special institutions were built to house, protect, and train developmentally disabled individuals (Hahn-Rafter, 1997). Although the institutions remained, the link between developmental disability and crime subsequently faded in importance as theorists of crime and punishment began to focus less upon biological, and more upon the psychological and sociological causes of criminality.

Some recent writers in the field argue that developmentally disabled people may be more likely than non-developmentally disabled people to exhibit characteristics, or experience social and economic conditions, that have been generally associated with criminality, such as low self esteem, poverty (Endicott, 1991), and a lack of social skills (Davis, 2002). Age-related moral development may also be adversely affected by a disability but primarily because of a failure to provide special programs to assist with the social and moral development of developmentally disabled individuals. It is these characteristics and conditions, rather than any *biological* propensity rooted in a disability, which may explain any disproportionate representation of developmentally disabled

persons in the criminal justice system (op cit.). In particular, analysts have argued that there is no *clear* and *direct* indication that people with developmental disabilities are more violent than others and therefore more likely to commit crimes against the person, such as assault (op cit.).

The management of people with developmental disabilities in the criminal justice system is a difficult area to research for several reasons. Firstly, there is no standard terminology[1], and no set of agreed upon definitions that are used to categorize research subjects who have developmental disabilities. As Endicott (1991) notes, labels like 'intellectually deficient' encompass a very broad range of functional abilities, while there are no clear means of measuring 'intellectual deficiency' and 'development disability.' Secondly, those working within the criminal justice system face significant difficulties with the identification, proper assessment, and effective treatment of developmentally disabled offenders, in addition to the difficulties that exist in the delivery of mental health services more generally. These difficulties have made the task of accurately reporting the prevalence of developmental disability amongst offenders within the Canadian criminal justice system a particularly challenging one.

This paper reviews the current literature on the topic of developmental disability, crime, and criminal justice. The review begins by focussing upon six main themes that emerge in the literature. The first theme is the issue of defining developmental disability,

[1] The terms used throughout the literature to describe developmentally disabled persons include the following: mentally retarded, mentally challenged, mentally disabled, intellectually disabled, intellectually challenged, intellectually handicapped, handicapped, developmentally disabled, low-functioning, and

identifying and classifying offenders with such disabilities. The second section examines the related issue of accurately reporting the prevalence of developmentally disabled offenders. The third section examines the experiences of developmentally disabled offenders when they come into contact with the criminal justice system. The review then shifts to the issues of competence and fitness to stand trial, which is followed by a discussion of the treatment of, and provision of programs for, developmentally disabled offenders. Finally, the controversial issue of the use of capital punishment on developmentally disabled offenders is reviewed. The focus then shifts to British Columbia and the work of researchers such as Ogloff & Welsh (2001) who have analysed admission and screening data at the Surrey Pre-Trial Services Centre over a ten-year period. The work of other analysts, notably Roesch and his colleagues, will then be reviewed as these researchers also examine the screening and intake processes used by the Corrections Branch in British Columbia.

DEFINITIONAL AND CLASSIFICATION ISSUES

There is considerable definitional diversity in the literature on developmental disability and criminality (Biersdorff, 1999; Simpson & Hogg, 2001a). Much of the diversity stems from the use of IQ and measures of social competence (Barnett, 1986). The American Association on Mental Retardation (also known as the American Association on Mental Deficiency) is recognized as the leading organization in the area of developmental disability that has been responsible for defining the disability since 1921 (American Association on Mental Retardation, 2002; Ellis & Luckasson, 1985).

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intellectually deficient. The term developmental disability and its variants will be the only term used to describe the condition in this review, unless the literature being reviewed requires otherwise.

The Association describes ‘intellectual deficiency’ as having both intellectual and behavioural limitations, “as expressed in conceptual, social, and practical adaptive skills” (American Association on Mental Retardation, 2002: p. 1). According to the Association, the condition must develop prior to the age of 18 (op cit.). In applying this definition, the Association identifies the following five points:

- (i) Limitations in present functioning must be considered within the context of community environments typical of the individual’s age, peers and culture;
- (ii) Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioural factors;
- (iii) Within an individual, limitations often coexist with strengths;
- (iv) An important purpose of describing limitations is to develop a profile of needed supports;
- (v) With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve (American Association on Mental Retardation, 2002: p. 1).

Some organizations and individual analysts have adopted the Association’s definition (Association of Regional Center Agencies Forensic Committee, 2002; Ellis & Lucasson, 1985; Garcia & Stelle, 1988; Menninger, 1986; Perske, 1991). Other writers have questioned the appropriateness of using IQ as a measure of developmental disability (Barnett, 1986; Hodapp & Zigler, 1986; Mickenberg, 1981; Zigler, Balla, & Hodapp, 1984), while some have attempted to describe those with developmental disabilities in more ‘practical’ terms. These terms include being ‘childlike’ in their thinking and ‘slow’ in learning (Petersilia, 1997). Some researchers, while acknowledging the problems associated with a reliance upon IQ scores, suggest that an IQ test score can be used, but only in combination with a wide range of other evaluative tools (Gelman, 1986; Perske, 1991). In addition, a test score must be adjusted for variables such as socio-cultural

modality: a variable that accounts for cultural differences which standardized psychological instruments fail to capture (Berkowitz, 1982).

The arguments against the use of IQ tests, whether on their own or in combination with other factors, are based upon the notion that a test score will prove unhelpful in formulating the type of individualized treatment program that a developmentally disabled person may need (Gelman, 1986). A test score may also block access to services for those who do not meet the IQ requirements, including services in correctional systems (Zigler, Balla, & Hodapp, 1984). The possibility that those deemed developmentally disabled may also suffer from a psychiatric disorder (i.e., those with a dual diagnosis) further complicates the discussion of the appropriateness of using certain measurement tools and scales (Borthwick-Duffy & Eyman, 1990; see O'Brien, 2002).

The range of definitions used, and the differences in the weights given to some measurement tools over others, is problematic for research on the relationship between developmental disability and crime, for two reasons. Firstly, differences in definition undoubtedly lead to differences in institutional intake screening and assessment procedures (Rockowitz, 1986), as well as in evaluation procedures (Santamour, 1986). This makes the comparison of findings from institutions in different jurisdictions, or even within the same jurisdiction, quite difficult. Secondly, as Santamour (1986) points out, the core elements of the definition of developmental disability have changed over time, making any temporal and longitudinal comparison extremely difficult.

PREVALENCE

According to American and Canadian research, the prevalence of developmental disability in the general population is estimated to range from one to three percent (Arc, 2003; Roeher Institute, 2002). This is an important baseline although the difficulties with definitions, and in the comparison of findings from different jurisdictions and different time periods, are particularly problematic when attempting to accurately determine the prevalence of developmental disability amongst offenders in criminal justice systems, a topic that has been of interest to many researchers. Some have focused upon developing national and state-wide estimates of developmental disability amongst correctional centre inmates. Denkowski and Denkowski (1985), for example, have estimated that two percent of correctional centre inmates in the United States have a developmental disability. More recently, Veneziano and Veneziano (1996, as cited in Petersilia, 1997) estimate the prevalence of developmental disabilities amongst inmates in both federal and state prisons at 4.2 percent. Petersilia (2000) has conducted similar research amongst offenders in the Californian criminal justice system and found an estimated 15,518 offenders with developmental disabilities; a prevalence rate was not calculated in this research.

Other researchers have examined either the prevalence, or total estimates, of developmental disability in smaller population sets. Hayes (1997), for example, has studied the prevalence of potential developmental disability amongst individuals appearing before courts in both local and rural areas in New South Wales, Australia, and estimates the prevalence to be, on average, around 30 percent (with a range of 23.6

percent to 36 percent). Mason and Murphy (2002) have studied individuals being supervised in the community on probation orders in south-east England, and found a prevalence rate of seven percent. Lund (1990) has studied offenders serving statutory care orders in Denmark and found that over the time span of the study (January 1970 through to December 1983), the total number of statutory care orders for developmentally disabled offenders decreased from an average of 40 per year to 29 per year. Hitchen (1994) discovered that an estimated 6.5 percent of the population of those remanded to the forensic psychiatric facility in British Columbia had developmental disabilities.

Numerous methodological problems and issues have been encountered by those undertaking prevalence research, such as the problem of over-estimation that can occur when administering group tests without other measures (Noble & Conley, 1992), or the problem of over-representing certain offence and offender types when using a remand population (Simpson & Hogg, 2001a). These difficulties have made the accurate determination of the prevalence of offending amongst the developmentally disabled, as compared to the general population, unattainable (op cit). However, one important finding appears constantly: individuals with developmental disabilities are over-represented in correctional systems (Coffey, Procopiow, & Miller, 1989; Gardner, Graeber, & Machkovitz, 1998).

A common interest in the majority of prevalence studies, and regardless of the population group from which the subjects are chosen, is determining the types of offences these kinds of offenders are committing. A study by Denkowski and Denkowski (1986)

examined the characteristics of developmentally disabled *adolescent* offenders at the time of *arrest.* Their findings were similar to those of Klimecki, Jenkinson and Wilson (1994), who found that theft was the most common offence committed by individuals with developmental disabilities. However, the studies differ when the types of crimes subsequently committed by developmentally disabled offenders convicted of theft is examined. Klimecki and his colleagues (1994) found that property crimes like theft or robbery were followed by assault, sex-related offences, and property damage. Denkowski and Denkowski (1986) found that theft was followed by burglary, and then assault. With respect to the sex-related offences found in the study by Klimecki and his colleagues (1994), a more detailed analysis indicated that sexual assault was the most frequently committed offence, followed by sexual penetration of a minor, rape, and indecent exposure. The frequency of property offences amongst developmentally disabled offenders has also been found to be higher than offences against the person in a number of studies (Steiner, 1984, as cited in Noble & Conley, 1992; Sundram, 1989, as cited in Noble and Conley, 1992).

Hitchen's (1994) findings were significantly different from those of Denkowski & Denkowski (1986) and Klimecki, et al. (1994). Hitchen (1994) sought to identify, amongst other things, any differences in the criminal histories and the nature of the current charges of those persons remanded to the British Columbia Forensic Psychiatric Institute. Her study revealed that a high proportion of the previous offences of developmentally disabled subjects were for assault causing bodily harm or assault with a weapon (Hitchen, 1994). Furthermore, with respect to the criminal charges that led to the

remand of the subject, the most frequent offences among the subjects were either sexual or assault-related (op cit.). In comparing the number of convictions for the non-developmentally disabled, the developmentally disabled subjects, and the subjects with dual diagnoses, it was found that no statistically significant differences existed (op cit.). This is an interesting finding but one that must be approached with caution because of the small number of developmentally disabled subjects in the study (n=8).

The issue of violent and sexual offences committed by persons with developmental disabilities has also been the topic of research. In their examination of the psychopathology of sexual abuse amongst young developmentally disabled adults, Firth and his colleagues (2001) stress that while research in the area often focuses on either the victims or the perpetrators of abuse, in reality, there is considerable overlap between these two groups. While their study set out to examine post-traumatic symptomatology, their findings did not support the view that these symptoms play an important role in sexual perpetration by victims of sexual abuse (Firth et al., 2001). Rather, the researchers found evidence consistent with abusive-reactive models which "link the individual's experiences as a victim with their later experiences as a perpetrator" (op cit.: p. 245). The findings of Balogh and colleagues (2001) are also consistent with this model. More specifically, their research supports the perspective that looking to the sexual developmental stages of perpetrators is crucial when trying to explain the subsequent adult behaviour of these types of offenders.

Brown and Stein (1997) were also interested in the topic of sexual offences committed by the developmentally disabled. In their comparison of male sex offenders with developmental disabilities and those without, Brown and Stein (1997) found that the former were more likely to have male victims and more likely to commit less serious offences. The findings of Crocker and Hodgins (1997) and Hodgins (1992), on the other hand, were quite different. With respect to violent crimes, Crocker and Hodgins (1997) found that the non-institutionalized developmentally disabled men in their Swedish birth cohort were more likely to be convicted of an offence before the age of 30. There was also a greater likelihood that this offence would be violent when compared to those participants who had never been placed in an institution for the developmentally disabled.

In an earlier study, Hodgins (1992) found that developmentally disabled men were five times more likely to commit a violent offence than men with no disorder or disability, and developmentally disabled women were 25 times more likely to commit a violent offence than women with no disorder or disability. This study also found that people with developmental disabilities have an increased risk for offending generally. Developmentally disabled men were three times more likely than non-developmentally disabled men, and developmentally disabled women were four times more likely than non-developmentally disabled women to commit an offence (Hodgins, 1992).

Some researchers have examined the impact of 'group influences' on developmentally disabled persons who commit first-degree murder. Simpson and Jardin (2002) and Simpson (2002) found that group influence (measured by the presence of co-

defendants) is more likely to enhance criminality amongst developmentally disabled offenders than those who are not developmentally disabled.

Finally, Simpson & Hogg (2001b) provide a review of the literature on the predisposing factors of criminality amongst the developmentally disabled. Amongst other things, these researchers found that gender, age, and socio-economic class were significant factors associated with criminality. Furthermore, Simpson & Hogg (2001b) found that the likelihood of offending increased when the developmental disability was in the borderline range, and also when there was a history of offending and/or behavioural problems.

CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

The literature examining the treatment of developmentally disabled offenders in the criminal justice system addresses the issue at different stages of the process, namely contact with the police, contact with lawyers, and the prison experience.

McAfee, Cockram and Wolfe (2001) have investigated the stage of police contact. More specifically, these researchers examined the reactions of police officers in sexual crime cases where the suspect or the victim was developmentally disabled. It was found that developmental disability did, in fact, influence the officers' perceptions and their responses, but the nature of their perception or response was dependent upon the role played by the developmentally disabled person in the crime (McAfee, et al., 2001). The presence of developmental disability in a victim led to an extremely supportive and

favourable police reaction. However, in cases where the suspect was developmentally disabled, the police found the latter to be less believable and the crimes were deemed to be more serious when all other factors were held constant (op cit.). Furthermore, McAfee and his colleagues (2001) found that police reacted more strongly when crimes were committed by developmentally disabled males rather than by developmentally disabled females. The patterns of police responses in this study and in others (see, e.g., Petersilia, 2000) were found to be unaffected by experience and training. Despite this finding, manuals have been developed in New South Wales and in the U.S. to assist police officers in communicating more effectively when dealing with developmentally disabled persons (see Brennan & Brennan, 1994; see Kennedy, Goodman, Day & Griffin, 1982).

While McAfee and his colleagues (2001) found that experience and training had little or no impact on the response patterns of police officers, Russell and Bryant (1987) found that the knowledge and attitudes of law students could be affected by special training. In their investigation of the effects of administering instructional programs on law school students, these researchers found that knowledge of, and positive attitudes towards, people with developmental disabilities increased when special training was provided. The findings of Russell and Bryant (1987) and Messinger and Davidson (1992), who discuss the potential of training efforts in the university setting generally, suggest that the inclusion of such programs in law school curricula may prove to be beneficial in the future treatment of developmentally disabled offenders by their lawyers. Some legal institutions, such as the New Jersey State Bar Foundation, have attempted to assist practicing lawyers by developing booklets to help them in recognizing the presence

of a developmental disability while acknowledging the lack of resources available to deal with this group of clients (The New Jersey State Bar Foundation, August 1996).

Labelling a defendant as developmentally disabled while in the hands of the criminal justice system has consequences for the person. As Petersilia (1997) points out, when a defendant is classified as developmentally disabled, fewer options become available and more difficulties arise at each stage of the process. These difficulties include obtaining access to treatment (Mental Health Court Task Force, 1998), and adjustment to the prison environment (Smith, Algozzine, Schmid and Hennly, 1990). Consequently, the label 'developmentally disabled' is often removed in order to serve the legal interests of the defendant (Petersilia, 1997).

One factor that is said to influence the overall experience of developmentally disabled offenders, regardless of which stage of the criminal justice process they are experiencing, is their suggestibility (Gudjonsson, 1990; Keilty & Connelly, 2001; Sigelman, Budd, Spanhel, & Schoenrock, 1981), and the consequent threat of manipulation (Petersilia, 1997). In both institutional and community samples, Sigelman and his colleagues (1981) found that rates of acquiescence are significantly higher among low IQ respondents than among high IQ respondents. Gudjonsson (1990) and Everington and Fulero (1999) found similar results in their research. These findings suggest that the reliance on 'yes-no' questions when interviewing developmentally disabled offenders at each point of the criminal justice process can have devastating impacts on the validity of the responses given and the subsequent fate of such offenders.

COMPETENCE AND FITNESS IN THE LEGAL CONTEXT

The issue of the competence and the fitness of developmentally disabled defendants arise at several stages of the criminal justice and legal processes. These stages include participation in a defence, the ability to provide a valid confession, the ability to waive rights (e.g., in the American context, a person's Miranda rights), and the ability to stand trial.

Bonnie (1990) has discussed the issue of the legal representation of developmentally disabled defendants. Consistent with the recommendations offered by Russell and Bryant (1987), aimed at increasing the knowledge and improving the attitudes of lawyers through changes to law school curricula, Bonnie (1990) emphasizes the importance of the role of counsel in assessing and judging the competence of developmentally disabled defendants. Bonnie stresses the need to develop procedures that will enable counsel to fulfil this responsibility, particularly the development of interviewing and counselling skills (1990). Bonnie also indicates that in the case of referrals for pre-trial forensic evaluation, there exists an even stronger need to enhance the competence of counsel (op cit.).

The issues of suggestibility and acquiescence discussed earlier are also relevant in the context of the competence of defendants to make statements of confession, as a confession may result from suggestive and leading questioning. The act of confessing is further complicated, in the case of developmentally disabled defendants, as the confession process assumes an understanding of Miranda rights. In the case of

developmentally disabled offenders, this assumption may be invalid (Everington & Fulero, 1999; Fulero & Everington, 1995; Gardner, Graeber, & Machkovitz, 1998). Fitness to plead is also an area of concern with respect to developmentally disabled defendants. More specifically, the prevalence rate of developmental disability among those found unfit to plead is quite high (see Grubin, 1991). In regards to competence to stand trial and the ability to communicate, Stevens and Corbett (1990) discuss the need to distinguish between mental illness and disabilities affecting communication so as to avoid unjustly detaining defendants who are merely 'communicatively disabled' and not mentally ill. The work of these researchers reveals that fitness to plead, fitness to stand trial as well as competence to confess are equal concerns in the case of developmentally disabled defendants.

With respect to the validity of the tests used to assess the competence of developmentally disabled defendants to stand trial, there exists some inconsistency in the literature. While Chellson (1986) found that the Competency Screening Test (CST) is an inappropriate tool for determining the competence of developmentally disabled defendants to stand trial, Everington and Dunn (1995) found high levels of validity and reliability for a similar competence assessment tool called the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). Despite the uncertainty of the value of these competence assessment tests, it has been suggested that decisions about the issues of competence to stand trial and criminal responsibility involve an appropriate use of different tests, measures and indices (Johnson, Nicholson & Service, 1990).

In Florida, efforts have been made to address the issue of competency to stand trial in the case of developmentally disabled offenders. The Mentally Retarded Defendant Program was established in the late 1970s in order to identify those persons who were unfit to stand trial, to assist them to participate in their own defence, and to divert these offenders from the criminal justice system (Mabile, 1982). This service also provides both the court and health services with treatment recommendations on a case-by-case basis (op cit.).

With respect to the trial process, Reich and Wells (1986) sought to determine what type of defendants received *multiple* competency-to-stand trial evaluations. Interestingly, they found that fewer 'repeaters' (i.e., persons receiving multiple evaluations) than 'non-repeaters' were diagnosed with developmental disabilities (2.0 percent versus 5.2 percent, respectively). Hitchen (1994) found that only one out of the eight developmentally disabled subjects in her study was assessed as unfit to stand trial while two out of the 24 non-developmentally disabled subjects and all five of the dual-diagnosis subjects were assessed as unfit. Certainly, the reliability and validity of the process of initially identifying the presence of developmental disability has to be considered when interpreting competency and fitness evaluation results.

PROGRAMMING AND TREATMENT CONSIDERATIONS

One area in the literature on developmental disability and crime where consensus exists is the adequacy of programs for developmentally disabled offenders. There is agreement that correctional environments have proven to be fundamentally inadequate in

addressing the treatment and programming needs of this group of offenders (Coffey, Procopiow & Miller, 1989; Reed, 1989). A great deal of the problem can be traced to not only the criminal justice system's inability to consistently and accurately identify inmates who are developmentally disabled (and thus in need of specialized programs), but also the relatively small number of developmentally disabled offenders in correctional facilities (Coffey, Procopiow & Miller, 1989; Veneziano, Veneziano & Tribolet, 1987). These problems make it more difficult to develop appropriate and effective treatment and other programs.

In addition to a lack of accessibility to treatment (Mental Health Court Task Force, 1998; Simpson, Martin & Green, 2001), and a lack of resources and knowledge amongst correctional staff, there is a lack of inter-agency agreement and co-operation (Coffey, Procopiow & Miller, 1989; Holland, Clare & Mukhopadhyay, 2002; Reed, 1989; Swanson & Garwick, 1990). In fact, the only U.S. program where effective agency collaboration has been documented is in Lancaster County, Pennsylvania, where probation, and mental health and developmental disability services have been combined to better address the needs of adult offenders with disabilities (White & Wood, 1988; Wood & White, 1992). The development of mental health courts has been raised in recent discussions on developmental disability and crime as a way of alleviating problems associated with treatment accessibility and ineffective agency collaboration (Mental Health Court Task Force, August 1998; see Trupin, Richards, Wertheimer & Bruschi, 2001).

With respect to the type of treatment program deemed appropriate for developmentally disabled offenders, the type of offence and the characteristics of the offender are taken into consideration. In the case of *adolescent* offenders, particularly those who display aggressive behaviours, Denkowski and Denkowski (1983) found that the secure group home type of program was particularly effective. This kind of program provided consistent treatment in the initial stages, while simultaneously protecting the community. Similarly, Losada-Paisey and Paisey (1988) suggest that comprehensive, residential, behavioural treatment may prove to be most effective in the case of developmentally disabled *adult* offenders[2]. An important distinction to be made between these two studies is that some of the subjects in the research conducted by Losada-Paisey and Paisey (1988) exhibited paraphilic behaviours, while the research by Denkowski and Denkowski was focussed upon aggressive, and not necessarily paraphilic, *adolescent* behaviours.

With respect to the effectiveness of hospital-based treatment programs for developmentally disabled adult males, Day (1988) found that for offences committed against the person, such as sex offences and assault, these programs were more effective than in the case of property offences. The treatment of developmentally disabled sex offenders has, in fact, received a great deal of attention in the literature. In their examination of the effectiveness of probation for this subset of offenders, Lindsay and Smith's (1998) findings led them to recommend a two-year probation period over a one-year probation period; the latter being too short a time for any sex offender programming

[2] Note that the diversion of intellectually deficient assaultive adult offenders into psychiatric services has been shown to be used appropriately (see Addington, Addington & Ens, 1993).

to take effect. Group-based therapy (Swanson & Garwick, 1990) and problem-solving intervention (O'Connor, 1996) have also been discussed for their potential in providing effective non-intrusive treatment to developmentally disabled sex offenders. Problem-solving intervention, in particular, highlights the importance of addressing the social and environmental context of the offensive behaviour (O'Connor, 1996). Firth et al. (2001) found that prolonged work in art therapy coupled with cognitive-behavioural therapy proved to be particularly helpful in enabling a victim of sexual abuse who later became a perpetrator of this type of abuse to recognize his abusive inclinations. Finally, Myers (1991) and Cooper (1995) discuss the utility of anti-androgens in the treatment of developmentally disabled sex offenders. While Myers (1991) focuses exclusively on medroxyprogesterone acetate (MPA), Cooper (1995) also discusses the value of cyproterone acetate (CPA). With respect to the overall efficacy of such treatments, Cooper (1995), in particular, highlights the need to devise controlled study designs with appropriate outcome measures to accurately determine the utility of anti-androgens.

Individualized treatment programs have also been recommended for developmentally disabled offenders with histories of non-violent behaviour (Morton, Hughes, & Evans, 1986). The use of peer jury systems has also shown some potential in the case of inappropriate (and presumably non-violent) resident behaviours (Grubb-Blubaugh, Shire, & Balser, 1994). The appropriateness of adopting current risk assessment and risk management practices in relation to developmentally disabled offenders has yet to be determined (Johnston, 2002; Turner, 2000).

DEVELOPMENTAL DISABILITY AND CAPITAL PUNISHMENT

In recent years, the issue of imposing capital punishment upon developmentally disabled offenders has generated significant controversy in the United States. The United States Supreme Court has ruled that the use of the death penalty in the case of developmentally disabled offenders is not unconstitutional, so long as the disability is taken into consideration during the trial of the offender. However, advocacy groups argue that capital punishment is unsuitable for all developmentally disabled offenders, by virtue of their condition (Calnen & Blackman, 1992). Consistent with the Supreme Court ruling, Calnen and Blackman (1992) argue that any unconditional protection fails to acknowledge individual differences amongst developmentally disabled people generally, and developmentally disabled offenders specifically. Others have similarly emphasized the need to acknowledge that developmentally disabled people are not a homogenous group (Santamour & West, 1982). The differences in IQ levels and the severity of the condition amongst developmentally disabled offenders who have been executed since the re-instatement of the death penalty in the United States in 1976 have been highlighted in the literature (see Keyes, Edwards, & Perske, 1997).

The differences in definitions and in the assessment procedures used to establish the presence of developmental disability have significant implications for the consistent application of the death penalty. The reliance upon expert opinions in the assessment of apparently disabled offenders facing execution, when the experts use measures the reliability and validity of which have been challenged, has been criticized (Olvera, Dever, & Earnest, 2000; Wilson, 2002). In cases where the offender has been deemed

incompetent for execution, assessors must decide whether and how to treat this subset of offenders, a decision that is undoubtedly riddled with moral and ethical dilemmas (Heilburn, Radelet, & Dvoskin, 1992).

FORENSIC EVALUATION: A BRITISH COLUMBIA PERSPECTIVE

The delivery of mental health services to mentally disordered offenders is a particularly problematic field of clinical activity. According to Roesch (1993), the core problem is the lack of continuity in service delivery. In order to address this problem, in the early 1990s, the then Ministries of Attorney-General, Health, and Social Services, and the British Columbia Forensic Psychiatric Services Commission, jointly adopted a set of protocols that recognize the management of mentally disordered offenders as an inter-ministerial responsibility (Roesch, 1993). By collaborating on service delivery, the objective was to prevent offenders from experiencing discontinuity in services as they moved from the jurisdiction of one Ministry to another (op cit.).

The Surrey Pre-Trial Mental Health Project was one of the first projects developed under this inter-ministerial framework (Roesch, 1993). In order to realize the goals of increased accessibility to services and the overall reduction of recidivism, the timely identification of inmates with mental health needs and the use of a universal screening process were adopted as the appropriate strategies (op cit.).

The Ogloff Report

In their report *'Surrey Pretrial Mental Health Program: An Analysis of Admission and Screening Data 1991-2000"*, Ogloff and Welsh (2001) provide a statistical overview of the population of inmates admitted to the Surrey Pre-Trial Centre over a ten-year period. A total of 41,127 inmates were admitted and, of these inmates, a total of 37,832 were screened (Ogloff & Welsh, 2001). The majority of the inmates (91.2 percent) referred to the mental health program received the referral from a screening interviewer[3] (op cit.). While almost two thirds of the inmates screened received no specific intake recommendations, approximately one third of those referred were then assessed or seen by a psychologist (op cit.). Further monitoring or reassessment was recommended for approximately 16 percent of inmates, segregation was recommended for 2.77 percent of inmates, and suicide watch was recommended for fewer than one percent of inmates (op cit.).

The Screening Process

The intake interviewers, who were for the most part doctoral students in clinical psychology, were responsible for administering a brief semi-structured mental status interview and the Brief Psychiatric Rating Scale (Ogloff & Welsh, 2001). The areas covered in these interviews included personal/demographic information, suicide risk, orientation to time and space, criminal history, social adjustment as well as mental status during the past month, and overall mental health history (op cit.). Although intake

[3] The remaining 8.2 percent of referrals consist of inmates who referred themselves to the program (4.3 percent), inmates who were referred by a correctional officer (1.6 percent), inmates who were referred by a medical duty nurse (1.7 percent), and inmates who were categorized in the referral source as 'other' (1.2 percent) (Ogloff & Welsh, 2001).

interviewers were responsible for conducting the routine screening procedures, corrections officers, nurses, other health care providers and staff were notified of which inmates were in need of mental health services (op cit.). Correctional officers specifically were provided with training on how to differentiate between non-mentally disordered and mentally disordered inmates (Roesch, 1993).

Once those inmates in need of mental health services were identified, the nurse coordinator was responsible for arranging for a follow-up to be conducted by a psychologist, a psychiatrist, or another health care provider (Ogloff & Welsh, 2001). Throughout the entire screening interview process, attempts were made to identify and immediately refer those inmates who might pose some threat to themselves or others. The threat could be due to a severe mental disorder, or the inmate might require crisis intervention as they might be at risk for violence, self-harm or suicide. Other inmates of interest were those who might present a more general risk because of adjustment problems (op cit.).

The Mentally Disordered Offender (MDO): Definition and Classification

The term 'mentally disordered offender' (MDO) is a term that is commonly used in the literature on offenders suffering from a range of mental disorders. The definition of MDO that Ogloff and Welsh (2001) used in their study was developed by an inter-ministerial mentally disordered offender committee (Roesch, 1993). According to this committee, "MDOs are those persons in the criminal justice system who require clinical intervention to address their behavioral and mental health problems. MDOs include a

range of persons, from those who are clearly certifiable under the *Mental Health Act* to those who have situational disturbances. Mentally handicapped persons are not categorized. . . [as MDOs] . . . unless they have a concomitant disorder" (op cit., p. 1). This definition was intentionally broad so as to include a range of inmates suffering from behavioral and mental health problems, without being so broad as to include all inmates (op cit.). Those who exhibit behavioral problems in the absence of symptoms of mental illness were not to be included in this definition (op cit.).

Once screening was completed, and the mentally disordered inmate had been identified, the screeners placed inmates into one of five categories of mental disorder. The categories were created by the mentally disordered offenders committee and were as follows: certifiable (category 1); mentally ill but not certifiable (category 2); dysfunctional but not seriously mentally ill (category 3); situational/short-term disorders (category 4); and a generally category that included those who were intellectually challenged (category 5) (Ogloff & Welsh, 2001).

Those persons deemed certifiable were those found to be suffering from severe psychotic illnesses (Ogloff & Welsh, 2001). These illnesses are characterized by symptoms such as delusions, hallucinations, thought disorders, or profound abnormalities of mood (op cit.). These persons are also said to present a threat either to themselves or to others, and may or may not be competent to stand trial or to give informed consent (op cit.). Those categorized as mentally ill but not certifiable, although disturbed and exhibiting signs of mental illness, did not present an imminent risk to themselves or

others and most likely would be found fit to stand trial and to give informed consent (Ogloff & Welsh, 2001).

Category three - persons who were dysfunctional but not seriously mentally ill - included those who have problems that are disturbing to others and that aggravate their situations while only showing borderline traits of mental illness (Ogloff & Welsh, 2001). The dysfunctional types of problems that these people may display include lack of control, mood disorders, emotional lability, and suicidal ideation (op cit.). As the title of the fourth category suggests, people suffering from situational/short-term disorders are not defined as being seriously disturbed, but rather as exhibiting problems as a response to a stressful life situation (Ogloff & Welsh, 2001). The common symptoms in this category include anxiety or depression, which are generally treatable (op cit.). It is deemed unlikely that these persons would pose a threat to others but they may, for a limited period of time, be a danger to themselves (op cit.). Finally, category five was a general category that *included* people who exhibited deficiencies in intellectual and/or adaptive functioning (i.e., developmentally disabled offenders) (Ogloff & Welsh, 2001).

MDO Categories Compared

Of all the inmates, a total of 17,600 were classified into one of the five MDO categories (Ogloff & Welsh, 2001). The breakdown per category is as follows: Category 1, 1.66 percent (n= 292); Category 2, 12.87 percent (n = 2,265); Category 3, 60.42 percent (n= 10,633); Category 4, 22.64 percent (n = 3,984); and Category 5, 2.39 percent (n = 421). When comparing the admission rates over the ten-year period, there was a

steady increase from the onset of the program until 1996/97, at which point there was a steady decrease (op cit.).

When comparing the type of offence on the first charge, it was found that there was no statistical difference between the categories (Ogloff & Welsh, 2001). With respect to the level of risk for suicide or violence, the inmates in Categories 1 and 2 were found to be at higher risk (op cit.). Inmates in these two categories were also found to be at the highest risk of poor institutional adjustment, followed by those inmates in Category 5, with inmates in Categories 3 and 4 being at the lowest risk of poor adjustment (op cit.). With respect to adjustment issues overall, one third of all inmates were deemed to have either poor or very poor social adjustment specifically in the areas of family and vocation (op cit.). Problems with social/interpersonal adjustment were exhibited in approximately one quarter of the inmates (op cit.).

Finally, in regards to substance abuse problems, inmates in Categories 3 and 5 (dysfunctional but not seriously mentally ill, and the general category, respectively) were more likely to have alcohol abuse problems, although the differences between all five categories was found to be relatively small (Ogloff & Welsh, 2001).

As the success of the Surrey Pre-Trial Centre Mental Health Project relied upon the ability of intake interviewers to accurately identify inmates in need of mental health intervention (Roesch, 1993), the validity of intake interviewer screening was evaluated. This evaluation found that nurses were less successful than intake interviewers in

accurately identifying inmates with mental health problems (op cit.). With respect to the identification of drug and alcohol problems amongst the inmates, intake interviewers and nurses were equally successful (op cit.)[4]. Another positive finding in this research was that the attitudes of officers in the institution toward the mentally disordered inmates improved dramatically throughout the course of the program (op cit.).

Future Directions: Screening and Intake Procedures

The issue of providing mental health care to correctional centre inmates in the province has been of interest to researchers other than Ogloff and his colleagues. Olley and Nicholls (2001), for example, emphasize the importance of screening for mentally disordered offenders and the use of an inter-ministerial approach. While the Surrey Pre-Trial Services Centre implemented such a program in 1991, this process was not implemented uniformly across British Columbia until 2000.

Olley and Nicholls (2001) argue that there is an ethical, moral, professional, legal and practical responsibility to provide mental health care to those inmates in need. They demonstrate the problematic nature of the jail experience for unstable individuals with mental disorders by comparing MDOs and non-MDOs with respect to rates of suicide[5] and victimization (Olley & Nicholls, 2001). They also compared MDO and non-MDO inmates with respect to their likelihood of breaching institutional regulations, needing segregation, and being perceived as difficult to deal with by the staff (Olley & Nicholls,

[4] Note that the most prominent distinction between these two groups was the area of referral. Intake interviewers were responsible for referring more inmates than the nurses. It is noted that, despite the possibility that nurses may have been more efficient with their referrals, false positives are more desirable than false negatives (Roesch, 1993).

2001). MDO inmates score higher than non-MDO inmates on all of these points of comparison (Olley & Nicholls, 2001). Unfortunately, inmates with developmental disabilities were not singled out for special analysis.

Following the recommendations of a review of mental health services in the late 1990s, the Burnaby Correctional Centre for Women (BCCW) implemented a new intake procedure effective February 1999 (Nicholls, Lee, Ogloff & Corrado, 2002). The screening procedure adopted at this institution was the same as that adopted at the Surrey Pre-Trial Centre, and at Vancouver Pre-Trial (op cit.). Although the screening process was found to be generally effective and valid, a few concerns remained, such as the potential overlap in services provided by intake screeners and the nursing staff (op cit.). The primary objective of the evaluation of this program, conducted by Nicholls and her colleagues (op cit.), was to assess the validity of the screening process in the correctional centre. In addition, the researchers tried to determine the overall characteristics of the inmate population as well as the prevalence of mental disorders amongst the inmates (op cit.).

A systematic random sampling method was used by the researchers (Nicholls et al., 2002). A total of 29 of the selected inmates agreed to participate in the evaluation study (op cit.). Of these 29 inmates, 93 percent were categorized as suffering from a mental disorder (i.e. they met the symptomatic diagnostic criteria of the DSM-IV within the month prior to the interview) (Nicholls et al., 2002). Of this 93 percent, 52 percent

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[5] A manual, called the 'Suicide Assessment Manual' (Zapf, 2000), exists for remanded inmates and may be useful in identifying those inmates who are at high risk for suicide at this stage (Olley & Nicholls, 2001).

were categorized as suffering from a substance disorder, 35 percent from a mood disorder, and seven percent from an anxiety disorder (op cit.). Forty-one percent of the inmates had been given multiple diagnoses (op cit.). There were no inmates with developmental disabilities in the population of the Centre at the time of the research.

As illustrated above, the work of Olley and Nicholls (2001), and of Nicholls and her colleagues (2002) focus more generally on the screening and intake procedures for all kinds of mentally disorder offenders. The Ogloff and Welsh (2001) study can be best characterized as a statistical *overview* of the inmates admitted during a ten-year time span. The goals were to identify those inmates with mental health concerns and the frequencies of offences committed by each of the five MDO categories, and this useful information has been gathered. However, the data have their limitations particularly with respect to an understanding of the quality of the offences, and the circumstances under which they were committed.

CONCLUSION

The definitional and terminological variation that exists in the literature on developmental disability and crime makes any research findings in this area quite tentative. This variation also makes the task of comparing findings from different jurisdictions and time periods as well as accurately estimating prevalence extremely difficult, with prevalence estimates ranging from two percent to 36 percent depending upon the population being studied. In addition to the difficulties in making comparisons and estimating prevalence, differences in definitional and assessment procedures have

significant implications in the case of assessments to determine whether a developmentally disabled offender should be subjected to capital punishment.

The studies also vary with respect to the types of crimes that developmentally disabled offenders are said to commit most often. While most studies have found property offences to be more common than offences against the person, others found the reverse. Despite these differences, it is generally agreed that developmentally disabled persons are over-represented in the criminal justice system. This over-representation may be due to the differential treatment of developmentally disabled defendants, documented in the literature, at various stages of the criminal justice process, including contact with the police, contact with lawyers, the legal process more generally, and the prison experience.

The inadequacy of treatment programs for developmentally disabled defendants has also been discussed at great length in the literature. While certain treatment approaches have been found to be more effective for certain types of offences, program inadequacy is linked to the difficulties in identification and classification, as well as the lack of inter-agency collaboration.

As illustrated in the work of Ogloff and his colleagues, and other researchers studying developmental disability and criminality, the identification and subsequent classification of developmentally disabled offenders begins at the stage of forensic evaluation (see Menzies, 1989; Petrella, 1992). As such, screening procedures and tools

used to identify and classify mentally disordered offenders generally, and developmentally disabled offenders specifically, must be consistent in order to ensure the reliability and validity of this key stage in the criminal justice process. Moreover, research that attempts to determine the prevalence of developmental disability amongst individuals in the criminal justice system ought to go further than the Ogloff study and examine the nature of the offences committed by offenders and the circumstances surrounding the commission of the crimes. This will ensure a qualitative, as well as quantitative, understanding of the relationship between developmental disability and crime that will likely better inform criminal justice policy and practice.

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