Like the wider population, people who have a learning disability can – and do – come into contact with the criminal justice system (CJS), either as witnesses to, perpetrators of, or victims of a crime. Compared with the general population, they are more likely to find the experience distressing, confusing and bewildering, which can negatively affect their ability to meaningfully participate in, and understand, judicial proceedings. This raises the question of equitable access to justice.

This article explores how nurses working in criminal justice or forensic settings can help meet the health and justice needs of people with learning disabilities who have committed a crime or are accused of having done so. It sets out definitions, refers to statutory guidance and explores the needs of that population so nurses can anticipate those needs and make reasonable adjustments to care, support and interventions.

Learning disabilities

Like the wider population, people who have a learning disability can have impaired cognitive and social functioning, and often come with comorbidities. People with a learning disability are over-represented in the criminal justice system. This population is exposed to inequities in access to justice health services. The criminal justice system uses the broader concept of ‘mental vulnerability’. Reasonable adjustments to the environment, communication and support systems are needed.

In this article...

- How a learning disability can affect a person’s journey through the criminal justice system
- Why this population is exposed to inequities in access to justice health services
- Adjustments needed by people with a learning disability in courts and in prison

Keywords Learning disability/Criminal justice/Prison/Reasonable adjustments

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Learning disabilities: supporting people in the criminal justice system

Learning disabilities are likely to affect a person’s ability to:
- Communicate;
- Problem solve;
- Plan and execute tasks;
- Manage everyday tasks.

Box 1

In this article...

- How a learning disability can affect a person’s journey through the criminal justice system
- Why this population is exposed to inequities in access to justice health services
- Adjustments needed by people with a learning disability in courts and in prison

Key points

- Learning disability can cause impaired cognitive and social functioning, and often come with comorbidities
- People with a learning disability are over-represented in the criminal justice system
- This population is exposed to inequities in access to justice health services
- The criminal justice system uses the broader concept of ‘mental vulnerability’
- Reasonable adjustments to the environment, communication and support systems are needed

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Abstract

People with a learning disability can experience multiple inequities in accessing criminal justice health services. This can lead to missed opportunities to diagnose learning disabilities, delayed access to effective treatment, and ineffective and unequal access to justice. People with a learning disability can experience difficulties in communication, sensory processing, comprehension and social functioning. Clinicians and criminal justice staff need to make reasonable adjustments to their practice so they provide equitable access to health and justice services, and improve the experience of people with a learning disability who are confronted with the criminal justice system.

Citation

It has been estimated that only about 20% of adults with learning disabilities are known to learning disability services (Hatton et al, 2016), so it is likely that many defendants in the CJS who have learning disabilities have not been diagnosed as such and are not known to specialist services.

To provide effective and meaningful access to justice and health services, the ability of CJS clinicians and forensic practitioners to recognise potential signs of learning disabilities is paramount. They are expected to screen for, and recognise defendants with, learning disabilities (National Institute for Health and Care Excellence, 2017; NHS England, 2014).

Prevalence
The prevalence of learning disabilities in the CJS is unclear. Data from a national inpatient census showed that, on 30 September 2013, there were 1,017 people with learning disabilities detained under forensic sections of the Mental Health Act (1983) (Bit.ly/MentalHealthAct1983); of these 278 had been referred directly from the CJS (Glover and Brown, 2015). UK studies of people with learning disabilities have reported the prevalence of learning disabilities in the prison population as being 7% (Young et al, 2009) and a similar study in a London police station found rates of 6.7% (Young et al, 2013).

The reasons for this lack of clarity include a lack of whole-population studies and differences in definitions, diagnostic criteria, sampling techniques and study designs (Murphy and Mason, 2014; Jones, 2007). In addition, in challenging environments such as the CJS, it is often not possible to conduct a full diagnostic assessment. That said, the expert consensus is that people who have learning disabilities are over-represented in the CJS (Hellenbach et al, 2017).

Population
We know that people with mild or moderate learning disabilities:

- Can, and do, come into contact with the CJS;
- Are more vulnerable than the wider criminal justice population (McCarthy et al, 2016);
- Are often young and male;
- Often have mental health and/or neurodevelopmental comorbidities (such as personality disorder, depression, attention deficit hyperactivity disorder or autism) and a history of being abused and/or alcohol misuse (Murphy and Mason, 2014).

Their pathway into the CJS, and the types of crime they commit, or of which they are accused, may differ from that of the wider criminal justice population. A typical example is a person with learning disabilities who has been manipulated by others to carry, hide or store illicit substances; they may have done it because they were seeking camaraderie or access to items that would otherwise be beyond their means.

People with more-severe levels of learning disabilities are less likely to come into contact with the CJS. This could be because the crimes they commit (or may have committed) are not reported as often and/or because of the safeguards inherent to our legal system.

Carers may shield individuals who display aggressive or violent behaviours from prosecution in the belief that it is their duty to protect them, or because they are unable to distinguish challenging behaviours from offending behaviours. However, this means the individual with learning disabilities may miss out on access to adequate support. It may also put others at risk – for example, anyone living with that person in shared housing (Lyall, 1995).

Criminal justice system
In the CJS there are mental health liaison and diversion teams whose remit is to provide mental health screening and assessment to individuals in police custody suites, local magistrate courts, probation services and prisons. Since their inception in the late 1980s, mental health liaison and diversion teams have been required to identify and support people with learning disabilities (NHS England, 2014; Bradley, 2009). However, this aspect of their work has often been neglected because of a lack of statutory guidance and a tendency for teams to prioritise mental illness and risk to self and others (Srivastava et al, 2013).

The Bradley report into the CJS and the needs of people with mental illness or learning disabilities concluded that:

- People with learning disabilities are over-represented in the CJS;
- There is no effective way of identifying and assessing that population;
- The police, the CJS and health staff need training to recognise learning disabilities and provide early intervention;
- People with learning disabilities need timely access to health and social care, and support from appropriate adults (defined in Box 2) (Bradley, 2009).

A more recent review of the CJS by the Criminal Justice Joint Inspection (2014) found similar failings and made similar recommendations.

Over the past 10 years, CJS health practitioners and researchers have attempted to redress these shortcomings by developing screening tools that complement the self-reports and routine clinical assessments. Some of these tools – notably the Learning Disability Screening Questionnaire and the Hayes Ability Screening Index – have been tested in criminal justice environments with encouraging results, as demonstrated in studies by Mckenzie et al (2012), McKenzie and Paxton (2005) and Hayes (2002).

Barriers
The nature of learning disabilities means that individuals will experience difficulties absorbing new information, learning new skills, remembering and processing information, problem solving and developing coping strategies for common or novel situations and problems.

Communication
Learning disabilities often affect a person’s ability to communicate. It can be harder for those who have learning disabilities to understand verbal communication, written communication and body language (receptive communication), and harder for them to formulate an answer or describe a situation (expressive communication).

Poor communication skills will increase a person’s difficulties in:

- Obtaining, processing and understanding basic information;
- Giving an accurate account of events;
- Understanding and participating in legal proceedings.
Box 2. Glossary
Appropriate adult (AA): an AA accompanies children or vulnerable adults during police investigations to ensure their rights and interests are safeguarded and to assist with communication and comprehension. More information on the role can be found at www.appropriateadult.org.uk

Caution and legal rights: a police caution must be given when a suspect is arrested ("You do not have to say anything. But it may harm your defence if you do not mention what you later rely on in court. Anything you do say may be given in evidence"). At arrest, suspects have three legal rights – namely, the right to:
- See a solicitor
- Have someone told that they are at a police station
- Look at the police codes of practice (see Jacobson, 2008).

Reasonable adjustments: under the Equality Act (2010) (Bit.ly/EqualityActProtected) all statutory bodies need to make reasonable adjustments for individuals with characteristics protected by the Act. People with a learning disability are protected by the Equality Act and, therefore, positive steps should be taken to ensure they can fully participate in their healthcare and justice proceedings. Examples of reasonable adjustments could be:
- Allowing extra time to improve communication
- Providing written material in alternative formats
- Adapting an environment to make it more conducive to understanding and participation.

Section 17 leave: the leave that can be requested by a person detained under the Mental Health Act (2007) (Bit.ly/MentalHealthAct2007) so they can leave hospital for short periods of time. It has to be approved by their responsible clinician.

Statement of educational needs: this is a document that sets out the additional learning needs a child may have. It is intended to ensure they get the appropriate support to progress and achieve at school.

- Defending themselves.
- Many may not fully understand instructions and, as a result, may come across as being ‘challenging’. Clare and Gudjonsson (1995, 1993) found that many people with learning disabilities could neither understand the caution and their legal rights (defined in Box 2) nor the implications of these. This can lead to self-incrimination (Murphy and Mason, 2014) or misleading and/or false confessions (Gudjonsson and McKeith, 1994).

Cognitive and social functioning
People with learning disabilities may have difficulties with attention, concentration and memory, which can put them at a disadvantage during police or forensic interviews. They may get confused about dates and times or find it challenging to recall or describe a sequence of events. There have been examples of people on probation who have been recalled to prison because they had failed to abide by restrictions they were unable to read or understand (Loucks, 2007).

There has also been a case in which a prisoner with learning disabilities put forward a legal challenge because he had been denied any realistic prospect of going on parole (R [Gill] v Secretary of State for Justice [2010] EWHC 364 (Admin)). Going on parole would have required him to take part in an offending-behaviour programme that he was neither able to understand nor meaningfully participate in. The court ruled in his favour, considering that the prison services had failed to make the reasonable adjustments (defined in Box 2) required for him to participate in the programme, thereby denying him the access to parole from which other prisoners were benefitting (Straw and Lomri, 2010).

Acquiescence and suggestibility
People with learning disabilities may be suggestive and acquiesce to what another person says, particularly if that person is in a position of power; this would be the case, for example, for a police officer, prison guard or nurse. This may be because they have been conditioned to please others or because they do not understand what is being asked of them (Clare and Gudjonsson, 1993). As a result, they may go along with what is being said and agree to everything. In the CJS, this may lead to false self-incrimination and false confessions (Perske, 2011; Gudjonsson and Mackeith, 1994). The use of advocates, appropriate adults and intermediaries can reduce the impact of acquiescence and suggestibility.

Sensory processing
Some people with learning disabilities, particularly those with co-occurring autism, may engage in sensory-stimulating behaviours such as spinning, rocking and hand flapping (also known as ‘stimming’). These behaviours may occur:
- Because of problems with processing sensory signals;
- To relieve anxiety;
- To provide sensory stimulation.

Sometimes these behaviours can be seen as challenging or interpreted as aggressive acts, and restrictive interventions may be put in place to stop them. However, it can be harmful and distressing to try to prevent these behaviours, and reasonable adjustments should be made to allow people to display them.

Learning disabilities and autism can be linked to hyper- or hyposensitivity to sensations, which can cause distress or communication difficulties. Busy, loud, aggressively lit or crowded CJS environments may lead to sensory overload, in which case a person’s senses (sight, hearing, taste, smell and touch) become so overwhelmed that they develop stress, anxiety or even pain.

Screens, video links and relaxed environments are examples of reasonable adjustments that can be made to improve people’s experiences and ultimately the judicial process.

Health needs
People with learning disabilities can have multiple psychological and physical comorbidities (Cooper et al, 2015). There are many reasons for this. Certain genetic conditions associated with learning disabilities are linked with physical conditions; for example, Down’s syndrome is linked with thyroid disorders and Alzheimer’s type dementia.

Sensory impairments, such as hearing loss and sight loss, are more prevalent among people with learning disabilities and may negatively affect their ability to communicate. In this population, there is also a
higher rate of epilepsy; behaviour, communi-
cation and cognitive function can be affected 
before, during and after a seizure.

Psychosocial masking
'Psychosocial masking' refers to the fact 
that psychiatric conditions may present 
differently – and therefore not be rec-
nised – in people with learning disabilities. 
Poverty of social experiences and intellec-
tual functioning can mean that some psy-
chiatric signs are not recognised. For 
example, if a person who does not have a 
learning disability says they have a driving 
licence and can drive, this would not raise 
any concerns during a psychiatric inter-
view. However, if a person with a learning 
disability says they have a driving licence 
and can drive (which is unlikely), then this, 
combined with other signs and symptoms, 
could indicate delusion of grandeur.

Psychosocial masking can lead to diag-
nostic overshadowing, whereby signs of 
mental illness are assumed to be due to the 
learning disability, resulting in the mental 
condition being left undiagnosed and 
untreated (Mason and Scior, 2004).

Service-level barriers
The frenetic environment of the CJS, 
coupled with the physical barriers of prison 
cells, wicket gates/cell doors and screens, 
can make it considerably more challenging 
for people with a learning disability to 
access healthcare. Noise and lighting 
levels, having to speak through a screen, 
fear of the unknown and increased anxiety 
can negatively affect their communication 
with CJS or forensic clinicians and practi-
tioners. This could lead to vital 
information about health conditions not 
being communicated and the necessary 
treatment not being provided.

These challenges are compounded in 
the prison system. According to the prin-
ciple of equivalence, prisoners have the 
same right to access health services as the 
general public – for many prisoners, how-
ever, this is not the case (Health and Social 
Care Committee, 2018). Prisoners who have 
a learning disability are therefore exposed 
to a 'double whammy' of health inequality.

Implications for practice
Recognising learning disability
The first step is to recognise people in the 
CJS who have a learning disability. The 
formal diagnosis of a learning disability is 
usually made by a clinical psychologist 
and/or a learning disability psychiatrist, 
based on specialist assessment of intellec-
tual and social functioning.

Assessment may include specific psy-
chometric testing using scales such as the 
Wechsler Adult Intelligence Scale (Wechsler, 
2008) and the British Picture Vocabulary 
Scale (Dunn et al, 2009). Such diagnostic 
assessments, considered the gold standard, 
are time-consuming and costly, which 
makes their use in the CJS difficult. In the 
CJS, it is therefore more practical to look for 
possible features of a learning disability 
using screening questions focused on the 
three diagnostic domains of learning disa-
bility (Table 1). The answers to these ques-
tions will not allow the professional to give a 
diagnosis, but it will alert them to the pos-
sible presence of a learning disability.

The CJS and the police use a broad defi-
nition of 'mental vulnerability', which is 

| Table 1. Screening questions to spot a possible learning disability |
|-----------------------------|---------------------|
| **Diagnostic domain** | **Features** |
| Impaired cognitive functioning | Can the person remember important personal details, such as their birthday, birth place, address? |
| | Can they tell the time using digital and analogue clock faces? |
| | Can they give a detailed or coherent account of what has happened to them? |
| Impaired social functioning | Is the person able to work or perform job-related tasks? |
| | Can they cook and manage household tasks, such as paying bills, shopping, cooking and cleaning? |
| | Can they use public transport independently? |
| Started in childhood | Was the person ever told as a child they had a learning disability? |
| | Did they have a statement of educational needs (defined in Box 2) or extra help in the classroom? |

‘As per the definition of learning disability in Department of Health (2001)’

Enhancing communication
It is important to make the environment as 
conducive to communication as possible, 
ensuring, for example, that there is min-
imal background noise and the individual 
feels as relaxed as possible. The communi-
cation style of the interviewer is also 
important. Box 3 provides examples of 
how to adapt communication to people 
with a learning disability.

During the clinical interview or interac-
tion, it is important to provide appropriate 
support tailored to the person’s levels of 
cognitive and social functioning. This can 
include:

- Ensuring the person understands 
  the environment and systems in which 
  they find themselves – for example, do 
  they know how to call for assistance, 
  order food and drink, speak to a 
  solicitor, or how to access privileges or 
  section 17 leave (defined in Box 2)?
- Establishing whether the person can 
  read or whether they need information 
  in a different format;
- Repeating information and/or 
  changing the way it is expressed;
- Presenting options in a meaningful 
  way; if the person can understand only 
  one instruction at a time, it is likely 
  they also understand only one choice at 
  a time – for example, if you are offering 
  them a drink, you may start by asking 
  "Would you like a drink?". If the answer 
  is “yes”, then you may ask "Would you 
  like a hot drink or a cold drink?". If the 
  person says they would like a hot drink, 
  then you may break this down further 
  into "tea or coffee?"; and so on;
- Being mindful of the person’s sensory 
  needs, particularly with the use of 
  physical or mechanical restraints such 
  as handcuffs.

Knowing what learning disability is and 
how it may affect people will help health 
professionals to anticipate what a person’s 
likely needs will be and make reasonable 
adjustments. However, there will be
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occasions when reasonable adjustments are not sufficient. In these circumstances, consultation with, and/or referral of the person to, specialist learning disability services are recommended.

Conclusion

A learning disability can affect people in many different ways and have an enduring impact on cognitive and social functioning. Many people with a learning disability who come into contact with the CJS may not be known to specialist services or have a formal diagnosis.

Some health and social care teams may require a formal diagnosis to enable entry into their services. However, the CJS’s broad approach of ‘mental vulnerability’ means that individuals who are suspected of having a learning disability but do not yet have a formal diagnosis can benefit from statutory protections such as appropriate adults, intermediary services and health liaison and diversion teams. So far, these teams have focused on mental illness and managing risk to self and others, but there is a statutory duty to identify people with a learning disability and meet their health and criminal justice needs.

Service-level barriers combine with inequities affecting all defendants in the CJS, as well as inmates in the prison system, to create a ‘double whammy’ of inequity for people with a learning disability. Increased awareness and small changes to clinical practice can have a large impact and improve access to health and justice for this population.

Box 3. Good communication practices

- Keep verbal communication short and introduce one concept per sentence only.
- Match your body language, facial expressions and gestures to verbal content; you can also use them to reinforce what you are saying.
- If needed, use pictures and symbols to reinforce verbal content.
- Avoid jargon, metaphors and idioms.
- Check that the person understands you by asking them to paraphrase the information.
- If the person uses technical language or jargon, check that you have the same understanding of those terms.
- Leave time after each question for the person to process it, formulate their response and reply.
- Avoid leading questions; instead, use a combination of open and closed questions to elicit information.
- Anchor events in time; for example, instead of asking “Did you feel like this six months ago?”, you could ask “Did you feel like this in the summer?”
- Ask a closed question about something and then later in the interview ask the opposite closed question (for example, “Do you feel happy?” and then later “Do you feel sad?”)

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