Chapter 18

Crime and Legal Issues among Intellectually Disabled Individuals

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ABSTRACT

Intellectual Disability (ID) can be caused by a variety of factors, which may lead to a variety of signs and symptoms. Individuals with ID are living in societies where during the past decade there is a steady increase in the amount of research focused on civil law, criminal law and mental health. In this chapter, there will be a theoretical presentation of the research on ID regarding criminal law and the different forms of aggressive behavior such as sexual violence, homicide, theft, arson and alcohol-drug abuse. There will be information on research regarding civil law and the most common problems for individuals with ID, such as financial capacity and capacity for medical consent. Finally, there will be a section for the most important issues regarding the trial and conviction for individuals with ID and a presentation of a recent research on attitudes toward ID and legal issues. The above will be examined through the prism of current neuropsychological data, while cross-cultural restrictions will be discussed.

INTRODUCTION

The mission of the proposed chapter is to give an outline of the background information regarding crime and legal issues among individuals with Intellectual Disability (ID). Although there is a lot of information generally on ID, which follows the widespread adoption of a changed construct and of a new term, which replaces mental retardation by renaming it in DSM 5 (Schalock, Luckasson & Shogren, 2007), there is scarce information on the significance of ID for a number of legal issues. As scientific literature indicates the theme of legal issues turns out to be particularly salient for ID worldwide. Current texts regarding psychology and law (legal psychology and forensic psychology) begin to include extensive sections concerning individuals with ID, who may play the role of suspect or victim according to the criminal law, or the role of the person who claims civil capacities according to the civil law. So, this
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Chapter will be an in-depth introduction, which will be focused on a variety of relevant themes, which are selected in order to include key terms and information on law and ID.

**Criminal Law and Individuals with ID**

In western societies, there is a general tendency to consider individuals with ID as a group of people who are more likely to commit a crime (New South Wales. Law Reform Commission, 1994). Individuals with ID may be over-represented in the criminal justice system (Baroff, Gunn & Hayes, 2004; Hayes, 1996; Holland, Clare, & Mukhopadhyay, 2002; Jones, 2007; Sønndenaa, Rasmussen, Palmstierna, & Nøttestad, 2008), given the intellectual and other psychosocial disadvantages which they experience and their incapacity to evade arrest, but the level of offending behavior in this group is found to be strikingly low (Holland et al., 2002), because much criminal activity of individuals with ID goes undetected or unreported, and as a result scientific research can only investigate data and individuals who are already involved with the criminal justice process. Individuals with ID are not overrepresented in prisons in most western countries (Murphy & Mason, 2014). For example, the likelihood of conviction for a man with ID in Sweden is as high as for a man without disability (Hodgins, 1992). It is of special interest that in a research from Denmark convicted individuals with ID, who had been admitted to psychiatric hospitals were found to have an increased risk of committing various kinds of crimes in comparison with individuals with ID without a previous admission history (Hodgins et al., 1996).

Individuals with ID are usually seen as potential suspects for crimes worldwide and this is due to a general misunderstanding and bias of different societies and communities (Lyal, Holland & Collins, 1996; McNulty et al., 1995; Vaughan, Pullen & Kely, 2000). Studies using IQ as a continuous variable indicate that significantly below-average intellectual ability is an independent predictor of future offending (Holland et al., 2002), but the studies which adopt an IQ-based concept of ID show lower rates of offending than those which use wider definitions (e.g. attendance at special schools). There is also evidence coming from a systematic review by Simpson and Hogg (2001) for believing specifically that the prevalence of arson and sexual offences may be higher relative to other kinds of crimes for individuals with ID than for other offenders (Barron, Hassiotis & Bannes, 2002; Simpson & Hogg, 2001), but there exist contradictory evidence for that (Murphy & Mason, 2014). In addition to this, intellectually disabled offenders start offending at an early age [ID youth, aged under 18 may demonstrate delinquent behavior as other individuals who are not of legal age, and who commit acts considered to be rule violations, which according to legal definitions, include such acts as robbery, assault, property damage, drug possession, and other similar crimes (Salkind, 2002)], and these same young offenders usually have a history of multiple offences. Offenders with ID are considered to be a group with complex needs who may pose a recurrent risk to the public (Barron, Hassiotis & Bannes, 2002). Individuals with ID and forensic involvement are those who also have a diagnosis of borderline to mild IQ and psychopathology-psychotic disorder, and are also more likely to have previously used drugs or alcohol and have significantly longer prior lengths of stay in psychiatric hospitals (Raina & Lunsky, 2010).

**Violence and Crime among Individuals with ID**

Over half of the ID population according to a review engages in some form of aggression, but only a small number is responsible for frequent or severe acts with serious legal implications, although ID is