

# Chapter 81

## Reflecting on Crime and Legal Issues in People With Intellectual Disabilities: Theory, Perspectives, and Future Approaches

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### ABSTRACT

*This chapter discusses research findings on intellectual disability (ID), criminal law, and the different forms of aggressive behavior such as sexual violence, homicide, theft, arson, and alcohol-drug abuse. ID is a generalized neurodevelopmental disorder, characterized by significantly impaired and varying intellectual-adaptive functioning. Given that a number of legal issues have been raised over the past decades regarding individuals with ID and civil as well as criminal law, particular attention will also be given to neuropsychological 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 research on attitudes toward ID and legal issues. The chapter concludes with suggestions for reform of the law relating to ID and the need for further research.*

### INTRODUCTION

The chapter is an attempt to present the latest information regarding crime and legal issues among individuals with Intellectual Disability (ID). 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), and the legislatively mandated changes in terminology (Stavrakantonaki & Johnson, 2018), can not clarify and examine in depth the significance of ID for a number of legal issues. As scientific lit-

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erature indicates the theme of legal issues turns out to be particularly salient for ID worldwide (Levine, Proulx & Schwartz, 2018). Researchers in psychology and law (legal psychology and forensic psychology) become more interested in examining aspects of individuals with ID, who may play the role of suspect or victim according to the criminal law (Carr et al., 2016; McCarthy et al., 2019), or the role of the person who claims civil capacities according to the civil law. As a result, this 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.

## **Individuals with ID and Criminal Law**

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), a belief that is based on the fact that individuals with ID may be over-represented in the criminal justice system (Baroff, Gunn & Hayes, 2004; Hayes, 1996; Holland, Clare, & Mukhopadhyay, 2002; Jones, 2007; Søndena, Rasmussen, Palmstierna, & Nøttestad, 2008). Given the intellectual and other psychosocial disadvantages which they experience and their incapacity to evade arrest, 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 (Boer et al., 2018; Gulati et al., 2018; Murphy & Mason, 2014). For example, the likelihood of conviction for a man with ID in a European country, such as 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). For example, studies support that individuals with ID do not engage predominantly in any one form of criminal behavior, and that their readily identifiable characteristics do not set them apart from offenders without a diagnosed disability (Salekin, Olley & Hedge, 2010). 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. This finding could be explained by impulsivity that is a general characteristic during the teenage years even in healthy youths (Stoyanova & Giannouli, 2018a). In addition to that, frustration, lack of social skills in dealing

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