EQUAL JUSTICE?

THE EXPERIENCES AND NEEDS OF REPEAT OFFENDERS WITH INTELLECTUAL DISABILITY IN WESTERN AUSTRALIA

A project undertaken by Activ Foundation Inc., in partnership with the Developmental Disability Council of WA., People with Disabilities (WA) Inc., Department of Justice, Disability Services Commission

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INTRODUCTION

The study of the link between intellectual disabilities and crime and the consequent development of policies and legislation, has evolved significantly over the past 100 years. The idea that individuals with intellectual 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 individuals with intellectual disability. Although the institutions remained, the link between intellectual 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 people with intellectual disability may be more likely than non- intellectually 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 individuals with intellectual disability. It is these characteristics and conditions, rather than any *biological* propensity rooted in a disability, which may explain any disproportionate representation of people with intellectual disability in the criminal justice system.

The management of people with intellectual 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 categorise individuals with the condition who are involved in the research. Secondly, those working within the criminal justice system face significant difficulties with the identification, proper assessment, and effective treatment of offenders with intellectual disability, in addition to the difficulties that exist in the delivery of services more generally. These difficulties have made the task of accurately reporting the prevalence of intellectual disability amongst

[1] The terms used throughout the literature to describe persons with intellectual disability include the following: mentally retarded, mentally challenged, mentally disabled, intellectual deficit, intellectually challenged, intellectually handicapped, developmentally disabled, and learning disability. The term intellectual disability will be the term used to describe the condition in this research.

offenders within the Australian criminal justice system a particularly challenging one.

In a recent study in Western Australia (Cockram & Underwood, 2000), it was found that while people with an intellectual disability were no more likely to be arrested than individuals in the general population, after first arrest they were subsequently rearrested at nearly double the rate compared to non-disabled offenders. In fact the finding of the research that the probability of rearrest of individuals with an intellectual disability is 73%, (compared with 52% of their non-disabled counterparts), is considerably higher than other jurisdictions (Cockram, 2005a). For example, in North America, recidivism nationally for people with mental retardation is estimated at 60% (Wood & White, 1992). In the only other study carried out in Australia (in the state of Victoria), it was found that there was a recidivist rate of 41.3%, although it should be noted that this figure was for "return to prison"(Klimecki, Jennkinson & Watson, 1994).

A further Western Australian study found that offenders with an intellectual disability have a much higher rate of imprisonment compared with their non-disabled counterparts, as well as a higher rate of re-imprisonment (Cockram, 2005b). An important finding in this study was that at first arrest 16% of offenders with intellectual disability were given custody, compared with only 7% of general population offenders. In addition, significantly more of the 843 individuals with intellectual disability involved in the study received a custodial sentence over the ten year period of the study (34%), compared with only 13.2% of the 2442 persons in the comparison group (Cockram, 2005c).

The management of these offenders and the provision of appropriate rehabilitation programs represent a major problem in Western Australian community and correctional services with many service workers currently reporting that this group is 'hard to serve'. Disability policy promotes the integration of people with disabilities into generic services as far as possible, but the issues about service development for this group are complex and require careful consideration across community organisations and government agencies. In these deliberations it is vital to determine the factors which influence rates of repeat offending. Many repeat offenders with an intellectual disability display a characteristic pattern of recidivism which can often be traced to problems associated with drug and alcohol abuse, unstable or inappropriate accommodation, and unemployment. Although identified, these issues often remain unaddressed.

Concern to address the issue of repeat offending by people with intellectual disability has arisen over many years as a result of considerable anecdotal

evidence surrounding the difficulties in supporting this group together with the paucity of relevant research to inform practice. Considering the factors that contribute to repeat offending by this group requires an inclusive and collective response spearheaded by members of this most disadvantaged group and supported also by enlightened policy makers and activists for social justice. For service delivery, the priority must remain one of providing informed and effective treatments and support stategies which, in turn, may lead to a decreased risk of future offending. It is hoped that the present research will provide information which will improve the planning for and provision of more effective responses to people with an intellectual disability who continue to offend.

COMMUNITY BASED RESEARCH TEAM

The research provided an excellent opportunity for Activ Foundation Inc., People with Disabilities (WA) Inc., Developmental Disability Council of WA, Department of Justice and Disability Services Commission to undertake some collaborative research to overcome the knowledge gap in the area of repeat offenders with intellectual disability.

The research was supported by inter-locking collaborative arrangements which brought to it valuable skills across a range of expertise. The five organisations worked together with Dr. Judith Cockram of the Centre for Social Research at Edith Cowan University to undertake the research project.

The community agency responsible for administering the grant was Activ Foundation Inc. Activ Foundation has supported people with intellectual disability and their families since 1951. Activ Foundation's Support Services provide opportunities for individuals with intellectual disability, enabling them to lead independent lives through a number of support programs including accommodation, employment, community access, recreation, library, services, transport and policies. With facilities throughout Western Australia, in both the metropolitan and rural areas, Activ Foundation forms an important part of the lives of people with intellectual disability.

The second community agency, People With Disabilities (WA) Inc. (PWD (WA), is the peak consumer agency which represents and advocates for the rights, needs and equity of all Western Australians with disabilities. PWD (WA) represents people across all disabilities - sensory, intellectual, psychiatric and physical. PWD (WA) provides information and referrals, advocacy for individuals, pursues systemic advocacy on issues identified by the membership and individual casework, promotes rights, safeguards and

quality assurance, promotes disability awareness and community education, and facilitates consultation processes.

The third community agency, The Developmental Disability Council Inc., is a peak agency providing a co-ordinated and united voice for people with developmental disability, families, service providers and any other individuals interested in advocating for the rights of people with developmental disability in Western Australia.

The fourth organisation, The Department of Justice, is one of the most diverse public sector organisations within Western Australia. The Department of Justice's mission is to provide quality, co-ordinated and accessible justice services which contribute to a safe and orderly community. The Department was established in July 1993 with the core responsibility of providing the framework and processes for the efficient and effective administration of justice and legal affairs in Western Australia. Key issues in relation to this report are the Department's role in providing court services that meet the needs of the judiciary and community, including victims of crime and protecting the community and directing offenders towards the adoption of law-abiding lifestyles.

The fifth organisation is the Disability Services Commission. The primary focus of the Disability Services Commission is to make a positive difference to the lives of people with disabilities, their families and carers. The Commission provides leadership to support local communities in welcoming and assisting people with disabilities, their families and carers; achieve access to quality support and services for people with disabilities; protect the rights of people with disabilities who are especially vulnerable and support them to live a full and valued life.

Research Issues

This collaborative study through applied research is aimed at enhancing our understanding of factors that contribute to re-offending by people with intellectual disability in Western Australia.

Whilst studies have been carried out to identify the prevalence and characteristics of people with intellectual disability who continue to re-offend, research has barely examined the context or factors that may influence re-offending for this group.

The aims of the study were to:

(1) examine both the individual experiences of repeat offenders with intellectual disability in Western Australia and the systemic context in which the experiences are located;

(2) investigate the characteristics and factors that might influence re-offending;

(3) identify the key issues that will need to be addressed to overcome the high rate of recidivism, including the gaps and barriers to the provision of more effective support; and

(4) identify strategies or approaches that could be considered for developing effective responses to identified needs and issues.

Defining Intellectual Disability

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

Five Assumptions Essential to the Application of the Definition

1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.

2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.

3. Within an individual, limitations often coexist with strengths.

4. An important purpose of describing limitations is to develop a profile of needed supports.

5. With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve.

The emphasis on adaptive behaviour as opposed to the earlier definitions (Grossman, 1983) which focused on intelligence quotients (IQ), suggests that disability is now seen more broadly than just a measure of IQ. Although there has been a move away from the sole use of intelligence testing in defining disability to a more developmental approach outlining the adaptive skills and abilities of the person, the disability movement has challenged this understanding as one in which the focus is upon the individual deficits of the person. Instead people with intellectual disability, arising from their own experiences, are purporting that the concept of disability is a form of social oppression arising from their exclusion into mainstream society through the effects of social, financial, environmental and psychological disadvantages (Jones & Basser Marks, 1998; Munford & Sullivan, 1997). Within this paradigm disability is no longer seen as a deficit but rather one which has been socially and idealogically constructed with the end result being the marginalisation of people with disabilities.

The arguments against the use of IQ tests, whether on their own or in combination with other factors, are also based upon the notion that a test score will prove unhelpful in formulating the type of individualised treatment program that a person with an intellectual disability 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. The possibility that those deemed to have an intellectual disability 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; also see O'Brien, 2002). In addition, a test score must be adjusted for variables such as socio-cultural modality; a variable that accounts for cultural differences which standardised psychological instruments fail to capture (Berkowitz, 1982).

The regulating body for disability services provision in Western Australia, the Disability Services Commission (DSC), uses the AAMR definition of intellectual disability. DSC is responsible for assessment and client data collection of government funded disability services (DSC 2003) and is therefore a key reference body in the area of assessment. People seeking access to services apply to the Commission to assess their eligibility. The DSC three-tier system of eligibility for services identifies 'access to Commission provided services' based on intellectual disability/Autism diagnosis as tier, or level 3, (DSC, 2001:50).

The standard process employed by DSC for assessment of people with intellectual disability (i.e. level 3 eligibility) involves confirmation of intellectual functioning and adaptive behaviour, often based on formal

assessments carried out by other agencies, such as the Department of Education. Assessment of 'need for support' is reliant upon an IQ score of approximately 70-75 or below and identification of limitations in two or more adaptive skill areas based on AAMR's ten adaptive skill areas of "communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work" (AIHW, 2003:16). DSC assessment will also commonly involve investigation into the aetiology of the intellectual disability in order to confirm time of onset as prior to age 18. The causes of intellectual disability are often examined in a temporal sequence and, therefore, prenatal factors are commonly the first to be investigated (AIHW, 2003:21).

Based on the understanding that social disadvantage is a strong predictor of offending (Deane & Glaser, 1994), Holland *et. al,* (2002) state the need for two distinct target groups as an important starting point for investigation into the efficacy of program responses for offenders with intellectual disability:

- Firstly, the 'borderline' group often unknown to disability services but who are clearly socially and intellectually disadvantaged; and
- Secondly, the smaller ' officially diagnosed group (Holland *et al.,* 2002:16).

The authors stress that the distinction between the two is not absolute[2] but that there is cause for particular concern for the unique and prevalent group of individuals considered 'borderline':

> *This group tend to be male, and may well have a history of impulsivity, risk taking and conduct disorder in childhood, and of substance abuse and social exclusion in adolescence and adult life. They are difficult to engage in services, and no specific factor can be identified that might account for their offending* (Holland et al., 2002:16).

Many people belong to the 'borderline' group who do not strictly meet the criteria for intellectual disability, but are none-the-less socially and intellectually disadvantaged. A number of authors argue that it is problematical to delineate based on IQ ranges (Holland et al., 2002; Hayes, 2000), however, it is commonly acknowledged in the literature that people classified as 'borderline' have an IQ of between 70 and 80[3].

[2] For example, people in the first group may enter hospital-based services for mental health treatment, in which case they may become 'known' for their intellectual deficit.
[3] Lindsay (2002:75 defines 'borderline IQ range as 70-80, however DSC uses an extended range of between 70 and 90 (DSC personal communication 28/102004)

There is also a group of people who do not meet the intellectual disability criteria because of 'time of onset'. These people may have an Acquired Brain Injury (ABI) after age 18 as a result of many factors such as a car accident or substance abuse. These people, who do not officially meet the AAMR's definition of intellectual disability, but can be identified in the referral and screening process by the criminal justice system and are therefore of interest to intellectual disability focused initiatives. However, DSC deems it important for any intellectual disability focused initiatives to differentiate between people with intellectual disability and those with 'borderline' intellectual disability, ABI (after age 18), or mental illness.[4]

Legal and Program Responses to People with intellectual disability who offend

Competence and Fitness in the Legal Context

The issue of the competence and the fitness of defendants with intellectual disability 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, and the ability to stand trial.

Bonnie (1990) has discussed the issue of the legal representation of defendants with intellectual disability. Consistent with the recommendations offered by Russell & Bryant (1987), aimed at increasing the knowledge and improving the attitudes of lawyers through changes to law school curricula, Bonnie (1990) emphasises the importance of the role of counsel in assessing and judging the competence of defendants with intellectual disability. Bonnie stresses the need to develop procedures that will enable counsel to fulfil this responsibility, particularly the development of interviewing and counselling skills. 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 issue of suggestibility and acquiescence 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 defendants with intellectual disability, as the confession process assumes an understanding of their rights. In the case of offenders with intellectual disability, this assumption may be

[4] Personal communication, Francine Holder, DSC October 18, 2004

invalid (Everington & Fulero, 1999; Fulero & Everington, 1995; Gardner, Graeber & Machkovitz, 1998).

Fitness to plead is also an area of concern with respect to defendants with intellectual disability. More specifically, the prevalence rate of intellectual 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 defendants with intellectual disability.

With respect to the validity of the tests used to assess the competence of defendants with intellectual disability 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 defendants with intellectual disability to stand trial, Everington & 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).

The need for reform of the law applying to mentally impaired defendants has been argued for many years in Western Australia. Consequently, in 1996 new legislation was passed which set out to consolidate and clarify the law as it relates to the disposition and treatment of defendants who are mentally impaired. Fundamental to the Act is the recognition that the criminal justice system must be modified to accommodate factors specific to mentally impaired defendants. The main factor is that mentally impaired defendants are not criminally responsible for their actions.

As pointed out by the Western Australian Law Reform Commission in its 1991 report: "It is wrong to treat as criminal those who by reason of severe mental illness or intellectual disability, are temporarily or permanently deprived of capacity to conform with the requirements of the law or distinguish right from wrong" (p.3). For this reason, the Act operates on the premise that, although it may be necessary to protect the health, safety or security of the defendant or another person, the form of that protection needs

to be appropriate to the particular circumstances of the defendant. Unlike the provisions of the old legislation, s.4 states that this Act applies in respect of any defendant before any court exercising criminal jurisdiction. A new provision (s.143) is inserted in the *Justices Act* 1902 to enable a court of summary jurisdiction to make a special finding. Where a defendant is found not guilty of an offence on account of unsoundness of mind, a summary court, having regard to the factors such as the nature of the offence, the defendant's character and the public interest, may order that the defendant be released unconditionally, placed on a non-custodial order under the *Sentencing Act* 1995, or ordered to be detained in custody. These are the same factors as those which are applied in the determination of whether a person found unfit to stand trial should be held in custody.

In the case of the superior courts, the substantive law relating to the defence of unsoundness of mind is retained in a similar form, in *The Criminal Code*. The powers of superior courts to release the defendant unconditionally or to make either a non-custodial or a custodial order are similar to those of Courts of summary jurisdiction, but a custody order must be made in respect of certain serious indictable offences listed in the schedule of the Act.

Part 5 of the Act makes provision for the management of mentally impaired defendants found unfit to plead or acquitted on account of unsoundness of mind. Matters addressed include:

- the place of custody - as determined by the Mentally Impaired Defendants Board. The Act provides that a mentally impaired defendant may be detained in an authorised hospital, a declared place which could be a facility for a person with an intellectual disability, a detention centre or a prison;
- the Board must report in writing to the Minister about a mentally impaired defendant within 8 weeks of a custody order being made, when requested by the Minister, whenever there are special circumstances for doing so and in any event, at least once each year;
- release by the Governor at any time either unconditionally or subject to conditions such as undergoing specified treatment or training, residing in a specified place or complying with the lawful direction of a supervising officer; and
- the discharge of a mentally disordered defendant from a custody order.

However, the appropriate place of detention for prisoners with an intellectual disability found unfit to plead and ordered to remain in detention, remains a contentious issue. The mental health system has demonstrated quite clearly that it would not accommodate persons other than those who have a diagnosable and treatable condition. There is no indication of any change in

this policy even with the building of a forensic unit within the mental health system. The Disability Services Commission maintains they do not have the capacity, nor the statutory duty, to provide custodial care or detention for people with an intellectual disability who offend. It would seem, therefore, that persons with an intellectual disability who are found unfit to plead or are acquitted on account of unsoundness of mind, and given a custodial order, will continue to be held in the prison system until it is appropriate for the person to be released by the Governor in Executive Council.

In July 2002, the Minister for Health and the Attorney General commissioned Professor D'Arcy Holman to undertake an independent review of the *Mental Health Act 1996* and the *Criminal Law (Mentally Impaired Defendants) Act 1996* (CLMID Act). In his recommendations, Professor Holman proposed that prison or a detention centre no longer be legal places of detention of mentally impaired defendants. In his report The Way Forward, Professor Holman proposed the following:

"Declared Place
5.1 The references to a prison or a detention centre should be deleted from subsection 24(1) of the CLMID Act, such that any general prison or general detention centre is not a legal place of detention of a MID subject to a custody order. In addition the definition of a "declared place" in section 23 should read "a place declared by the Governor by an order published in the Gazette to be a place where appropriate facilities exist for the assessment, detention, care and protection of MIDs".

The Chief Psychiatrist, Dr. Davidson has been appointed by the Attorney General to chair a committee to report to the Minister for Health and the Attorney general by 21 July, 2005 on the recommendations of the Holman Report. The committee has representatives from the Department of Justice, Office of the Public Advocate, the Department of Health and the Mentally Impaired Defendants Review Board. One of the contentious issues to be discussed is the 'declared place' issue.

Program Responses

The Access to Justice Working Party

Taking a whole of government approach, the Access to Justice Working Party brought together representatives from the relevant government agencies to work together to develop a comprehensive model for the assessment, detention, care and protection of mentally impaired defendants. The Access to Justice Working Party does not represent the views of any one agency,

although it reports to the Disability Services Commission. The Department of Justice, the Legal Aid Commission, the Chief Stipendiary Magistrate, the Public Advocate and the Community Forensic Psychiatric Service are represented on the committee. The Access to Justice Working Party (AJWP) has developed a number of initiatives to support people with disabilities who are entering the justice system.

Police Diversion Project

The Fremantle Police Diversion Project was developed by the AJWP and was jointly funded by the Department of Justice and DSC. At the time of the review, The Fremantle Police Diversion Pilot Project, which ran from October 1996 to November 1998, was the only program initiative that had attempted to address the unique needs of offenders with intellectual disability in Western Australia. The Fremantle pilot project was a restorative justice program based on the juvenile justice model (AJWP, 1996:4).

The project eligibility criteria focused on offenders with 'decision-making disabilities', including intellectual and psychiatric disabilities and less easily categorised disorders such as dementia. The program targeted offenders who had committed 'nuisance' offences or 'other commonly occurring offences' such as possession of cannabis, petty shoplifting, receipt of stolen property and burglary[5].

The length of diversion from the court depended upon factors such as assessment time; completion of the management plan items (some items might extend across 3-6 months); and the need for intermittent court appearances to gain extension of non-custodial remand in order to pursue the plan (Stanton & Cameron, 1998:14). Upon completion of the plan the client was formally referred back to the court and the Police Prosecutor had the power to withdraw the charge. It was expected that if the client's management plan had been successfully completed that s/he would receive a more appropriate and meaningful final disposition. The court would also be better informed regarding the risk of re-offending and the general of circumstances of the client.

However, in 1998 the program was discontinued due to police withdrawal. Concerns put forward by police were difficulty or reluctance of police to identify people with an intellectual disability, low number of referrals, poor

[5] Not all commonly occurring offences were suitable for diversion; for example with burglary someone of limited capacity might be used as a 'look out', in which case the offence might present as not 'divertible' (Access to Justice Working Party, 1996: Appendix A,6).

completion numbers, issues surrounding cautioning powers and high resource commitment for limited outcome .[6]

Following police withdrawal, the AJWP convened a subcommittee to develop an alternative diversion model.

The Intellectual Disability Diversion Pilot project

The Intellectual Disability Diversion Pilot project (IDDP) was established in April 2002 in an attempt to address some of the problems that arise when people with intellectual disability interact with the criminal justice system. The project is jointly administered by the Disability Services Commission and the Department of Justice, and its purpose was to find appropriate services for individuals who are eligible for DSC services

The IDDP project is part of the broader *Reducing Imprisonment* program in Western Australia that seeks to identify more appropriate strategies than imprisonment for groups at particular risk, such as Aboriginal people, people with a disability, people with mental health. Specific objectives for the pilot were to: reduce the rate of imprisonment by diversion and appropriate dispositions; reduce the rate of recidivism, and improve the appropriateness of the ways in which people with intellectual disability are handled within the system.

The IDDP program coordinator runs a training program for professionals who may come into contact with people with intellectual disability at some point in the justice system. Training is therefore delivered to many different agencies such as the WA Police Services, Police Prosecutors, Legal Aid lawyers, court staff at all levels, DSC staff etc.

An evaluation of the program was carried out in 2004[7]. Positive findings included:

- Of those who had participated in training programs, by far the majority indicated that they had found the training helpful.
- Project participants and their families and carers interviewed were consistent in their comments about the contribution made by the IDDP in improving their life circumstances, including improvements to behaviours, improvement of life skills and improvement of social capacity.
- Stakeholders reported better utilisation of existing services and resources through cross-agency liaison – multiple government agencies and service providers (ie more cooperation; less overlap; fewer service gaps).

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[6] *Personal communication DSC 10/10/04*

[7] *Evaluation of the IDDP Project, (2004). West Perth: TNS Social Research:*

- The IDDP program has fostered improved communication between departments through the active involvement of those represented on both the Steering Committee and Operational Committee.

However, many of the stakeholders questioned why IDDP was not wider in its inclusion of all those with a disability, regardless of their level of disability or the seriousness of the offence. There was considerable concern that there are many people who fall through the gaps (i.e. who are not eligible for DSC Level 3 services) and are therefore left struggling in the justice system. There was a belief that the program has further highlighted the lack of services for non DSC clients.

The evaluation also found that the extent to which the IDDP has met the broader aim of reducing imprisonment was not currently achievable due to the short period of time the IDDP has been operating and the small number of people with intellectual disability who had been diverted through the program.

Frequent Offenders Project

In 2002 the Frequent Offenders Program began between Homeswest and DSC to consider the needs of clients with intellectual disability who had become trapped in a cycle of imprisonment, return to the community and rapidly re-offending. An important aspect of service provision to this group is the establishment of stable accommodation arrangements around which the required supports from DSC and other agencies can be gathered. Homeswest committed resources to provide a rental property for a one year pilot with the intention to subsequently increase its commitment if required. There are now three Homeswest properties involved in the program. The Outcare organization agreed to take the head lease for the property and they and the Department of Justice joined the DSC working group.

The aims of the program are to:

- Provide appropriate, stable accommodation for a small number of clients who have received non-custodial orders and who require supervised support and input to meet the conditions of that order and establish a balanced lifestyle.
- Bring together all relevant support and enforcement agencies to ensure coordinated planning and intervention strategies for these clients e.g. Department of Justice, Disability Service.s Commission, Non-government agencies, Police, Homeswest.
- Identify the person's social and developmental needs and the specific inputs required to reduce their rate of offending.

People eligible for the Frequent Offenders Project will generally have the following characteristics:

- The individual is eligible for DSC services

- Instability in their residential arrangements such as to prevent a balanced daily lifestyle (home life, day occupation, community participation).

- Persistent use of maladaptive social behaviours which cause public rejection or police attention unless supervised and supported.

- Non-compliance with the reasonable demands of a balance lifestyle unless supervised and supported e.g. work

Transitional Accommodation Support Services program for frequent offenders with intellectual disability

A family support service has received funding from the Department of Justice to provide a new program for frequent offenders with an intellectual disability (who are not clients of DSC) leaving prison who need transitional support as they re-enter the community in the area of Perth, south of the river. The TASS Program has access to 3 Homeswest properties for the program which are overseen by Outreach services as the lease holder, and aims to provide the following:

- Contact with clients whilst they are still in prison to assess their needs, and their suitability for the TASS Program.
- Assistance in identifying an area in which the client prefers to live.
- Assistance in securing a suitable Homeswest property for a period of up to six months.
- Personal support, especially in the period immediately after release from prison with the following:

    - Establishing new social networks in the community.
    - Obtaining the correct Centrelink benefits and entitlements.
    - Establishing the individual's new home.
    - Obtaining furniture and other household effects.
    - Employment and training.
    - Independent living skills, including budgeting, cooking and travel training.
    - Tenancy training.
    - Looking for long term accommodation.

LITERATURE REVIEW

It is known that relatively little research work has been undertaken on repeat offenders with intellectual disability. The current study included an on-going monitoring of published research to ensure that the findings of any relevant studies were incorporated. In addition a review of national and international literature on repeat offenders with an intellectual disability was carried out. This review was intended to ensure that the empirical data gathering for the present project both builds upon what is already known and concentrates on what has not already been systematically examined or empirically verified.

Prevalence of Offending

The study of the link between intellectual disabilities and crime, and the consequent development of policies and legislation, has evolved significantly over the past 100 years. The idea that individuals with intellectual 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 individuals with intellectual disabilities (Hahn-Rafter, 1997). Although the institutions remained, the link between intellectual 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.

Rather than espousing the theory that there is any biological propensity for people with an intellectual disability to be disproportionately represented in the criminal justice system, recent literature suggests that people with intellectual disability may be more likely to exhibit characteristics or experience social and economic conditions that have generally been associated with criminality (Endicott, 1991). Furthermore, age-related moral development may also be adversely affected by a systemic failure to provide special programs to assist with the social and moral development of some people with an intellectual disability (Davis, 2002).

However it is well established in the research literature, and a familiar reality to service providers, that some people with intellectual disabilities commit

offences. In fact prevalence studies showing high rates of over-representation have been carried out involving people with intellectual disability within different parts of the criminal justice system (police studies e.g. Cockram & Underwood, 2000; Gudjonsson Clare, Rutter & Pearse 1993; and Lyall, Holland, Collins & Styles 1995; court studies eg. Cockram 2005a ; Hayes, 1993; 1996; probation orders Mason & Murphy, 2002; and prison studies e.g. Cockram, 2005c; Brown & Courtless, 1971; Denowski & Denowski 1985, Hayes & McIlwain, 1988; MacEachron, 1979).

Several commentators have indicated that there are methodological problems that contribute to the issue of prevalence of offending by people with intellectual disabilities (see for example Lindsay, 2002; Taylor, Thorne, Robertson & Avery, 2002). These authors point out that the inclusion criteria used for any prevalence study sample will affect the offending rates obtained. This is especially true when attempting to ascertain and define those functioning in the borderline and mild levels of intellectual disabilities. Classification trends in the United States, for example, have steadily moved toward labeling children and adolescents who meet the criteria for mild mental retardation and who have significant academic and social problems as emotionally disturbed or learning disabled (Macmillan, Gresham, Siperstein & Bocian, 1996). Increased use of diagnoses that are perhaps more acceptable than mental retardation, such as speech and language delays, autism and other pervasive developmental disabilities, might also account for less frequent use of the classification of mild mental retardation. There may also be a reluctance to label non-white students and students for whom English is a second language as mentally retarded. These and other factors are perhaps in part responsible for the large decrease in the use of the label mental retardation in the United States education system. Similar problems occur in defining mild intellectual disability in adulthood. Many students within special education and labeled as having a borderline/mild intellectual disability are not served in adult intellectual disability services when they graduate from high schools.

Another factor influencing offending rates among people with intellectual disabilities is the source and location of the study sample. Studies on offending by people with intellectual disabilities have been conducted at different stages of the criminal justice system. These studies may find different prevalence rates due to sampling bias and "filtering" effects (Holland, Clare & Mukhopadhyay, 2002; Mason & Murphy, 2002). These "filterting" mechanisms occur at different stages of the criminal justice system and are still not well understood. For example, the implementation of policies,

such as diversion from custody, will have significant effects on observed prevalence rates for this client group.

The methods and measures used to determine the individual's level of functioning are also factors that affect the reported prevalence of offending in people with intellectual disability. Variations in the intelligence test, adaptive behaviour, measure, education history and screening assessments selected will affect the observed prevalence rates (McBrien, 2003; Simpson & Hogg, 2001). The decision making process, clinical skills and biases of the clinician making the diagnosis may also affect whether or not someone is labeled as having an intellectual disability. Of course, these factors will have the largest effect on whether or not someone is labeled "intellectually disabled" for people with borderline and mild intellectual disabilities, but will probably have a much lesser effect for labeling people with moderate through severe intellectual disabilities. It may also be possible that offending or certain kinds of offences may create biases as to whether or not someone with borderline or mild intellectual disability is referred for assessment or how a clinician behaves when conducting an assessment.

These methodological problems occur in the context of sometimes quite rapid changes in social, health care and criminal justice policies. Definitions of both intellectual disabilities and criminality may change significantly and quickly. These changes influence the apparent incidence, reporting and visibility of offending behaviour by people with intellectual disabilities (Holland *et al.*, 2002; Lindsay, 2002; Macmillan *et al.*, 1996). However, one important finding appears constantly: individuals with intellectual disabilities are over-represented in correctional systems.

Recidivism by offenders with intellectual disability

Strikingly little work has been undertaken to explore repeat offending by people with intellectual disability. Understanding recidivism is useful in assessing the effect of penal policies and the utility of specific interventions upon offending behaviour. It is particularly critical for offenders with intellectual disability in Western Australia as large differences in re-arrest have been observed between these offenders and mainstream offenders.

High rates of reconviction have been noted in overseas follow-up studies of people with intellectual disability who have been institutionalised following a conviction, (Craft, 1984; Day, 1988; Gibbens and Robertson, 1983; Lund, 1990; Walker and McCabe, 1973; White and Wood, 1986), although it is important to note reconviction for serious offences is uncommon following appropriate

intervention. The often-cited White and Wood study (1986) reveals that the recidivism rate for offenders with an intellectual disability is 60%, unless they receive appropriate programmes, when the rate can fall to 5%.

In a study of 135 offenders with an intellectual disability in the United States, Scorzellie and Reinke-Scorzelli (1979) found that 68% had a history of prior arrests. This study suggested a higher level of recidivism than has been found among mainstream prison populations who exited the prison system between May 1985 and December 1986.

Linhorst, McCutchen & Bennett (2003) reviewed five American programmes serving convicted offenders with developmental disabilities living in the community, either on parole or probation orders. Three of the programmes provided outcomes for participants. Arrest rates ranged from 6.5% over five years to a recidivism rate of 5% over 10 years, and a parole revocation rate of 25% within an unspecified time period. Difficulties in interpreting this research are immediately apparent. First, studies use different definitions of recidivism. Some programmes used parole and/or probation revocation, some arrest and some conviction. Second the time period over which recidivism was tracked is not specified. Thus, it is not clear if reported arrest and recidivism rates were measured while clients were receiving a service from the programme, following discharge from the programme or a combination of the two. Finally, these studies did not routinely or consistently report the type or severity of the offences that resulted in revocation, arrest or re-conviction.

There are only two Australian studies on recidivism and intellectual disability. In 1994 Klimecki, Jenkinson and Wilson found that 75 offenders who had served a sentence in the segregated unit for people with intellectual disability at the Reception Centre in Melbourne had an overall recidivist rate, defined here as *return to prison*, of 41.3%. Cockram (2005b) in Western Australia found that people with intellectual disability had a probability of rearrest of 73% compared to only 52% for general population offenders over a ten year period.

Linhorst *et.al.,* (2003) reported on a community case management programme for 252 convicted offenders with mental retardation. The majority were voluntary clients on probation or parole orders. The primary functions of the programme's case coordinators were to facilitate clients' access to services and benefits and to share information between relevant organisations. Recidivism in this study was defined as arrests during the period when the clients' cases were open, and within a six-month period following case closure. During the period their cases were open, 40% of clients were arrested. During the six months following case closure 34% were arrested. The majority

of crimes resulting in arrest were minor. Only 13% of arrests across both time periods were for felonies against the person. Of the clients who completed the programme, 25% were arrested during the follow-up period, whereas 45% of those who dropped out of the programme were arrested. However, the recidivism rate of 25% is markedly higher than that for programmes that provided more intense levels of supervision and mandated clients' inclusion in the programmes through parole or probation order conditions.

Some authors argue that the risk of reconviction is highest during the year immediately following discharge (Day, 1988; Gibbens and Robertson, 1983; Tong and Mackay, 1969; Walker and McCabe, 1973). A history of convictions prior to the offence for which they were institutionalised substantially increases the chances of further convictions (Day, 1988; Payne, McCabe and Walker, 1974; Walker and McCabe, 1973), and is the best predictor of the likelihood of reconviction (Gibbens and Robertson, 1983). Property offenders have a substantially greater chance of reconviction than offenders against the person (Day, 1988; Walker and McCabe, 1973; Tong and Mackay, 1969).

Sex offenders, both with an intellectual disability and those who do not have an intellectual disability, display a low but persistent tendency to repeat sex offences (Day, 1990; Soothill and Gibbens, 1978). Commentators have noted the importance of follow-up for all offenders with an intellectual disability, particularly sex offenders. A number of studies have found that a shorter duration of institutional care is associated with a greater likelihood of reconviction and rehospitalisation and imprisonment (Lund, 1990; Walker and McCabe, 1973). Sex offenders are prone to relapse in times of high stress or in situations of obvious temptation and need to learn to identify, prevent and escape from high-risk situations. The evidence suggests a positive correlation between good outcome and stable residential placement, regular daytime occupation and regular supervision and support (Glaser, 1991). Such support may include the establishment of a support network of friends, family members and other caregivers who have some awareness of the offender's problems.

Within the population of people with intellectual disability, behaviour amounting to offending occurs mainly, but not exclusively, amongst those with mild disabilities (Cockram & Underwood, 2000). There is often a fine line between challenging behaviour and offending. There is evidence to suggest that those with intellectual disabilities who offend are more likely to have psychiatric disorders than other people with intellectual disabilities (Hodgins *et. al*., 1996; Murphy & Mason, 1996).

Individual offenders with an intellectual disability tend to commit a wide range of offences. In Western Australia, people with intellectual disability are charged with their major offence in the categories of crimes against persons, including sex-related offences; against property offences, as well as good order offences more often than other offenders (Cockram & Underwood, 2000).

Overseas Denowski & Denowski (1986) examined the characteristics of intellectually disabled *adolescent* offenders at the time of arrest. Their findings were similar to those of Klimecki, Jenkinson & Wilson (1994), who found that theft was the most common offence committed by individuals with intellectual disabilities. However, the studies differ when the types of crimes subsequently committed by offenders with intellectual disabilities convicted of theft are examined. Klimecki and her colleagues (1994) found that property crimes like theft or robbery were followed by assault, sex-related offences and property damage. Denowski & Denowski (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 her 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 offenders with intellectual disability 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. Lund (1990) also found that property offenders tended to continue to commit property offences whereas only one-quarter of those who had committed arson, violence or sex offences repeated such crimes, the majority subsequently committing property offences. A similar finding has been reported in non-handicapped offenders (West & Farrington, 1977).

The issue of violent and sexual offences committed by persons with intellectual disability has also been the topic of research. In their examination of the psychopathology of sexual abuse amongst young adults with intellectual disability, 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 stage of perpetrators is

crucial when trying to explain the subsequent adult behaviour of these types of offenders.

Brown & Stein (1997) were also interested in the topic of sexual offences committed by people with intellectual disability. In their comparison of male sex offenders with intellectual disabilities and those without, these authors found that the former were more likely to have male victims and more likely to commit less serious offences. The findings of Crocker & Hodgins (1997) and Hodgins (1992) on the other hand, were quite different. With respect to violent crimes, Crocker & Hodgins (1997) found that the non-institutionalised men with intellectual disabilities 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 people with intellectual disabilities.

In an earlier study, Hodgins (1992) found that men with intellectual disability were five times more likely to commit a violent offence than men with no disorder or disability, and women with intellectual disability were 25 times more likely to commit a violent offence than women with no disorder or disability. It must be noted however, that there are methodological limitations with this study in that evidence of intellectual disability was taken from registers of children who were placed in special classes at school as a result of intellectual disabilities, or people with intellectual disabilities who had admissions to psychiatric wards, and this may in fact be a biased sample. Being given special schooling or being admitted to a psychiatric ward is more likely if the person shows challenging or antisocial behaviour, so that people with intellectual disability who have been in special schools or hospital wards are biased samples of the total population of people with intellectual disabilities and are more likely to commit offences for reasons which may be unrelated to their disabilities.

Finally, Simpson & Hogg (2001) provide a review of the literature on the predisposing factors of criminality amongst people with intellectual disability. Amongst other things, these researchers found that gender, age, and socio-economic class were significant factors associated with criminality. Furthermore, Cockram & Underwood (2000) and Simpson & Hogg (2001) found that the likelihood of offending increased when the intellectual disability was in the borderline/mild range, and also when there was a history of re-offending (Cockram, 2005b).

SERVICE DEVELOPMENT, PROGRAMMING AND TREATMENT CONSIDERATIONS

The advent of deinstitutionalisation across the Western world has fundamentally altered services for offenders with intellectual disabilities. In the UK and North America for example, in the mid-1970s it is likely that each large facility for people with intellectual disabilities would have had a number of wards dedicated to forensic cases. Most of these facilities have now closed or reduced greatly in size (Coucouvanis, Polister, Prouty & Lakin, 2003). Thus, there are now few institutional beds into which forensic cases can be diverted.

The impact of deinstitutionalisation on disposal of forensic cases with intellectual disabilities is unknown. However, Cockram & Underwood (2000) in Western Australia suggested that a plausible explanation for the finding in their study that people with an intellectual disability were charged far less during the first five-year period (1985-1989) than the second five-year period, (990-1995) while arrests for the non-disabled sample were about the same over the two five year periods, offers some support for the view that deinstitutionalisation contributes to more people with intellectual disability coming into contact with the criminal justice system. The authors note that the living arrangements of people with intellectual disability in Australia decreased from 8.8 per cent of individuals living in institutions in 1991 to only 7.5 per cent in 1993. The downward trend in Western Australia is consistent with national trends. The Disability Services Commission records show that at 31 December 1994 (the last day of the study period), 9.1 per cent of individuals with intellectual disability lived in specialist disability hostels, whereas in 1990, 14.7 per cent resided in these settings.

Managing Risk in the Community

A reasonably accurate estimate of long-term risk is required to determine the appropriate level of supervision required for individual clients. Harris, Rice & Quinsey, (1993), suggest that instruments such as The Violence Risk Appraisal Guide, (VRAG), appear capable for providing such an estimate for clients with intellectual disabilities. Ongoing management of risk and changes in level of supervision, however, require monitoring of changes in risk so as to proactively adjust supervision. For example, Quinsey *et. al*., 1997 found in a field trial in the UK, that changes in staff ratings were prospectively related to risk and some of these changes occurred over a period of months. Therefore, staff could use them to increase or decrease supervision level or to adjust programs designed to reduce the likelihood with which clients become involved in aggressive or antisocial behaviours.

Interventions for clients who have intellectual disabilities that have the potential to reduce long-term risk have been reviewed by Cipani (1989). Additionally, work on Assertive Community Treatment (e.g. Burns & Santos, 1995; Lafave, de Souze and Gerber, 1996), also appears to be an appropriate model for the provision of services because of its implementation with high-risk individuals in community settings. However, two further elements of programming require careful attention: supervision and crisis intervention.

The degree of risk that an agency is able to assume depends on the amount and quality of supervision available in the community and the characteristics of the environment, such as access to young or vulnerable persons, in which the client is placed. Supervision for very high risk clients requires that a particular person be responsible for authorising a particular level of supervision for an individual client and for coordinating its implementation. It is also necessary that that person has the legal authority to compel compliance (Wiederanders, 1992; Wiederanders, Bromley & Choate, 1997).

Bird, Sperry & Carreiro (1998) describe a successful program for 10 individuals with intellectual disabilities who had failed in a previous community placement because of aggressive, antisocial and suicidal behaviours. The program involved a network of intellectual disability services. It focused on applying rehabilitation principles and environmental behaviour support strategies through "goal setting, comprehensive case management, social skills training, positive reinforcement, crisis intervention, competency-based skills teaching, medication monitoring, data-based outcome measurement, and community-living arrangements" (p.331). Compared to their pre-intervention status, all participants showed "significant reductions in targeted behaviours, maintained extended placement within the community without emergency hospitalisation, developed effective and adaptive social skills, secured job placement, and reported satisfaction with their quality of life" (p.331).

The treatment of sex offenders with intellectual disability has received a good 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 a sex offender programming 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 sex offenders with intellectual disability. 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 behaviour therapy proved to be particularly helpful in enabling a victim of sexual abuse who later became a perpetrator of this type of abuse to recognise his abusive inclinations.

Individual treatment programs have also been recommended for offenders with intellectual disability 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 & Blaser, 1994).

METHODOLOGY

The research incorporated an applied methodology, with research being undertaken using methods that maximised the relevance and on-going value of findings.

A series of case studies was undertaken on thirty individuals who had been identified as repeat offenders and who had undergone experiences of particular relevance to the aims of the study. These individuals were drawn from the Department of Justice Disabiliy Unit database comprising approximately 200 offenders with intellectual disability, the majority of whom are repeat offenders.

In-depth Case Studies

From this group of 30, 10 were reviewed more fully to gain further insight into this client group. These case studies have been anonymised and potentially identifying details have been altered.

As part of the 10 case studies a cluster of interviews were undertaken, including 7 offenders with an intellectual disability, 4 family members and 21 service workers from community organisations and government agencies who have responsibility for service provision and/or who were judged to have a depth of knowledge and experience in relation to the information being sought. Official case records were used as supplementary sources of information.

The value of this approach was that it allowed the research to capture more in-depth experiences, as well as identifying common themes and allowed for clarification of issues which emerged. Information was collected about the flow of the individual's life course including current circumstances, recent life events, personal history, education, family support, as well as co-morbid conditions, including mental health problems, substance abuse, history of abuse and family breakdown. Data on individual experiences with the criminal justice system and with community and government agencies were also collected.

There is an absence of voices of people with an intellectual disability who offend in research, policy and practice as well as those who might support them. An essential step is acepting that people with an intellectual disability do have important things to say on their own behalf, and that their

perspectives are a valuable source of input into decisions regarding themselves as individuals as well as for service development.

The individuals with intellectual disability were asked by the researcher for their consent to the interview taking place. A consent form was given to the person to read. If they could not read, the content of the form it was read out to them. Each person was then asked what the content meant. If there was any difficulty in understanding the content this was explained further. The form was not signed until the researcher was satisfied that the participants understood the issues and the process**.**

The service workers were also interviewed by the author at their workplaces or by telephone. Data on the agencies experiences were collected to assess the impact on the individuals who form the focus of the case studies. In addition throughout the life of the study, contributing agencies were invited to identify contemporary critical incidents (eg. events within their agencies involving the individuals involved in this study). This method allowed for a closer study of change and development within agencies as they occurred. All interviews were treated as confidential.

Ethics Approval

Ethics approval for the project was obtained from the Human Research Ethics Committee, Edith Cowan University, The Department of Justice Research Application and Review Committee and The Disability Services Commission's Research and Confidentiality Committee. Two individuals with intellectual disability had a guardian appointed, and approval was gained from the Public Advocate to include their case studies.

Conclusion

Within this chapter the method of the study has been described. The next chapter provides an overview of the thirty case studies and presents the ten individual case studies. The final chapter provides a discussion of the findings and their implications.

CASE STUDIES

Overview of 30 repeat offenders with intellectual disabilities

Males represent 23 of the 30 (77%). The ages of the individuals in the case studies ranged from 19 to 49 years. For the majority of the sample group, the case studies were able to consider and include information spanning a period from a young age to current age**.** At the time of the study 19 individuals were in prison and 11 were in the community.

Of the 30 case studies, 21 related to people identified as having an intellectual disability; 9 individuals were noted to have a dual disability – the combination of intellectual disability with mental illness. 13 were noted to have been formally assessed as eligible to receive DSC services, and 17 were described as having a low IQ, (borderline intellectual disability). Some of these individuals refused to cooperate with assessments, which may have determined the level of disability. Six of these individuals had an acquired brain injury. Substance abuse was reported to have contributed to the acquired brain injury in five cases. In addition, three individuals with an acquired brain injury also had mental health issues.

The case studies of 14 individuals describe various degrees of violence, abuse, neglect and service involvement experiences in their childhood years. Nineteen individuals had their first contact with the service system at, or under the age of 18. Ten had their first contact with child protection services. Domestic violence, conflicting, strained, or non-existent relationships with parents were characteristic of many in the sample group. There were five case studies that described the individual's experiences with domestic violence where the parents were violent towards each other and/or the children. Thirteen case studies noted that the individual was not in contact with one or both of their biological parents and six case studies noted a 'close relationship with their families'.

There were six case studies that noted that individuals had experienced some form of abuse in the home, including physical or sexual abuse and six case studies where sexual abuse had been identified outside of the home. Five of these were in prison. In addition, two individuals had been subject to Guardianship Orders.

Homelessness was noted to be a significant issue; 12 individuals were noted to have experienced either homelessness, sleeping rough, transient or

otherwise moving between numerous short term and unstable accommodation placements (such as boarding houses or crisis accommodation). In six case studies it was noted that the lack of stable and secure accommodation contributed to increasing challenging behaviours, which in turn lead to increased contact with the criminal justice system.

Involvement in education, training or employment activities was generally intermittent and short term in nature, with a number of individuals being 'asked to leave' placements due to extreme behaviours. All of the individuals were described as socially isolated or had some difficulties with making and maintaining social networks and meaningful relationships. Only one case study described a situation where the individual's ability to form and maintain relationships improved, after the individual settled in to an appropriate accommodation placement and slowly began making friends with fellow residents and staff.

There was abuse of alcohol and other substances across the majority of the case studies. Of the 30 individuals, 18 had significant problems with alcohol and other substances. The most common types of substances used were alcohol and cannabis. Only one case study described a concerted, consistent involvement in treatment services that improved the situation. Suicidal ideas, suicide attempts, and self harm were also features of a number of case studies.

The case studies generally described persistent patterns of difficult behaviour with excessive drug and alcohol use and breakdown in accommodation commonly acting as triggers. Some individuals displayed a mixture of aggressive and challenging behaviours that placed staff at risk. The case studies often detailed the impact of the behaviours on the individuals themselves including loss of contact with family, rejection by particular agencies, including drug treatment service and rehabilitation/vocational services. In a number of instances, individuals were described as having 'exhausted' accommodation options.

A characteristic of the case studies was that for many, interventions and service responses had been tried, many over a long period and few with extended comprehensive case management and support. There was often a repetitive nature of service responses – for example, several different accommodation placements, or drug and alcohol counselling services, or mental health assessments. This indicates that many of the individuals were often changing or using multiple services, and not being provided with consistent and effective treatment, support of case management services, in some cases because of the consistent refusal by some agencies to accept overall responsibility for the individuals concerned. There were five case

studies that indicate no service interventions or responses had been effective for the individual. Four individuals were identified as being resistant to service engagement.

Criminal Justice Involvement

All but two of the 30 individuals had an extensive history with the criminal justice system. Almost all individuals had been charged with numerous offences over a number of years, and most had their first criminal justice contact as juveniles. The experiences of the individuals with the system included facing charges, court appearances, incarceration, supervision orders, probation orders, good behaviour bonds, being fined, undergoing assessments (by psychologists or psychiatrists) and intervention orders. Several case studies described particularly high levels of involvement. For example, over a ten year period, one individual at the age of 29 years incurred 59 terms of imprisonment, with an average time between release and re-incarceration of 10 days.

The 30 individuals had been charged with many and varied offences, ranging from minor (drunk and disorderly, nuisance behaviour) to very serious (sex offences; indecent assault/grievous bodily harm; arson). The most common were burglary/theft, and assault.

Individual Case Studies

The following individual case studies, while based on the experiences of a number of the 30 individuals in the study are composite in order to protect individual identities. Any similarity to actual cases is purely chance.

HARRY

Background

Harry has been registered as a client with Disability Services Commission since pre-school, when he was diagnosed as having a mild intellectual disability. Harry's disability was compounded by family and environmental factors. As a young child, Harry was said to have a distinct disadvantage in relationships with his peers due to his poor speech development and this led to his becoming more aggressive because of his communication difficulties. Harry was identified by DSC as being an "at risk" child due to physical abuse. Harry was referred to the Department of Community Welfare and was then made a ward of the state for a period of time.

He was later returned home when intermittent abuse continued and Harry says that this abuse led to him spending as much time as possible away from the family home, often in the city, from the age of eight years onwards.

Harry reported that he attended about six primary schools. He said there was nothing he particularly liked or disliked about school, but admitted that he did not get along with the teachers or his peers, experienced boredom and difficulty paying attention and later began to run away to avoid having to attend. He said that he was placed in "special school" while his brother was in the "normal section", but did not feel that he belonged there. He did not attend high school as he was spending the majority of his time on the streets, despite the efforts of people involved in his case to engage him in education.

Harry said in interview that he began sniffing, primarily glue and toluene, from 11 or 12 years of age as the individuals that he associated with on the streets did this. It was also at this time that he first got into trouble with the law for stealing food and other essential items. The onset of these behaviours appears to have been concomitant with a documented deterioration of Harry's behaviour in other domains, with him refusing to attend school and running away from home in favour of spending time on the streets. There was suspicion by his mother that he had been sexually abused, as he was caught engaging in sexualised behaviour with his brother. Harry confirmed this in interview, reporting eight different individuals had abused him while on the streets and in hostel accommodation. Due to his behavioural difficulties Harry's mother applied to have him made a ward as an uncontrollable child when he was 13 years of age. At the same time an application was made by the police, who often returned Harry, as they were concerned about his physical welfare. He was placed into foster care, and again over time, there was a noted improvement in Harry's functioning, specifically he ceased running away, stealing and being verbally abusive, began taking pride in himself and demonstrated improvement in his social skills

File documentation indicates that after this placement Harry wandered between hostel to hostel, spending little time in the hostels that he was housed in, heading into the city, where there was suspicion that he was "selling himself". He was described as having limited social skills, very few friends and being teased by other children as a result of his speech impediment. Concern was also expressed that Harry had some sexualised behaviour and hence may be very vulnerable himself to abuse. At this point a DSC Local Area Coordinator investigated options within DSC, but "it was agreed with the social worker that none of their 'crisis' accommodation options could meet Harry's specific needs".

Harry reported that his offending behaviour escalated after he was placed in hostel accommodation, attributing this to the lack of stability and structure he experienced. At this time Harry also said that he had befriended a man on the streets who he thought was going to help him as he provided Harry with money, cigarettes and food. Harry disclosed being sexually abused by this man who sexually abused him over a two year period. In interview Harry described this experience as "horrible" and inducing a belief that "everyone was out to get him" as well as resulting in a dislike of adults. He said that his use of inhalants increased after this experience and helped to block out the memories of his abuse. It appears however that Harry has not received any sexual assault counselling.

Subsequent to this, Harry moved between his mother's residence, and hostel accommodation, none of which were successful, with him electing to live on the streets. Harry estimated that he had lived primarily on the streets for a period of approximately eight years prior to his current incarceration, punctuated only by a previous term of imprisonment. He described having no friendships, inhaling solvents with others in a similar situation and going "wherever the day took him".

Although DSC has been aware of Harry's problems over many years they report that there has been some resistance from Harry to accept their services in the past due to Harry not seeing himself as being "intellectually disabled." However Harry has responded positively to some of the interventions in recent years including services from his Local Coordinator and funding through DSC's Post School Options Programme which has provided him with a support worker who spent time with Harry twice a week to engage him recreational activities. This latter option was placed on hold when Harry was sentenced to prison.

Offending History

Harry has an extensive offending history, commencing when he was 13 years of age and it is apparent that there has been an escalation in the seriousness of his offending.

At 13 he was convicted of two Burglary charges . Two years later he was charged with further Burglary and Criminal Damage charges, for which he was given 3 months Probation. When he was 18 Harry faced charges of Indecent Assault, Deprivation of Liberty and stealing with violence. He was sent to prison for three months, with a 9 months Intensive Supervision Order to commence on release. One month later he was again charged with Indecent assault and given 6 months imprisonment suspended for 12 months. A year

later he was charged with Aggravated Indecent Assault, Assault Occasioning Bodily harm and Breach of Suspended Sentence and was sentenced to four years imprisonment.

Harry was released from prison after serving two years. Upon release, Harry has been able to access support and accommodation within the Frequent Offender's Program, a combined initiative of DSC, the Department of Justice, Outcare and Homeswest.

Whilst on parole Harry was charged and convicted with another Aggravated Indecent Assault charge together with a charge of Assault Occasioning Bodily Harm.

In interview, Harry minimised the seriousness of his offending when he insisted that he does not consider his behaviour i.e. touching a woman on her breast without her consent, to be particularly serious. In support of this, Harry said many times that he does not consider his own offending behaviour to be particularly serious as it is "not sex or rape". He was not like "sex offenders who had committed offences against children and old people and raped adult women, he was not as bad as them".

It appears that Harry has been involved in several incidents during his terms of imprisonment. These have been in relation to behaviours such as sexually inappropriate behaviour with, and propositioning of, other inmates, implication in an assault and refusing a urine test. Harry disclosed being the victim of sexual abuse by four prisoners and has had two known attempts at suicide.

Harry has been afforded the opportunity to engage in a variety of programs focusing on substance misuse, anger management, legal and social awareness and the Cognitively Impaired Sexual Offending Program on his two terms of imprisonment. During interview, Harry claimed that he withdrew from a Sex Offender Program as he was in a group with people who had offended against children and elderly women, believing his offences to be less serious.

Doubts were raised by DSC psychologists as to the extent of Harry's intellectual disability. Nevertheless, in absence of reliable evidence to the contrary Harry remained eligible for DSC services. However, the most recent assessment notes that Harry's refusal to complete the IQ assessment or an Adaptive Behaviour assessment suggests "that an accurate estimate of his intellectual functioning is not currently possible". The report also notes that Harry's Adaptive Behaviour assessment completed six years ago "was well above DSC eligibility criteria and taken together, Harry's previous

assessment, his present assessment results, and his comments and behaviour during the current assessment DSC suggest he is functioning outside their eligibility criteria".

At a number of Harry's previous parole hearings, the Board had postponed a decision due to lack of accommodation and support in the community. Over a three year period Harry was reviewed 8 times before the Parole Board considered he had the necessary community support for his release.

When released, Harry had served over 3 years longer than a prisoner with community support. Considerable planning had been underway to support Harry's release from prison. The plan included community housing with the Frequent Offenders program and regular support provided by a family support service. Support funding was approved, up to the end of the financial year, when he was to be deregistered.

In interview shortly before his release from prison, Harry reported that he intended to associate with former prisoners who do not use drugs to obtain support, as well as accessing support through his contact with various agencies if needed. He also expressed willingness to attend a maintenance program, as well as individual counselling to explore issues of a more personal nature. Harry appeared committed to ensuring that he does not return to prison, and this is reflected in plans that he was currently making, such as applying for work and saving money to purchase items upon his release. He said that as a result of his two terms of imprisonment, totally approximately six years, separated only by a few weeks, he had matured and was now aware of what he needed to do to avoid returning.

Harry stayed in the community for 8 weeks under the guidance of a family support program. However, he found life outside prison very difficult. He could not manage his finances and spent much of his money on alcohol, often frequenting bars for company. He later reported that he felt "lonely and unsafe" in the house" and spent a good deal of the time "sleeping on the streets". He also said "he was too institutionalised". He subsequently spoke to his Community Corrections officer saying "he would do something to get back to prison" and begged the officer to let him return. He was sent back to the maximum security prison to complete his parole and six weeks later was released back into the community. Five weeks later he was back in prison.

SALLY

Background

Sally is a young woman with a borderline intellectual disability coupled with a chronic personality disorder. Sally had a disrupted childhood and long-term history of behavioural disturbance. She has a volatile relationship with her father but describes her mother as the most important person in her life. In her early years at school she was described as “fidgety, a little nervous, chirpy and asked an enormous number of questions”. She was reported to have problems in social situations, preferring the company of younger children. However her methods of play and socialising were described as somewhat bizarre. Sally adopted play devices which instead of promoting involvement in a game, caused the structure of the game to alter to the point where she became the centre of attention. Once she achieved this goal she would lash out physically and run, whereby the other children would chase her. She also developed a great number of avoidance behaviours.

Reports from that period describe Sally as frequently engaging in verbal and physical abuse. The family situation finally broke down after an incident involving Sally and the police. Sally refused to return home and Crisis Care arranged emergency accommodation for her. A number of short-term placements were then arranged, however, none of the placements proved suitable or successful because of her behaviours. A report from one hostel described Sally’s placement as being "totally unsuitable" as she had threatened and intimidated some of the residents.

Sally said that she suffered from sexual abuse as a child but could not elaborate. She said she was “raped” when she was eleven years- of- age. Prior to this, she said that she was sexually abused by an older man for well over a year. Sally could recall clearly that she did not “do well” at school and could not concentrate and subsequently left school at a very early age. It appears that she has had a number of casual jobs and she has been on a Disability Support Pension for ten years. She described her childhood as an “unhappy” one. She also recalls being physically abused and claims to have experienced occasional traumatic flashback from time to time. Sally believes that she has no problems in controlling her anger. However she has readily admitted to the fact that perhaps she is an “impulsive” type by nature and especially in times of stressful circumstances.

Offending History

From the documented criminal record, it appears that Sally has been in trouble with the law for over twenty years. She has been charged with a number of offences ranging from stealing, burglary, criminal damage and disorderly conduct. Most of her offences appear to be criminal damage by fire. After her last charge she was found Fit to Stand Trial. She has had previous imprisonments and the longest one was for well over three years. However she says that she was 'trouble free" for a number of years in between.

Her efforts to be friendly were being constantly frustrated, she said, by her neighbours. Sally reported that her neighbours had failed to reciprocate with dinner invitations. She explained that she had invited these neighbours for dinner at her unit on 3 occasions, providing them with a 3 course meal each time at considerable cost to her. However the couple had not returned the dinner invitation and had in fact been verbally abusive to her. At around the same time, her landlord ordered her to get rid of a stray cat she had befriended and taken in as a pet and companion. This animal was very dear to Sally and she was angry about having to give it up. After drinking a bottle of rum she entered the premises of both her landlord and the rejecting neighbours and set fire to curtains, causing thousands of dollars worth of damage. Sally thought that she was quite justified in her behaviour at the time and did not think of the consequences of her actions. Sally said she often feels rather "helpless" and says that she has no control over what she does, especially when she "feels depressed or stressed out".

Sally's above mentioned behaviour followed the same pattern that it has previously followed. Her arson offending have generally occurred when she feels she has been unjustly or unfairly treated by others. A previous offence had occurred four years previously which involved a similar offence against her hostel supervisor because he had gone through the personal items in her room.

Sally appeared in court to face these charges. A pre-sentence report suggested that Sally had a high risk of re-offending, given her inappropriate reactions to "perceived slights". The report further commented that psychiatric and psychological assessments indicate that the behaviour patterns have not varied for more than 4 years, but it was noted that with appropriate supports the risk of re-offending may be reduced. However, it was noted by the Court:

there are limited resources available for females who are not considered intellectually challenged enough to require DSC services, but do require a much higher than average support network. In the immediate short term it is not possible for this service to provide the level of assistance required to ensure successful completion of any Community Based Supervisory Order. If a custodial term is imposed, it may be possible to implement the necessary regimes and support services to enable completion of a period of parole with ongoing professional assistance provided by a psychologist after termination of the Order.

Sally was again given a prison sentence.

Sally did not settle into prison life well. Officers' report that for the most part, she was extremely obstinate, refusing to comply with officer's requests. Sally was considered a management problem due to her propensity to cause damage and make threats and allegations against officers when she did not get her own way. One incident occurred following what she saw as rejection or betrayal by a fellow inmate with whom she had developed a close personal friendship. This prisoner promised Sally that when she was released she would make contact with Sally. However, this did not occur and Sally never saw her again, which was distressing to her. When asked what she remembered most about her prison experiences she said: "the stand overs and attacks like fights". She described the standovers as "they say hand me your shoes and your smokes or I will bash you". She also indicated that she was abused and beaten in jail and when asked where the prison officers were she responded: "they turn a blind eye".

A psychologist was employed to work with Sally in prison. A comprehensive behavioural modification program was designed for Sally for the remaining period of her imprisonment to try to decrease her destructive and abusive behaviours. A reward system was implemented to encourage positive behaviour. She also attended an anger management program on a weekly basis to help manage her anger more effectively. It is reported that she responded well, and on her release contact was maintained with her by the psychologist for a period of a year, via telephone. Sally said this was helpful to her as she was able to talk to someone when she felt distressed. The psychologist was also able to advocate for her on a number of occasions for priority Homeswest housing. Sally was also able to telephone the psychologist from time to time to tell her of her achievements. However, Sally moved from her Homeswest house and the psychologist soon lost track of her.

Unfortunately one year later Sally was again involved in another incident which resulted in another term of imprisonment. On her release she began binge drinking and was admitted to a Psychiatric Hospital as a result of her inebriated, antisocial behaviour. On her discharge from hospital she appeared to settle down and eventually found temporary accommodation. At that time she was on parole and reported to Community Corrections on a regular weekly basis. However, as Sally's Community Corrections Officer experienced some difficulties in interacting with Sally, her previous psychologist was asked to become involved with Sally once again. The psychologist saw her on a fairly regular basis during the parole period which Sally completed successfully.

Sally once again moved house and was not heard of until some months later when she had reoffended once again. She was charged with damaging a neighbour's property. The explanation of the offence was that when she offered the neighbour some free bread which had had obtained from the local church soup kitchen, he expressed expletives and slammed the door in her face. In revenge she was abusive and caused damage. A restraining order was taken out against her and she was again sent to prison.

It appears that although Sally is in great need of friendship and nurturing her behaviour is so inappropriate at times that she puts people off side, but cannot understand why. The absence of friends can lead to an extended definition of friendship. This means, for example, coming to regard neighbours as 'friends' on the flimsy basis of the occasional nod, smile or kind word. The extended definition of friendship does not remove the feeling of loneliness, but it may disguise the isolation. She then becomes upset by her 'friends' actions and takes revenge. As her history of offending behaviour spans a twenty-year period, it is possible that over time this behaviour and the resulting damage has become a means through which personal feelings of anxiety, humiliation or emotional pain are diminished, therefore, could be internally rewarding. Of note, a relationship appears to exist between making friends, the friendships (or behaviour of others) not working out to her satisfaction, and resulting acts of damage .

Sally stayed in prison long after her earliest release date as no services could be found for her. The psychologist who had worked with Sally over the years had recommended that a pre-release and post release programme be drawn up to enable Sally to function more appropriately when she was released into the community. She noted, that from past experience, it is evident that Sally only functions co-operatively when some form of supervision is in place and when she relates well to her contact personnel. This supervision and regular contact needs to be in place over a long term period, not just a few months

intermittently. She acknowledged that funding for the program could prove difficult to acquire, but believed that given Sally's significant range of cognitive impairments (particularly her learning and problem solving deficits) that the Disability Services Commission should play some role with funding. She further noted that the structured programme that she has recommended was mentioned as far back as 6 years ago, when the consultant psychiatrist stated that he believed that despite Sally's intellectual disability, Sally was capable of responding to a structured treatment regime. However no funding could be found and Sally was released at the end of her sentence.

ROGER

Background

Roger was first accepted as eligible for Disability Services Commission (DSC) services at the age of eight. He was referred by his teacher and guidance officer at his school. Roger's current diagnosis includes mild intellectual disability. Roger went to primary school until Grade 2 and subsequently he was educated outside the formal education system at an Occupational Centre. Speech impairment has been a permanent feature of Roger's disability, as is his frustration and embarrassment with it to the point where he avoids social situations because of his self-consciousness. Roger periodically participated in hospital-based speech pathology for his speech and communication difficulties during his school years, but problems associated with his speech deficits continue to be noted. When he was 18 Roger began work in a sheltered workshop. Absenteeism, associated with binge drinking meant that Roger did not sustain his job beyond six months.

Roger was the second of four children to alcoholic parents. There was significant domestic violence and his mother was hospitalised on at least three occasions with serious injuries. Alcohol use was taught as a coping mechanism rather than expressing emotions. DSC played an intermittent and minor role in Roger's life until the family approached DSC for assistance and advocacy for Roger who had received a probationary sentence for dealing with a child under the age of 13. Roger's father and mother died within two years of each other. After the death of his mother he was unable to continue residing in the family home and therefore became homeless.

Emergency accommodation was found by DSC which was a strictly supervised hostel situation. Reports back from DSC were that while he was in this hostel he was doing extremely well and seemed happy in this situation. Once he had learnt a range of self care skills Roger was transferred to a temporary bed in another DSC hostel as it was considered that his level of disability wasn't sufficient to qualify him to remain in that hostel situation.

He subsequently resided in homes for alcoholic and homeless men. He was then placed in a group home with five other registered clients of DSC.

Offending History

The first offending incident arose when Roger touched a 5-year old girl on the vagina with his hand. When Roger was interviewed he admitted having committed the offence and when asked why he had done it, he said that he did not know why. He did not receive any treatment for this offence as there was no Sex Offender Treatment program available at that time that could adequately address his needs.

While on probation he reoffended when he committed two counts of arson. Summary Breach action was taken by the Court and he was sentenced to a 2 year Intensive Supervision Order for Breach of Probation. The order had a curfew requirement but the usual curfew requirement involving electronic/telephonic surveillance equipment could not be implemented due to the nature of Roger's living arrangements. Electronic monitoring or surveillance by security guards was considered to be too disruptive to the other residents. The home was staffed with one DSC Social Trainer or Client Assistant for 24 hours from Friday to Sunday, while from Monday to Thursday a staff member was present from 1.30pm to 9p.m as all of the residents had a day placement during the morning.

Roger was employed on a full time basis at a sheltered workshop and independently accessed public transport to and from work until suspension due to misconduct. He had independent access to the community and although he spent much of his free time at home watching TV and videos he often spent his Friday evenings and weekends out of the house, and whilst he generally informed staff of approximate times of arrival home, DSC staff have no mandate to detain residents in their facilities and staff had no control over what Roger did, how long he was out and how frequently he spent time in the community. As a result, they were often unaware of his whereabouts.

As Roger matured his drinking problem became more severe. In an attempt to combat Roger's drinking and, in turn, minimise the likelihood of offending (as his history indicates that he was more likely to offend while intoxicated) certain rules/guidelines were imposed within the home. To promote appropriate drinking behaviours, previously Roger had been allowed to drink moderate levels of alcohol within the home. Roger's support person was also requested to take him to the pub with the aim of modelling appropriate drinking. However, Roger refused to see the support worker before this could

be put into place, and unfortunately these strategies were not successful in alleviating his binge drinking. Roger was reported to get himself into extreme levels of anger and frustration when things started to build up on him but because of his communication difficulties service workers were unable to access what was frustrating him. This then sent Roger into bouts of depression when he started binge drinking as a way of coping.

Several more wilful damage charges and wilful damage then followed. Roger readily admitted the offences. He says "he was picked up and taken to the police station where they booked me". He did not find it too easy to explain what happened when he was "booked" but was emphatic that it was wrong to do what he did. He did not find it easy to distinguish between the abstract idea of something being wrong and the more particular concept of something being against the law.

Psychological assessments undertaken at this time revealed that Roger's intellectual attainment is in the first percentile of the population and that there had been several areas of behaviour disorder which were not easy to bring under control by DSC who had the responsibility for his care. He was able to understand only simple, single concept terminology. He was easily embarrassed by his inability to understand everything that was said to him and his inability to articulate clearly. Both of these deficits lead to an avoidance pattern in communication.

A psychiatric assessment was also performed with the particular task of determining Roger's fitness to plead. Conclusions from this assessment indicated that he understood both required concepts at an adequate level and was therefore reported to be fit to plead. A Community Corrections Officer who was asked to comment on Roger's offence reported that it was her belief that there was a high risk that Roger would re-offend due to his poor response to supervision and his unwillingness to cooperate in addressing those issues which were underlying his offending behaviour. It was her recommendation that as he had never been incarcerated, "a short term of imprisonment may indicate to him the serious nature of his offending and the need to address his offending behaviour." However, as the judge noted in court transcripts:

> *whilst imprisonment would be the appropriate disposition in this case, it is recognised that general deterrence should be given little weight in cases such as yours because a person with a low level of intellectual function is not considered to be an appropriate medium for making an example to others.*

Roger was again placed on an Intensive Supervision Order for a period of 2 years with curfew requirements.

For a couple of months Roger seemed to settle, but later the same year Roger appeared in court on further arson charges and stealing $31 to buy alcohol, again breaching his Intensive Supervision Order. Roger's lawyer in the plea in mitigation argued that prison was entirely the wrong place for Roger, but in the circumstances he could not see an alternative to that outcome. He reported to the court that options had just run out in the community. The real concern was that the time-frames between incidents occurring were becoming shorter and shorter. DSC had reported that they had offered Roger everything that they could offer him in terms of trying to provide him with some sort of stable life to avoid the problems that had occurred for him. This had included the provision of social skills programmes, employment, accommodation and counselling of various types. Much attention had been given to finding strategies to address his episodes of heavy drinking in order to minimise his tendency to light fires, although DSC admitted these efforts had met with limited success due to Roger's minimal co-operation and motivation. DSC further reported that they have no coercive power over individuals. They have statutory responsibilities but they cannot actually tell him "you will live here, you will not drink". The other concern was that Roger had commenced stealing in order to fund his drinking.

Roger was held on remand in custody for four months until appearing to face these most recent charges. His lawyer whilst arguing that Roger was at high risk within the prison system because of his intellectual disability, believed that:

> *in a kind of a weird way, it (custody) also suits him because it is a very structured environment. Everything is laid out for him. His conduct is prescribed for him and he fits quite well into it and were it not for the fact that he was a high risk, prison probably would be a very good place to keep him. It is just the fact that he is at such a high risk in going into prison, but again I would have to say I don't see any alternative.*

When questioned by the judge if there were other institutions which might provide the same regimentation that Roger seemed to need, the lawyer replied that the mental health system would not accept him because he does not have any mental illness and there was probably little the court could do to avoid what is probably and inevitable outcome. Roger was sentenced to 3 years imprisonment.

It appears that Roger's work as an office cleaner was good and that he required little supervision. He had no prison charges and was described by prison staff as well-mannered and quiet, mainly keeping to himself. Roger was initially assessed by the Sex Offender Unit, but there were no sex offender programmes offered in prison for men with intellectual disability. He subsequently completed the introductory module of the community based sex offender treatment programme for offenders with intellectual disability. This was an 8 week programme that ran for 2 hours per week and was delivered in a group format. The content included disclosure of offending, relationship issues, such as establishing appropriate boundaries and consent, and victim empathy. However communication difficulties were a problem for Roger.

When Roger was eligible for parole he had not presented a parole plan of any kind and when interviewed appeared unconcerned about returning to the community, seemingly feeling settled where he was. However, Community Corrections made contact with the relevant agencies to try to set up appropriate accommodation and supports for his return to the community.

The Parole Board met to consider Roger's parole. However, it was deferred based on his high risk of reoffending, due to unaddressed sexual offending behaviour and determination by DSC of accommodation and supports. Roger had no offers of employment in the community and he had no suitable accommodation arranged. At his next Parole Board hearing Roger's parole application was again denied because his situation had not changed. Roger expressed a preference for living in a flat with another person for company but had no idea how to organise this. He had limited individual support funding from DSC of $5000 per annum and, as DSC felt that this was clearly insufficient to meet his support needs, a new accommodation support funding application would need to be made. At this stage DSC did not have this support plan for Roger and he had recently been allocated a social worker, as case manger to address these issues. It was noted that from a treatment perspective Roger was suitable to attend further sex offender treatment in the community, that he be placed on the waiting-list for the community based program, and that Roger be given the opportunity to attend while under parole. However, his lack of accommodation jeopardised the viability of this recommendation.

In view of Roger's social isolation, he was also referred to Citizen Advocacy who then visited him in custody. Their aim was to offer ongoing support to Roger once he was released and to assist in finding suitable accommodation for him. An advocate was matched with Roger and he continues to play an important part in Roger's life.

On release from prison Roger was placed in a DSC house with five other residents which offers 24 –hour supervision. Roger has resided in the house for four years. With staff consistency, who have learnt to understand and deal with Roger's propensity to binge on alcohol when stressed, together with a work place which suits Roger, and the part his advocate plays in his life, carers in the house report that Roger now rarely drinks alcohol to excess and has not re-offended.

Belinda

Background

Belinda was born and brought up in country town in Western Australia. She left home in her twenties. She is the youngest in a family of seven siblings with two brothers and four sisters. Belinda appears to have come from a somewhat deprived family background. She described it as "distant" – physically present but emotionally absent parental role models in her formative years of life. She claims to have feelings of rejection and being unwanted. Belinda has a limited employment history and worked mostly as a casual gardener.

A full Neuropsychological Assessment of Belinda when she was 14 found Belinda to have a borderline Full Scale IQ of 70. She showed signs of significant frontal lobe dysfunction on four separate tests. This indicates that Belinda does not have the capacity to analyse situations and select appropriate solutions to resolve her problems effectively. Hence she makes inappropriate decisions which lead her into trouble. On the basis of this score Belinda was referred to DSC where she was accepted as eligible for their services. From a psychiatric point of view, reports state that Belinda presents with major functional psychiatric disorder. However, her clinical presentations from time to time were indicative of probably depressive features with possible borderline/antisocial personality traits such as impulsivity and poor coping strategies. She has been prescribed anti-depressants in the past.

Offending History

Belinda has an extensive offending history spanning over a thirteen years. She has incurred multiple terms of imprisonment with a very short time between release and re-incarceration.

Her offences tend to be nuisance offences such as disorderly conduct or creating a disturbance, however there have been some offences against the person, such as assault. She is usually sentenced to a few months in prison and is released without parole. A Fitness to Plead Assessment was carried out 5 years ago and it was the opinion of the Court:

> *that this woman does have the mental capacity to understand the nature of her actions…she understands the rightness and wrongness of actions and has a general understanding of the legal process. Thus she is fit to plead and to be dealt with as the court would see fit. As far as her management in the future is concerned, I see that as being a difficult problem. There is good evidence that such people are best managed or trained or re-trained in a situation where clear limits can be set and there is enough control for those limits to be enforced. In a more open setting where much is left to trust, these people tend to have more difficulties in developing socially acceptable interpersonal behaviours. Whilst recommending such a placement I am not sure of one existing in Western Australia. Consequently I am not sure that there is available any place which would deal with a person of Belinda's nature satisfactorily.*

File notes indicate that Belinda resides in restrictive custody for much of her stays in prison, does a very small amount of work, receives no programs and demands enormous time for psychiatric services. A strict behavioural regime has been implemented in prison with some success. It appears that Belinda lacks the coping skills that would allow her to live an "ordinary life" in the community and has become dependent on the prison system because it provides structure, predictability and security; she finds recognition, tolerance, acceptance as well as status amongst certain groups of individuals in prison. When out of prison Belinda has tended to gravitate towards her old connections in the city, to misuse substances and to re-offend.

Alternate accommodation options that Belinda has tried are: returning to her family home, hostel and group home living, and independent living. Often she has not used the accommodation arranged for her. On the few occasions she has, she has not remained long enough to develop supportive relationships. She often presents at emergency departments of hospitals, where she creates disturbances. Community mental health services have also been involved, however, Belinda does not have a treatable mental illness.

In readiness of one of Belinda's recent releases from prison the Department of Justice employed 2 mentors to provide social and emotional support and DSC sourced supportive employment, but as had become typical for her, Belinda

re-offended shortly after release. However, on this occasion she received a suspended sentence as well as a night time curfew. On this occasion Belinda remained out of prison for a period of 8 weeks, the longest period to date. One of her mentors reported that it was his belief that on this occasion Belinda's positive transition from prison to the community was due to a number of factors:

> *I believe the coordination of DSC and Justice to organise experienced support people pre-Belinda's release to the community, the ability of the mentors to quickly develop a rapport with Belinda, enabling her to feel wanted and so improving her self-esteem, the fact that Belinda has had someone to advocate for her in the Court setting where her details were explained in detail to the magistrate and the positive attitude and support of staff at the Hostel were positive factors in keeping her in the community. The subsequent curfew conditions imposed by the Court and the fact that Belinda knows that going back to prison is not going to be as easy as it has been in the past has also been influential. Keeping her active 5 days per week through work and organised weekend activities have given her exposure to a totally different lifestyle to that which she has experienced in the past. I believe it important to keep all the positive support mechanisms in place, at least in the immediate future. This will help keep Belinda in a routine and normalise her lifestyle as much as possible*.

Unfortunately, the very high level of skilled support required, the intensity of one- to- one interaction with Belinda, and the high level of communication required between all stakeholders proved difficult to maintain. Belinda became increasingly demanding and when on occasions her demands were not met she returned to her old pattern of behaviour and inevitable re-imprisonment.

Prior to her next release, and at Belinda's insistence (she refused to return to the DSC group home) alternative accommodation was sourced through a charity group hostel. Despite her initial enthusiasm and the commitment of the hostel staff, Belinda rarely stayed there and formed no close relationships. Within hours of being released Belinda presented at the emergency departments of two hospitals with self inflicted injuries; she then attended the state psychiatric hospital and ultimately the courts until again being re-imprisoned.

Soon after, DSC made an application for the appointment of a guardian and administrator to assist in making decisions in relation to Belinda's future accommodation needs and management of finances respectively. A guardianship order was made and there being no realistic alternative

accommodation available, the DSC group home where she had previously been placed became the designated place of residence.

Planning for Belinda's many releases from prison have usually involved an inter-departmental/interagency approach, however, it has proved to be difficult to engage Belinda in the arrangements made. The options have sometimes failed to commence because she has absconded from staff when they have collected her from prison. A number of attempts to develop a plan using DSC and Justice funding has also proved difficult to implement when Belinda has failed to engage with staff. Belinda has received extensive psychology input from both DSC and The Department of Justice. Recent advice from DSC psychology services suggests that attempts to enforce behaviour controls would almost certainly be met with an increase in negative behaviour including the potential of an increase in serious self injury to which Belinda has resorted within prison.

Many inter-departmental meetings have been held over the years to discuss release plans for Belinda. At one recent meeting there was a clear request for more restrictive management of Belinda in the community in order to prevent further offending behaviour and to prevent an escalation of the seriousness of her offences. Concern was expressed regarding the possibility of future harm to Belinda or a member of the public if more restrictive arrangements for her were not made. The Department of Justice and the Mental Health Services were suggesting that a strict behavioural response from DSC should be implemented to prevent further offences and further terms of imprisonment. There was an expectation that some extraordinary arrangements should be made to prevent further imprisonment for Belinda and to better manage her behaviours. The possibility of using some form of restraint was discussed, as well as arrangements allowing her rapid return to custody and a restrictive regime, should she not comply with release arrangements. Belinda's guardian could give permission for DSC staff to use restraint in maintaining Belinda within her accommodation option, that is, to lock her in. Other suggested initiatives included: the involvement of the judiciary in any future plans for Belinda and the need for special arrangements or legislative change to be introduced to allow for the strict behaviour management of Belinda's offending behaviour in a constructive manner. However, it was agreed that these suggested changes ask for more restrictive practices to be introduced to manage Belinda's behaviour in the community and were therefore outside the usual DSC policy. Currently there is no legislation in Western Australia relating to compulsory treatment for people with intellectual disability and there has been no examination of the safeguards that would need to be in place for people to protect their rights should civil detention be considered.

Implementing such a regime would have serious implications for DSC and they were not therefore prepared to implement them.

There is pressure from the Department of Justice to find some solution to Belinda's situation. DSC is seen as being in a constant state of planning. It has been acknowledged that DSC's current programs can not meet Belinda's needs. It is believed that she is either unwilling or unable to participate at any level or on any basis that may offer some longer term positive developmental hope. In addition the justice system does not have programs of a developmental nature to offer Belinda and punitive approaches would appear to only further entrench her negative behaviour. Belinda has been known to seek restraint and isolation within maximum security. Prison staff are often at a loss as to what to do with her. Belinda's status and history in prison precludes her from participating in a graduated release program.

At her last release from prison DSC contracted a family support agency who provided pre and post release support under the Transitional Accommodation Support program to offenders with cognitive impairment (non DSC clients) whilst on parole to deliver these services to Belinda at a DSC group home. This was noteworthy because the program accepted for the first time a referral for a client registered with DSC. However, a one-off exception was made in view of Belinda's unique personal circumstances, the chronic nature of her offending history and due to the crisis nature of recent planning (only one week left of her parole) where the Department were mandated to supervise and engage with clients whilst on a Parole Order.

The family support agency reported that this arrangement raised many issues for the delivery of services on a program that explicitly seeks to place clients in independent living situations under the "case management" of the Agency providing direct support to the client. It was their belief that staff in the house were unskilled in managing challenging behaviours such as those exhibited by Belinda. Staff were also inexperienced and unprepared for the situation regarding the provision of external support by another organisation. This raised concerns in regards to confidentiality. It was evident that staff were unsure of confidentiality boundaries in relaying information to the family support staff. Specifically they were not informed of the reasons of Belinda's removal from one group home to another, as well as day-to-day occurrences that were deemed to be essential to the provision of effective client case management. In addition family support staff were not informed of Belinda's threats towards the group home staff. The lack of this information, it was believed, was inappropriate, as it potentially placed the family support staff at risk.

Belinda's relationship with the family support staff was initially strong. However, as time progressed, her contact with staff declined. As she was already being provided with 24-hour support and contact by DSC staff in her place of residence, it was considered that the role of the family support staff was made redundant, or at best of secondary significance to the role being performed by the staff perceived as the primary providers of care, namely DSC personnel.

The placement clearly raised a number of issues pertaining to the provision of effective and delineated case management and in the end failed and Belinda was exited from the family support program. Belinda continued to come and go from the group home and was imprisoned once again.

DSC report that "numerous staff from DSC had done everything they could to assist Belinda, within their mandate", and it was noted that "if the Department of Justice have difficulties managing her within a prison, it is no surprise that DSC has problems when she is released". A representative of Police Services commented that it was surprising to note that "all offences were of a reasonably minor nature. It seemed that it was a deliberate effort upon Belinda's behalf, whereby she only did just enough to get into trouble and hence, back to prison." The Department of Justice report that over the past decade Belinda's entries to prison, have cost the department, at minimum, $1.3 million.

Peter

Background

Peter is the eldest in a family of two children. His father worked in a factory and his mother attended to home duties. At 3 years of age, Peter was diagnosed as being hyperactive and having minimal brain damage. He was registered with DSC when he was 5 and received limited services. Psychological testing at the time indicated that Peter had a mild to moderate intellectual disability.

DSC had no contact with Peter and his family from when Peter was a 7-year old until he turned 19, when limited support was offered. When Peter was 26 years of age he was rated as functioning at the level of a 14-year-old. Although intellectual and cognitive testing was not attempted for this assessment, Peter's presentation during interview suggested that his social and intellectual abilities had remained the same or were lower than previously assessed. Two attempts were made by DSC to equip Peter for independent living. He was accepted at their hostels and became involved in

various training programmes. However, it appears Peter refused to cooperate and in each instance left the Hostel before the completion of the programme.

When Peter was 23-years-of age he established himself in a flat and managed to remain away from home for nine months. Apparently, in an effort to make friends, Peter opened his flat to other young people who stayed with him without contributing to expenses. Peter was asked to leave the flat when he began missing rental payments. According to his mother, Peter had difficulties budgeting and would spend all his money without accounting for rent and food.

The following year Peter returned to the family home but moved out again on his own a year later. He then had a number of changes of addresses in and round the city residing in either hotels or boarding houses for an average period not exceeding three months. His parents were pessimistic about their son's ability to cope in the community.

Peter attended a special school until he was seventeen. Between the ages of eighteen and twenty three, Peter was employed in a sheltered workshop. He sometimes worked as a 'paper boy' and at the local football ground.

Offending history

Peter first offended at the age of sixteen when he was charged with Aggravated Sexual Assault. This was dismissed under Sec. 26 of the Child Welfare Act. Over the next nine years he was charged with a number of offences including Stealing and Wilful exposure . When Peter was 27 he was convicted of a charge of Aggravated Sexual Assault, and sentenced to seven years imprisonment, to be detained at the Governors Pleasure on expiry of the finite term. He is still in prison and has now served 19 years, having exceeded his first statutory review date by over 14 years. He has come to the attention of the Parole Board on 21 different occasions.

Some years ago Peter's plight came to the attention of a local Citizen Advocacy agency and an advocate was matched with Peter. Peter's citizen advocate wrote to the Attorney General expressing his distress at Peter's "deplorable circumstances".

> *… if it were not for Peter's intellectual disability, he would have been given a fixed sentence and released long ago. This is a violation of his basic human rights. He does not need to be punished any longer for his offence. Simple release into the community is not the answer, but unfortunately Western Australia does not have a place for people in*

Peter's situation. While the ultimate solution may not be solely the jurisdiction of the Department of Justice, I strongly urge you to develop a viable solution to Peter's plight. Continued imprisonment with little or no hope of change is not an option.

The Attorney General replied:

…As you state, Peter is suffering from an intellectual disability and it is due to this condition that both the Department of Justice and Peter are placed in a difficult situation. This is to find the solution that will best assist him his return to the community and yet temper this by not putting the community in a possible situation of risk. Much effort has been expended in trying to find an equitable solution…For the next twelve month period Peter will become involved in a number of excursions outside the prison. This would give him, inter alia, a sense of security, offset the effects of institutionalisation and allow him to regain a return of some normalcy to his life. This solution was presented to the Parole Board and I gave my approval to this recommendation. Under normal circumstances participation in these activities as a pre-cursor to a formal pre release programme would not have been considered, however, due to the unusual circumstances that exist in Peter's case a limited programme has been specially devised to assist him towards the possibility of future release. To prepare Peter for eventual release is indeed difficult but not insurmountable and as he progresses through his twelve months of resocialisation activities, more discussion and options will become possible. His progress will be carefully monitored and this will give more direction towards further planning, it will also demonstrate those areas that need specific attention.

During this period Peter was placed in a special prison for offenders with intellectual disability (which has since closed), Peter participated in several treatment intervention programs, including social skills, and a sex offender program which were designed specifically for prisoners with intellectual impairments. However, assessments continued to show that Peter had limited insight into his offending behaviour, most likely due to his intellectual disability

Upon closure of the special prison, an alternative placement needed to be found which continued to meet Peter's needs for ongoing development. A regional prison was considered the best alternative. According to a prison report Peter responds well to an environment that requires an increased sense of responsibility from him. Peter's prison conduct and behaviour throughout his sentence has continued to be more than satisfactory. However he is considered to be institutionalised and although from time to time he asks

about his release prospects, prison officers report that he does not appear overly concerned about remaining in prison.

Peter has difficulty socially within the prison system. He has few friends and contacts are of a superficial nature. Observations of Peter indicate that the communication/social skills training undertaken with Peter at the special prison had had little impact in relating to others. He did not appear to understand how to develop and maintain a friendship and initiated conversations focused on himself. It was further noted that the repetitious content of his conversations and pressured speech provide little incentive for others to pursue a friendship with Peter. There appeared to be poor residual skills from the training program and little generalisation in learning had occurred.

Owing to distance Peter's Citizen Advocate was unable to support him. However a new Advocate was found in the area and he receives fortnightly visits from her. He receives no other social visits. When in prison in the city, Peter received monthly visits from his elderly mother and occasional contact with his sister. However, his mother is unable to drive and with his sister's family/work commitments, they are unable to visit him in his current prison. Although his family has maintained phone contact with him and are still willing to do so, they are not able to provide accommodation or the level of supervision which would be required if he was to live with them.

The Parole Board has expressed concern on numerous occasions regarding the lack of progress towards release for Peter. As noted above the Attorney General had approved a Re-Socialisation programme which was developed as a pre-cursor to a pre-release programme. Approval was sought and granted which involved activities under Section 94 of the *Prisons Act 1981*. However, after completion of one of these Section 94 activities, that being a visit to his mother's residence, it became apparent these activities did not comply with the terms under this section of the Prisons Act. After legal advice was sought and in view of Peter's intellectual disability, lack of community support and efforts to be made in order to prepare Peter for an eventual release into the community, a Grant of Permit was approved by the Minister, under Section 83(2)(c), of the Prisons Act. This alteration to Peter's Re-socialisation Programme delayed any involvement for a considerable amount of time. At this time, it was noted that Peter's situation was unusual in that he faced the possibility of lifelong incarceration due to his intellectual disability and lack of community supports, factors which maintain his risk of re-offending at a high level. Subsequently it was agreed that an informal and minimal pre-release program be developed which would allow Peter to have some community access but with close supervision and monitoring. Peter would be

taken once every four months to visit his mother at her residence as well as his father's grave. His mother had agreed to have her son visit her in this manner while accompanied by a prisoner office. This would provide an opportunity for Peter to experience some form of re-socialisation and contact with his mother in a natural home environment.

Over the years, regular discussions have occurred between DSC and the Department of Justice with the aim of developing a suitable release plan for Peter. However, given his assessed high risk of re-offending and the cost of consequent high level of supervision which would be required, his release has not yet been recommended.

A Pre-release programme has been approved with an amendment to Stage 2, last year that he be placed in the minimum security section. It would seem that if Peter was successful for a 12 month period in a minimum security setting that he would also be suitable for eventual release to a group home .

Various reports from professionals indicate that they believe that Peter has gained little benefit or insight into his behaviour despite "his best efforts to comply with the contents of the various programmes". As a result it is believed, he still remains a risk to the community, but if Peter is ever to be released, contact with support agencies in the community must be established. DSC have indicated that they cannot provide any programmes for people in prison and can have no involvement until Peter's release is likely. It has been pointed out that if a mentor was allocated to Peter while he was on special leave from prison and something was to go wrong, issues of duty of care would be a real concern. Further, if Peter was accompanied by both prison officer and a mentor it may detract from any independent skills being learnt by him due to the unrealistic level of support he would have. However, others have argued that this then raises the question about the relevance of teaching life skills to Peter if he will not be considered suitable for release at some future date. Unless he establishes some community support and skills necessary for independent living his prospects for parole are certainly negligible.

Joint discussions between DSC and the Department of Justice have currently been re-activated with a view towards effecting a community release plan. A possible scenario is being considered that Peter be given the opportunity of parole (following the completion of his pre-release program) with intensive supervision, structured programmes and regular reviews by the Parole Board to ascertain his progress and ongoing level of risk. If it was considered that he had not made sufficient progress prior to the expiry of the parole period, then a return to prison may need to be considered. Should this be the case, it may

not necessarily be a failure but could provide valuable information for possible future attempts at release.

Finally, there is the issue regarding funding to cover the costs of the intensive supervision which is believed to be required by Peter in the Community. It appears that funding is the major factor in relation to DSC's involvement and ability to provide any form of long term support for Peter. Two possible scenarios have been costed by DSC over a 4 year period and joint funding by DSC and the Department of Justice is being considered. A non-government disability agency has been contacted regarding possible accommodation for Peter in the community and possible employment in their supported workshops. A representative from that agency has advised that although they run the facilities, funding is provided through DSC on an individual basis for each client. Group homes accommodating 4-6 residents are available and these homes are supervised 24 hours per day and only locked at night.

Peter has not been involved in further treatment programs, due to the fact that there have been no appropriate available programmes and also because he has previously participated in programs at the special prison with "little discernible gains". Once released into the community, it is hoped Peter will be able to access various programmes, including a sex offender treatment and living/social skills programmes. It is believed that there is a possibility that given the opportunity to practice the concepts presented to him he may be able to internalise those concepts and thus have some control over his own behaviour. If this were to occur then a reduction in the amount of supervision over a period of time may be possible. However, it is also believed that it would be unrealistic to assume that there will ever be a time when Peter would be living independently in the community without some degree of supervision or support from DSC. The concern then remains about Peter's willingness to that supervision following the expiry of his parole.

In the meantime, Peter continues to remain in prison 14 years after his first statutory release date and the final decision for his release will be made by the Attorney General.

Mary

Background

Mary is an Aboriginal woman who was born in a community in remote Western Australia. She is the second eldest daughter of six children. Her siblings now live in various communities in the area. Mary never married and

has no dependents, although she reported that she did have a defacto husband in her early 20s and that they were together for some time. Mary completed her schooling at the mission school. After finishing school she moved to the nearest large town when she was 20 years old and attained employment with a local lady for whom she cleaned her house. Mary says this is the only job that she has ever had and has been in receipt of a Disability Pension for many years.

Mary has a long, well documented history of cognitive impairment which may be primary or secondary to head injuries and chronic alcohol use . She has had two admissions to the State Psychiatric Hospital. On both occasions the diagnosis was that of Organic Brain Syndrome, with cognitive deficit and complicated by alcohol abuse.

An assessment conducted last year for the purposes of "fitness to plead" noted that no psycho-pharmacological interventions could be recommended as Mary does not have a treatable, major psychiatric disorder. However, it was noted that Mary's functioning in the community was at a significantly impaired level and that her behavioural problems were primarily related to her impaired cognitive functioning. It was also believed that without ongoing involvement from the appropriate services, her behaviour would only deteriorate. It was pointed out that ongoing supervised care under the guidance of DSC in liaison with local health services needed to be implemented urgently. What she needed is a structured environment, ongoing support in the community based on simple, behavioural interventions, although it was noted that Mary's chronic alcohol abuse was a problem as this may exacerbate her already impaired impulse control. The report concluded that Mary was unfit to stand trial and given the progressive nature of her cognitive impairment, is unlikely to become fit to stand trial. However, it was further noted that there were significant problems with lack of services in remote areas.

Offending History

Mary has an extensive history of contact with the legal system, which stems back over thirty years. Mary's offending behaviour appears to be influenced by the consumption of alcohol, which she has used from an early age. She has numerous convictions for Disorderly Conduct, Re-entering Licences Premises, being Drunk and Resist Arrest. She also has numerous convictions for Assault type offences including Assault Public Officer, Assault Aggravated Police and Threatening Behaviour. There have been few breaks in Mary's criminal history and she has appeared often on numerous occasions within each year.

In 1995 the Health Department initiated an assessment with DSC with regard to Mary's eligibility for their services. However, a file note indicates that evidence of an assessment being undertaken could not be found. Two years later Mary was referred again by The Department of Justice for possible registration for services from DSC. Another file note indicates that advice was given that before assessment/registration could proceed Mary would need to give informed consent. Further, that DSC was of the understanding, based on previous dealings with Mary and after previous discussions with members of the health profession, that there were perceived issues with regard to Mary being able to give informed consent. As such they would require a guardian to consent on her behalf. In addition, as Mary was in prison at the time, they could not carryout assessment within that setting. DSC also pointed out that should Mary be registered with their service and chose not work with them they would not be in a position to enforce participation.

Those involved with Mary in the past have had concerns about her vulnerability with regard to financial exploitation by her family, friends and acquaintances. An application for guardianship had in fact been submitted previously, but then withdrawn because of concerns expressed by her family about this initiative being undertaking by non Aboriginal professionals. Subsequently a further application was made to the Office of the Public Advocate with regard to Mary's competencies in decision making. On this occasion it was determined that Mary was deemed to be incompetent with regard to making decisions pertaining to her life (eg medical treatment etc.). At this time Mary was residing in a hostel which was considered to be a stable environment where her needs pertaining to medical issues and care were being met without objection from her. As such it was deemed that there was no role for their office to play.

Mary was referred from prison on a third occasion for Level 3 registration with DSC, with Mary signing the consent form herself. This application was successful and Mary was approved for Level 3 registration on the basis of her intellectual disability. Further applications were subsequently made for accommodation funding, through DSC but on each occasion they were unsuccessful.

A community with which Mary has connections agreed to take Mary where she continued to reside off and on during last year. She continued to be a rearrested for drinking type related offences and was held on remand on four or five occasions. Some investigation took place to consider Mary under the Mentally Disordered Offenders Act, (MID) but because of the implications for Mary this did not proceed. On the last occasion Mary was held on remand

for 10 months. Her case was reviewed 4 or 5 times with each time a declaration from the Magistrate that he did not want to place Mary under the MID Act as it would have resulted in her receiving an indeterminate prison sentence. He was strong in his declaration:

> *… prison is not appropriate, she should be supported in the community.*

Simon

Background

Simon is currently in the maximum security prison serving a 7 year sentence for Assault Occasioning Bodily Harm, Assault with Intent to Commit a Crime, Deprivation of Liberty and Assault on a Public Officer. He has spent much of his life in institutions, having been made a ward of the State at 7 years-of-age. In addition much of Simon's adult life has been spent in prison and he describes himself as being institutionalised. He stated that "he feels that he has never really lived in a family and does not know how one should operate".

Simon is the younger of two boys. He grew up in a home characterised by violence and abuse. He reports that his father was a "violent drunk" at whose hands he suffered emotional and physical abuse. Simon's mother suffered a nervous breakdown whilst he was at school and when he was 7 years-old Simon was made a ward of the state. Just prior to this Simon was hit by a car whilst riding his bike. He sustained some injuries including trauma to the head and was taken to hospital. At this point, Simon entered several foster homes and he reports ongoing physical abuse, stating that his behaviour became increasingly uncontrollable. Simon reports that whilst at one of these homes he was "adopted" by a group worker, who he refers to as his "stepmother". He believes she offered him care and support and said that she often took him home for weekends. Simon maintained his contact with this support worker, however at this point he is estranged from her, reporting that in recent years she has become overly restrictive and overbearing. Simon states that he has not had contact with his brother since he left the family and has little contact from his mother over the years. His father died last year.

Having been made a ward, Simon spent most of his childhood in various institutions and foster placements. He socialised poorly, often truanting from school, had few friends, could not form working relationships with staff and has only learnt to read and write during his long stretches of imprisonment.

Simon has never held down a job, or been employed in any capacity of paid work.

From his early social and psychological history, it appears Simon periodically abused substances because of poor impulse control, an inability to defer gratification, or to comfort and/or distract himself. It is also likely that Simon originally started using drugs as a way of being accepted into a new offender peer group. He reported that he has occasionally used Benzodiazepines, Heroin and Cannabis, however his drug of choice is Amphetamines, which he used daily prior to his present incarceration. Simon maintains that he commenced using needles for the first time in his life about six months before he was sent to prison, a fact of which he is not proud. He cites a small group of friends as drug-taking associates and notes their negative impact on his behaviour.

Psychometric testing was carried out on Simon two years ago. Results showed that he has borderline intellectual disability and suffers from an antisocial personality disorder. He is not at present taking any prescribed antidepressants, but admitted to attempted suicide on a number of occasions, at least two of these attempts occurring whilst incarcerated.

Offending History

A review of Simon's Court History reveals that prior to the current offences his record for violence was not significant, although he does have a significant generalist criminal history, including several charges of Stealing, Receiving, Break and Enter and also Driving offences. In addition Simon also incurred several charges of Escape Legal Custody and also Common Assault (spitting at a police officer). He has been imprisoned on nine previous occasions and has been subject of two Community Service Orders, Probation and he has also been subject to Parole on four occasions. Simon's response to supervision has been poor, all of these Supervision Orders being breached or cancelled.

The current charges involve him having been in a premises to steal money, after running out of petrol and physically assaulting a female. Simon described his current offences as impulsive, desperate and "stupid". It appears that these offences are symptomatic of his chronic impulsivity where his focus at the time of the offending was on gratifying his needs, with little regard of the consequences. Prior to the burglary, Simon had been living on the streets following his release from prison 8 months prior.

Simon could at times be difficult to manage in custody, and he has numerous charges for wilful damage. He reported regular suicidal ideation and some suicidal attempts. Although it has been commented that these behaviours may at times be attempts to communicate and obtain attention, there is always the possibility that such gestures and behaviours may become fatal. Simon's skills for employment are virtually nonexistent. He has undertaken some courses in prison which give him a basic literacy, but it is at the very basic level and he is functionally illiterate.

Because of the time that Simon spent in various institutions, he has had enormous difficulty in dealing with custodial situations and also the people who are in charge of them so a good deal of his time in prison is spent in punishment. He has been placed in the Special Handling Unit during his current term in prison. The decision to place Simon in the Unit given his history and intellectual deficits and psychological disorder was an unusual one and emanated from the paucity of options available to manage him appropriately in the prison system. The Special Handling Unit is not a long-term placement option for persons with high needs, and staff working in the Unit have reported that they do not have specialist skills or the environment to manage such challenging disabilities.

Special Handling has lead to Simon's social isolation. It has been difficult for him to interact to any degree with others in the prison population, and his lack of skills and communication for dealing with situations in an appropriate manner, means that his behaviour is such that he is then placed back in punishment and he doesn't really make any progress.

Simon reported that he has experienced limited intervention for his drug problem. He states that he kept an appointment with a substance abuse unit about six months prior to him coming into prison, however he did not return. Simon was considered for inclusion in the counselling and treatment program offered by the Drug Court as an alternative to his current imprisonment but it was considered "that Simon's ability to comply at present with the requirements of counselling and treatment the Drug Court would wish to impose on him is questionable, given Simon's limited awareness."

At interview Simon expressed difficulty in maintaining hope and was genuinely distressed about the future. He reported that he currently had poor appetite, disturbed sleep pattern and generally feels "worn out". He said that he tends to keep to himself rather than getting involved with other prisoners. Simon appeared to have limited awareness as to the need for community

supports, although he continually expressed his desire for a relationship with a woman.

Arthur

Background

Arthur is an Aboriginal man in his mid twenties. He has an intellectual disability and brain damage due to substance abuse. Arthur first came in contact with the justice system as a juvenile when he was remanded in custody for 18 days for stealing. As an adult his offending continued with a further 11 offences that include Escape from Legal Custody, Assault Occasioning Bodily Harm and Robbery. He has been imprisoned 4 times.

Four years ago Arthur was charged with robbery and after six months in custody on remand Arthur was deemed incapable of pleading to the charge. The sentencing judge, taking into consideration the complex issues of Arthur's disability and his need to be placed in the community with safeguards, made a custody order in respect of Arthur under the *Criminal Law* (Mentally Impaired Defendants) Act *1996.* He further observed that Arthur was likely to reoffend if left unsupervised, but he was concerned "he should not be left languishing in prison". He ordered the case be reviewed within five day. However, despite Arthur's status as Unfit to Stand Trial he has remained in custody under the Act for over four years. He has been detained in a maximum security prison, for a much longer period than would usually be served for his offences.

After a year in prison Arthur was in fact released on a 6-month Conditional Release Order. It was noted that Arthur had family members in the community who had indicated a willingness to assist in his care. It was also noted in his Release Plan that it was important that family had training in monitoring and risk management and that there needed to be work with the family to help them to recognise any problems with Arthur as they arise so that early intervention could be made before the situation escalated, i.e. his failure to take medication, or his indulgence in substances. For the duration of the Release Order Arthur was provided with a mentor to ensure that he attended for his medication and other necessary appointments, and/or any special task required. Funding for the mentor was provided by the Department of Justice Aboriginal Policy and Services Branch and the Department's Disability Unit.

Unfortunately Arthur release into the community was not successful. After five months, the Release Order was breached due to Arthur's failure to take

medication and inability to cope in the community. He was returned to the maximum security prison, where he remains.

Arthur has been reviewed by the Mentally Impaired Defendants Review Board on twenty four occasions. However, since Arthur's original release, a viable release plan has not been developed for consideration by the Board. Information held on offender records indicate that Arthur has five active alerts that involve information relating to his behaviour, disability, mental status and impairment, escape, self harm potential, substance abuse.

Arthur has been observed as exhibiting poverty of speech with a disorganised speech pattern. Much of his conversation is often monosyllabic. The content of his speech is preservative, usually related to his wish to return to his home community. His mental state fluctuates over time but it is often responsive to the familiarity of the environment and persons within it.

Arthur is a registered client of DSC, eligible for level 2 services due to his need for substantial ongoing support and The Guardianship and Administration Board have appointed the Public Advocate as his Guardian. There are very few service options available for Arthur with his complex needs to assist with his release into the community. In the meantime prison is the default option.

The Mentally Impaired Defendants Review Board has maintained concerns that Arthur was being detained in prison. This scenario exists due to the lack of a 'declared place'. Section 24 of the Mentally Disordered Defendants Act specifies the place of custody for defendants who have committed a Schedule 1 offence as being: a prison, juvenile detention centre, authorised hospital or a 'declared place'. It also states that only those with a "treatable mental illness" can be held in an authorised hospital, but this applies only for those with a mental illness. If it is determined that an intellectual disability, brain damage and dementia are not "treatable" the only option for Schedule 1 offences is imprisonment. A 'declared place' is defined in the Act as "a place declared to be a place for the detention of mentally impaired defendants by the Governor by an order published in the Gazette".

The Public Advocate, together with representatives of the Disability Services Commission, Departments of Justice and Health and Aboriginal Health Services have spent much time and effort investigating community support arrangements for Arthur's release. The DSC recently sought inter-agency collaboration between the Commission and the Department of Justice to progress Arthur's eventual release into the community

Despite all efforts to find a suitable community placement, there has been no viable plan proposed since the original release plan over three years ago. Recently the Department of Justice, the Public Advocate, the Department of Health and the DSC have established a joint agency project to develop and oversee the implementation of an appropriate plan for Arthur's management while in prison and for his release to an appropriate community based setting. A special Project Manager has been appointed by the Department of Justice. All agencies agree that a viable and well-developed release plan is essential to ensure Arthur's release into the community is successful. DSC has agreed that when a plan is finalised between the agencies, the Commission will contribute funding towards a trial of the arrangements.

This is amid grave concerns for Arthur who has been moved to a more restrictive environment and is reported to be deteriorating. Concern amongst government agencies about the lack of 'declared places' has resulted in the matter being considered by the Human Services Director General Group (HSDG). The HSDG has recently established a Senior Officers Group to report back on service models for a 'declared place/services' with across government agency involvement. The HSDG requires a report by 31 July, 2005.

Mark

Background

Mark is currently serving a sentence in the maximum security prison for a sex offence. Previous to this Mark resided with his mother and sister who is one year younger. Mark's mother indicated that she and Mark's father had lived together in an unsettled relationship. She had had "a rough time" with his father. Her partner had a drinking problem and had been physically abusive towards her. She said she was hospitalised when 7 months pregnant with Mark due to being physically abused and her son was almost born then, prematurely, at which point his mother suffered from high blood pressure and toxaemia. Mark was described as having been "a slow developing child" both physically and intellectually. Mark suffered from "little fits" from babyhood onwards, and was on epilepsy medication until aged 10.

Departmental records indicate that Mark has significant intellectual disability. His self esteem is low and his self-concept negative. His tests also indicated concerns involving anxiety and dysthymia, with a preoccupation with intrusive thoughts and a tendency to feel discouraged, socially awkward, introverted, sad and filled with self doubts. It also indicated personality problems, and social isolation. Mark can present as impulsive. However, once

Mark has become used to some-one he presents as less awkward and more friendly.

According to his mother, Mark has experienced intellectual impairment all his life and attended educational support centres from the outset. At high school, he attended a Special School until the age of 18. Other students had physical disabilities, but Mark was the only student with intellectual disability. His mother reported Mark had been teased constantly in relation to his small stature, and because he was "slow", but he had learnt to "stick up for himself".

According to Mark he found schoolwork difficult and got annoyed with teachers because he couldn't understand the work required. He was apparently suspended a few times for misbehaviour. He indicated having had a problem with his temper and low frustration tolerance.

Mark's mother reported that her son was not currently receiving medical treatment for his chronic health conditions. However Mark said he was being given some type of medication in prison, but could not say what it is for.

Mark's reading skills are rudimentary, only being able to recognise simple words. Whilst looked after by his mother and never leaving home, Mark appears to have developed some independent skills. For example, he reported managing his own money and doing his own banking. However he did not shop for food. Mark attended several work experience placements. When he left school be obtained a job in a sheltered workshop , but left after a year as a result of his co-workers "giving me a hard time". His mother confirmed this stating the Mark had difficulties as the other workers there were severely physically and mentally challenged. He found this frustrating and difficult to ignore their behaviour, and they often tormented him and he became upset by this.

Mark has been described by his mother as lacking in self esteem, social confidence and interpersonal skills. When questioned about social contact, Mark said that he enjoyed spending time with his mother and visiting his grandmother. He also spent time with his younger nephews helping them fix their push bikes. Mark did not have any social contacts of his own age, and his social contacts are very limited.

Offending History

Mark's court history is not a lengthy one. Initially, Mark's offending was comparatively minor, receiving convictions for Damage which he stated was

where he and his nephew pulled a bike apart. He then had charges of no Motor Driving Licence and Unlicensed Vehicle. He indicated that these offences occurred when he had taken his two nephews for a ride on a dirt bike and was caught riding it on a strip of road between his brother's house and a vacant block. These charges appear to be childlike and spontaneous in nature indicating lack of insight into the consequences of his actions.

However, when he was 18, Mark was found guilty by trial of the offence of Sexual Penetration of a child under 13 and received 2 years imprisonment.

Mark has always strongly denied sexually penetrating the child and as Mark denied committing the offence, he was not suitable to participate in either a prison based or community sexual offending program.

Mark appears to have limited sexual experience and knowledge, and has stated that he wanted to avoid developing relationships with members of the opposite sex. It has been observed by a professional working with him that:

> *a failure to develop interpersonal skills and satisfying relationships could set the scene for acting-out with an inappropriate sex object (a child)…the risk of reoffence could be reduced by offering individual counselling to Mark, as well as family support to facilitate the development of his self esteem, social integration and the implementation of strategies for meeting his sexual needs in the future.*

As such it was recommended that Mark participate in individual counselling or community programs appropriate to his intellectual/developmental ability, to address issues such as sexual education , and developing interpersonal skills and protective behaviour. Mark was released to Parole with conditions to have no direct or indirect contact with the victim, no unsupervised contact with children under 16 and to undertake counselling as directed. Mark was compliant with reporting for supervision and had no known contact with the victim, but as he had denied the offence he could not be included in any community sex offender treatment program.

However, Mark was accepted as a client in a program which addresses issues of sexuality, protective behaviours and self esteem for people with intellectual disability. Despite that, within a matter of weeks of his release on parole Mark committed further sex offences with children. Mark's mother had indicated that she was supervising his contact with children, but she admitted that she was not supervising him at the time of the offences.

During interview Mark described his experience in prison as "scary." He said "it is horrible in here, I am very badly stuffed up". He said he missed his mother and cried often. It was apparent that he has a negative self-concept of himself as "dumb". He said "my brain's not all there…I'm a bit dumb in the head…I think it was the way I was born. I was born sick".

Mark has incurred no charges during his incarceration and he is not reported to be a management problem. He has now completed the sex offenders treatment program for intellectually impaired prisoners.

However, when last in prison he was a victim of a sexual assault perpetrated against him by another prisoner. Both the Police Prisons Unit and the Sexual Assault Referral Centre attended the prison and prison staff were called in to provide support for both Mark and the prisoner involved. During a visit with his mother, Mark stated that he did not want to proceed with the complaint and no further action was taken.

It was clear in interview, that Mark has developing psychosexual needs which have not been met. Possibly compounded by his current predicament, he wants to avoid developing relationships with members of the opposite sex and sees females as a source of potential trouble. He said he has no interest in marriage in the future, and that he would be better off being by himself. It seems that the current crisis has reinforced a pre-existing tendency towards isolating himself from others. It also seems that Mark's strong desire to distance himself from females could be a direct consequence of his guilt and his feelings of fear and shame about the current offence. A failure to recognise and meet his developing sexual needs could set the scene for further inappropriate attempts at seeking sexual contact with children.

Terry

Background

Terry is a 27 year old single man currently living independently in the community, supported by a Disability Pension.

Terry came to Australia with his parents and older sister from England at age 7. He had difficulties in school and was hyperactive. His parents found themselves unable to manage his behaviour and he considered them very strict and controlling. Terry began to run away from home at 13 years and found himself in trouble with the law on a frequent basis thereafter, yet his parents were very supportive of him, despite his behaviour.

Terry left school at the age of 14 and worked as a casual labourer for a short time. He has been mostly unemployed since then. He began to experiment with alcohol and cannabis by the time he was 16. He now has a significant alcohol and drug problem, abusing most kinds of illicit drugs. He has used amphetamines, marijuana and alcohol as his main drugs of abuse. He has also abused prescribed medications such as major tranquillisers and sleeping tablets. Substance abuse remains problematic in Terry's life and it appears he is unwilling to abstain or even reduce his intake.

Terry has been diagnosed with frontal lobe pathology secondary to birth damage, head injury and poly-substance abuse. He has received residential assessment and treatment at the State Psychiatric Hospital on a number of occasions. While he is in the community, his finances are administered by the Public Trustee.

Some years ago Terry's eligibility for registration with DSC under the category of intellectual disability was assessed. The recommendation to the New Referrals Committee was that Terry be made Not Eligible for services as he did not meet the first criteria, i.e. IQ of 70 or below. It was noted that Adaptive Behaviour assessment was not carried out due to Terry's current residential placement, i.e. prison. However reports received from the Special Needs Team indicated that Terry had significant deficits in his adaptive behaviour. It was reported that he could not look after himself, has ongoing health problems due to failure to carry out basic self-care and health routines and was vulnerable within the prison system. Additional assessment tools were then utilised in assessing Terry due to these reports of very poor levels of adaptive behaviour in relationship to his intellectual functioning. Terry's results on this test placed him in the borderline range of intellectual disability.

Although Terry was not accepted for services with DSC, he has received some support in the past from this agency, which provided him with accommodation and a mentor during one of his parole periods to help Terry acquire independent living skills, with the ultimate aim of reintegrating him to the community. However, it appears Terry has not responded in any sustained way to this assistance, and further support is unlikely to be given until Terry can demonstrate abstention from drugs and alcohol over a long period. It is believed that, given Terry's unwillingness to change, this abstention is unlikely to occur in the foreseeable future, so he is unlikely to last long in the open community.

When assessed, Terry was found to have scored very low in literacy and numeracy. He has had access to a program in the prison to assist him with literacy, but it seems this was not very successful.

Offending History

Terry has a substantial 12 year record of re-offending involving dishonesty, public disorder, illegal driving and drug and alcohol abuse. He has been imprisoned 10 times. During his adult life, only when Terry has been imprisoned or retained in psychiatric custody has his offending cycle been broken.

As a juvenile, Terry failed to comply with a Probation Order and was subsequently breached after incurring numerous further convictions. When he was 18 he was placed on 6 months Probation and 40 hours Community Service Order. He re-offended after two months but the breach of the order was deferred pending his response to his community service obligations. He completed only 16 of the forty hours at the expiry of the order. Breach action was subsequently taken against him. The following year Terry was placed on a 2 year Probation and 200 hours Community Service Order with special condition to receive drug and alcohol counselling. His response to supervision was unsatisfactory. He failed to report to his supervising officer, did not attend any drug and alcohol counselling and did not complete any community work hours. Court files indicate that Community Based Services have nothing to offer Terry, since he remains comprehensively unsuitable for community-based supervision. Should he re-offend then there appears to be no alternative but to imprison him. He was subsequently sentenced to imprisonment for re-offending and he further received 9 months imprisonment for breach of Probation. Terry was released to parole but was convicted of further charges soon after which led to fines but no breach action being taken. The Parole Order was expired eventually.

Terry continued to re-offend and when he was 21 he was placed on 12 months Probation. He breached the order by again re-offending and was sentenced to a total of 3 years imprisonment. A good deal of effort was put into the preparation of a viable parole plan for Terry which involved the State Psychiatric Hospital, DSC, his parents, Community Based Services and psychologists, but despite all the efforts, no suitable accommodation was available and his parole was denied due to his high risk of re-offending. Terry was released after serving his full term in prison. It appears that the combined efforts from various government departments and non-government agencies were not sufficient to supervise or alter his offending behaviour. His

mother is adamant that she and her husband do not want Terry residing with them. She stated that both she and her husband have been unable to cope with their son's behaviour in the past and they cannot do so now.

One year later Terry was charged with a home Burglary and Stealing a Motor Vehicle. Terry's mother had taken a good deal of effort in soliciting assistance from various government departments, which unfortunately, did not have great success because there was "no service available". However, through the advocacy of an organisation which supports and advocates for people with head injury progress had been made for Terry. He had received residential treatment at the State Psychiatric Hospital for several months and was released to a Community Treatment Order by residing in a hostel for psychiatric patients. His finance was administered by the Public Trustee which paid the hostel fee for Terry and he is given pocket money to spend. Terry was also under the medical treatment from a visiting psychiatrist which regular injections and medication for his psychiatric condition. Terry also received support from the Commonwealth Rehabilitation Services for employment. According to the hostel supervisor, Terry had cut down on his alcohol consumption to a great extent and he had not used cannabis for some months. However, because of his extensive criminal record, the seriousness of the offence, and Terry's poor community supervision record, the Courts were not willing to sentence him to community supervision. He was imprisoned for 18 months.

During the initial stages of his sentence, Terry did not cope well with imprisonment and appeared to be at regular risk of self-harm. Consequently he was transferred to a Regional Prison where he settled and began work in the laundry. He was transferred back to maximum security in order to facilitate planning for his release to parole. On his return Terry remained settled, did not require medication and did not present as a management problem. However he was unable to work due to the lack of employment opportunities within the prison. Late last year Terry was granted parole under supervised release.

Terry has significant problems and a poor prognosis for many reasons. These are mainly related to his organic brain damage and the effect that illicit substances have on him. In a report to the court, a psychiatrist observed that:

> *Terry requires psychiatric follow-ups. He needs to continue taking the prescribed medication and requires close monitoring and supervision both psychologically and psychiatrically. Terry also requires a structured day-to-day programme, and such a programme needs to be imposed on Terry as he is insightless. Unfortunately at this point in time we have no legal powers to*

impose such a programme on Terry unless his mental state deteriorates further and requires psychiatric hospitalisation under the Mental Health Act. If this happens, at the time of his release into the community from the psychiatric hospital, Terry could be placed under Community Treatment order where the above recommend therapeutic measures could be imposed as conditions of his release. In my opinion, it is highly unlikely that Terry will undergo any programme on a voluntary basis. Prognosis in this case remains poor.

It was further noted by another consultant psychiatrist in his assessment of Terry:

…treatment for organic brain damage is difficult, certainly with co-morbid substance abuse, it makes it harder still. It also appears that Terry is poorly compliant with follow-up and Terry's complaints fall between different speciality areas. As he does not have a significant psychiatric illness such as schizophrenia or major depression he does not fulfil many of the community clinics criteria to be followed-up. I also understand that DSC have assessed him and do not believe that he fulfils their criteria to be followed-up. Unfortunately patients who have significant brain damage with behavioural problems and intellectual deficits, together with substance abuse fall between the gaps between different services and can often languish in the community. It is highly likely that Terry will re-offend in a similar manner given his past history of offending and his organic brain damage.

Terry appears to have no comprehension of what he needs to do to address his offending behaviour and when asked about the possibility of re-offending he could offer no answers or reassurances at all. He appeared very vague on all aspects of his future.

DISCUSSION OF FINDINGS AND IMPLICATIONS

The present study was aimed at enhancing our understanding of the needs and experiences of individuals with intellectual disability who continue to be caught up in the criminal justice system, including the characteristics and factors that might influence re-offending. The study also sought to identify the gaps and barriers to the provision of support and to identify strategies or approaches that could be considered for developing more effective responses to minimise re-offending.

People with intellectual disability are a relatively small but increasing portion of offenders in the criminal justice system and progress towards care in the community has brought the needs of people with intellectual disability who offend into sharper focus. Extant data demonstrate that while people with an intellectual disability are no more likely to be arrested than others in the population, at first arrest, they are more likely to be charged with more serious offences, receive disproportionately more severe sentences, are four times more likely to be sent to prison, and are significantly more likely to be rearrested than cognitively unimpaired offenders (Cockram, 2005).

The case studies considered in the present project describe an alienated and deprived sub-group of society who by and large lack the supervision and social skills on how to function responsibly in a complex world. There are many barriers to their real involvement in community life. Homelessness, unemployment, no meaningful day activities, drug and alcohol abuse, sexual victimisation and dysfunctional childhood experiences, are the realities for many. Added to this, communication and social skills deficits are both a cause and an outcome of their isolation, which in turn leads to boredom and frustration and no appropriate social role models. It is the constellation of these negative social circumstances and an ensuing sense of failure which make some people with intellectual disability particularly susceptible to exploitation and challenging behaviour. The inappropriate behaviour and crime may often be seen as a symptom of a deficit in knowledge, skills and experience necessary for independent living, and in many instances, the lack of appropriate service support increases the shift into the criminal justice system.

The reasons why there are so many people with an intellectual disability in the prisons are complicated. On the one hand it is likely that their over-representation is related to socio-economic disadvantage as well as the personal and structural disadvantages directly associated with the disability. However, other explanations are that with the rise in prison numbers, so wider and different spectra of our community find themselves incarcerated.

This would reflect a greater willingness to imprison certain groups of offenders among whom people with intellectual disability are over represented. It could be that people with intellectual disability finish up in prison because of their increased offending. It could be that the courts see no alternative placement or community supports. It could paradoxically reflect the use of certain non-custodial disposals, such as supervision orders, which people with intellectual disability are more likely to breach. It could reflect a shift in public and judicial attitudes to intellectual disability as a mitigating factor when it comes to sentencing. It is probably some, or all, of the above.

We now have close to 3500 individuals in Western Australian prisons and over half of them will be returning to their communities in the next two years. For people with intellectual disability as well as all other releasees, the process of reintegration is difficult –their families may not be willing to accept them back, finding jobs and housing will be difficult, and positive social contacts may have been broken. Such circumstances contribute to an offender's return to crime. But managing prisoner re-entry when the person has cognitive impairments is even more challenging. Persons with disabilities are less likely to have financial resources, marketable job skills, or suitable housing options.

Sentencing offenders with intellectual disability to prison can have severe repercussions for both the offender and society. Offenders with an intellectual disability often suffer from practices of exploitation and degradation whilst incarcerated on two fronts. Firstly, prisons are poorly equipped with the necessary resources to respond to treatment or the support services required to meet the needs of these offenders, illustrated by many of the case studies in this research. Furthermore, fellow inmates also mistreat prisoners with disabilities, often making them the target of assault, exploitation, extortion and sexual abuse. When discharged from prison, the negative effects of imprisonment combined with a lack of adequate monitoring and support services required to assist the person's transition back into the community, often exacerbates re-offending and thereby increasing exposure to the criminal justice system. That the provision of prison services to these people is a challenge, is not new. The greater task is the provision of support within the prisons to those who on the outside would be candidates for community care.

While the rate of offending among women with intellectual disabilities is quite low, this group nonetheless appears to be increasingly over-represented in the penal system (Cockram, 2005a). Women prisoners with intellectual disability present particular problems. Quite apart from the utility and social justice of imprisoning so many women who present a serious threat only to

themselves there are issues either specific or of particular relevance to women prisoners. These include the impact of abuse (child sexual, physical and emotional abuse, and sexual assault in adult life).

Indigenous people with intellectual disability are also at particular risk in prison from both other prisoners and from staff. The difficulties following implicit rules, including the prison code can place this group at risk from other inmates. The difficulty following the explicit but complex rules of imprisonment means there is a greater likelihood of getting into trouble on a regular basis with prison staff. For instance, frequent behavioural problems tend to result in a much more punitive place of security, as one of the case studies presented in this research attests. Prisoners who do not understand the processes within prison, and who then get into trouble frequently, tend to get very distressed and are at risk of self-harm or suicide. For prisoners with intellectual disabilities and who are also Indigenous, this sense of alienation might be exacerbated because of additional cultural factors such as the challenge of confinement and extreme isolation, particularly if they are a long way from their family and land.

Intellectual limitations are frequently constructed by staff and prisoners alike as a sign of vulnerability and vulnerable is not a "safe label" to wear in prison. Those who do seek support are at risk of being seen by staff as attempting to evade the rigours of prison, and by fellow prisoners as weak and unacceptably alien. Prisons are intended to be punishing and they provide hard and unforgiving environments which often amplify distress and disorder. Equally however, they provide remarkably predictable environments with clear rules and limited but well delineated roles. Some individuals with intellectual disability do well in this world stripped of the contradictions and complexities of the outside world. Sadly doing well in total institutions is rarely conducive to coping in the community.

Whilst there is a need for programs inside prison which are more useful for people with intellectual disability, it is difficult to separate any benefits such programs might have from the negative effects of incarceration, including reduction of living skills and self-esteem, and increased feeling of alienation and identification with an offending culture. Although there is certainly a need to focus on the assessment and program needs of this group, there are still philosophical and pragmatic difficulties with these operating in the prison context. Prison programs are by their nature fragmented. They operate around the demands of the prison environment which might include such things as attending three musters a day, long periods locked in cells and programs only offered at certain prisons. Despite the best intentions of the administrators of prison programs, the security considerations at the heart of

imprisonment present a frequent impediment to the delivery of good programs. Such considerations undermine the basic rights of these people to receive a therapeutic response to their situation. For example, placing potentially suicidal prisoners in isolation cells stripped of furniture, clear of hanging points and subject to the constant gaze of prison staff may be a cheap and, in the very short term, effective suicide prevention strategy, but should remain unacceptable to those who are concerned with the state of mind and long term mental health of the individual.

Many problems have recently arisen over the parole legislation and there is strong community feeling in Western Australia that the sentence should more truly reflect the actual period of imprisonment. Parole has been criticised as creating uncertainty and disparity in sentencing practice, failing to reduce recidivism and incorporating predictions of dangerousness and recidivism which are beyond the capacities of the Parole Board. Even if parole is part of the sentence laid down by the court, it poses particular problems for people with an intellectual disability when parole is due. First, the questionable assumptions surrounding the concept of dangerousness find their way informally into parole decisions via the criterion of public interest. Secondly, the prisoner must show the potential and then exhibit the ability to adapt to normal lawful community life. Such an adaptation is difficult for many prisoners, but may be more so for prisoners with an intellectual disability and thirdly, there is no guarantee that decision-makers within the parole process are sensitive to those circumstances of people with an intellectual disability which, if not taken into account, may place them at a disadvantage in obtaining parole, and set them up to fail upon release. There are a number of cases in the present research for example, where the individuals have spent longer periods in custody, as they were not being released on parole at the expiration of their minimum term because of the lack of post -release community support programs. Another example of how the lack of services adversely affects the parole process for people with an intellectual disability is the lack of accommodation when parole is applied for. It is extremely difficult to secure accommodation for people with an intellectual disability, especially when the person has served a gaol term, and even more so where the offence concerned was of a sexual nature. As the Parole Board cannot make a conditional parole order until it has decided, in light of the offender's circumstances, that it will be feasible to secure compliance, the Board usually requires the nomination of place of residence to ensure supervision, hence people with an intellectual disability are significantly disadvantaged.

Clearly, services in the community have a major part to play in providing adequate attention in respect of accommodation and supervision to assist the offender with an intellectual disability to complete his/her parole period

successfully. The fact that there is a lack of services in the community and resources enabling offenders with an intellectual disability to obtain parole, or inadequate supervisory arrangements which do not satisfy the Parole Board's requirements, inevitably means that the individual will remain in prison long after their original term is completed.

Whilst the provision of accommodation to persons upon their release from incarceration plays a vital role in the successful reintegration of the individual into the community, it is but one of a series of interventions that are necessary if the process of reintegration is to have positive long-term outcomes. The case studies point to the need to access specialist interventions that can address the varied and often complex issues that the individual brings with them whilst in prison and when they re-enter the community. Many of the individuals had no prior experience of living independently in the community in their own housing, having either resided in various forms of supported accommodation, with family, in boarding houses or living on the streets. This has resulted in the need to provide them with intensive support in the area of the development of independent living skills, including: rent payment, tenancy obligations, cooking, household maintenance, neighbour relations, personal hygiene, clothes washing, income maintenance, as well as accessing relevant employment and training, and where appropriate drug rehabilitation and sex offender programs, support which for many, is unobtainable.

It is evident that on return to the community individuals will require varying levels of "post-placement support". Many people with intellectual disabilities have life-long disadvantages that cannot be addressed in limited time frames, and will therefore require in many cases the ongoing professional support for an extended period of time. Short-term gains, such as not re-offending, the obtaining of temporary accommodation, the development of rudimentary independent living skills, and social skills development are all of vital importance to the individual, but will not be consolidated in the lives of individuals within the finite time-frames dictated by the current service plans attached to, for example, the existing frequent offenders programs. The solution to this dilemma lies in the provision of longer-term accommodation with intensive community support.

Loneliness manifests itself as a major issue for most individuals with intellectual disabilities exiting the prison system. Individuals with disabilities frequently lack the developed social skills to successfully engage in the establishment of appropriate social networks in the community. The subsequent loneliness and isolation starkly compares with the prison environment when surrounded by both constant staff and other prisoners. This is illustrated by the finding in one of the case studies where a young man

who was housed as part of the Frequent Offenders Program begged to go back to prison to complete his parole because of his fear and loneliness in the community. This case study also illustrates the need for more intensive support which must be provided by more experienced staff.

People with intellectual disability who continue to offend represent a complex, troubling and increasingly costly issue for the Western Australian criminal justice and human service systems. The high return to prison rate for this group clearly indicates the failure of imprisonment as a mechanism for individual or social change. However, a critical issue here is the "protection of community" role of justice and the courts. The case studies clearly demonstrate that prison is inappropriate for many of these people, but it is also clear that courts take the view that they must err on the side of protecting the community. Without adequate community based programs and support the evidence is strong that a substantial group of people with intellectual disability will reoffend (sometimes in a very serious and harmful way). When presented with this situation the justice system will tend to put the rights of potential victims beyond the rights of the offender.

Recent work in Australia acknowledges the difficulties services experience in this area and indicates that service development is patchy and not always focused on meeting the needs of this group. Whilst there are projects and programs offering innovative and dynamic responses to people with intellectual disability generally, continued research and program development with respect to the needs of people with intellectual disability who are unable to stay out of the criminal justice system needs urgent action. Legal protections are of very limited value to offenders with intellectual disabilities unless there are also appropriate and accessible support services. The ability to lead a 'lawful' life is complicated by a range of factors, including socioeconomic disadvantage, and a feeling of alienation. However, if community supports are not available, and the range of factors which impact on offending behaviour are not being addressed, there is a likelihood that offending will continue.

This is not new. Since *The Missing Services* report of Wran government in 1985, it has been well documented that people with intellectual disabilities do not get the services that they need to help them keep out of trouble with the law. The NSW Law Reform Commission reaffirmed this in its 1996 with its Report 80, *People with an Intellectual Disability and the Criminal Justice System.* The Commission concluded that the cost to government of properly meeting the needs of this group would be recovered in the long term. There would be a reduction in recidivism and in duplicative and inefficient services. For example, a cost of $73,000 per year, per inmate, and court costs of over $10,000

per day, could be avoided. There are also the human costs to victims and to people with intellectual disability who continue to end up in the criminal justice system. Such a scenario offends not only our sense of equal justice, but also our cost consciousness.

It is suggested that the justice system in Western Australia is seriously failing to accommodate the needs of people with intellectual disability. Neither of the two systems charged with handling offenders with intellectual disability are currently doing so effectively. The Disability Services Commission with the sole purpose of funding services for people with intellectual disabilities do not have the resources or legal mandate to handle criminal offenders. The criminal justice system, with the primary purpose of processing criminal offenders, is not well equipped to handle persons with intellectual disability. Neither possesses the resources to train staff or develop programs specifically for these persons. The result is two systems, often at odds, leaving a vulnerable population with poor service delivery, increased victimisation in custody, and what amounts to harsher criminal penalties.

Managing the Risks of Future Offending among People with Disabilities

The area in greatest need of policy attention pertains to the development of effective treatment and habilitation programs for people with disabilities who have been convicted but are not eligible for DSC services. However, there is also a need for more effective policy for clients of DSC who offend.

Government disability services have usually been refused for non DSC clients because the person only had a borderline disability and was therefore not seen as a priority. These offenders therefore have not had access to case management, supported accommodation, programs to address their challenging behaviours and other services provided by DSC. In addition, the current diversionary options for DSC clients, are inappropriate for offenders with a less severe or borderline intellectual disability who make up the majority who get convicted in the justice system. This group find it almost impossible to access services elsewhere. It is particularly difficult for Indigenous people with disability to fulfil the eligibility requirements. Many Indigenous people are not eligible for mainstream disability services and cannot establish that they had their disability before age 18, thus limiting their ability to access services.

It is argued that this does not follow. A person who is involved in the criminal justice system may have mild or even borderline assessed intellectual disability, but

almost by definition, may have high support needs in terms of their need for intensive support, supervision and behaviour intervention. If the person has spent some time in prison, the resultant loss of skills may also mean they have high support needs, in spite of their assessed level of disability. It is suggested that many such people should fit squarely within the priority category for services, with particular emphasis on those individuals that continue to re–offend.

Many service workers and policy makers interviewed for this study talked of their desire to address the problem, but they also talked of the practical realities of a justice system with few resources. Similar sentiments were voiced by agencies for persons with disabilities. The tough-on- crime mood of the nation is precluding them from responding to calls for improved services for a select few, however deserving. But policies regarding individuals with disabilities in the criminal justice system have been penny-wise and pound-foolish. The available research evidence indicates that well-designed and properly implemented programs can result in significant reductions in recidivism. Instead, most offenders with intellectual disability are released to communities that provide few services and impose conditions that almost guarantee their failure. The result is a rising tide of parolees washing back into prison, putting pressure on the state to build more prisons, which in turn, takes money away from rehabilitation programs that might have helped these offenders when they were in the community. All of this means that people with intellectual disability who offend will continue to receive few services to help them deal with their underlying problems, assuring that recidivism rates and returns to prison remain high – and the ability for policymakers to do anything to address the problem remain low.

An important question here is whether offender programs delivered in a community setting as opposed to those delivered in a custodial setting could assist in overcoming the high rate of recidivism by people with an intellectual disability. There is in fact abundant evidence that offender programs delivered in a community setting are on the whole more successful in delivering this outcome than those delivered in custodial setting (Harding, 2000). Recent research is conveniently summarized in a report of the UK Parliamentary All-Party Penal Affairs Group (1999). The report states:

> Effective programs have been developed for different groups of offenders including those convicted of aggressive offences, stealing, auto-crime, sexual offences, drink driving and fire-setting. The research indicates that these programs produce better results when carried out in the community than in custody and can also produce reductions in reoffending.

The report urges that sentencers should not pass custodial sentences on the (often inaccurate) assumption that the offender will receive an effective treatment program while in custody, nor on the false assumption that any such treatment will be more effective in a custodial setting than in the community. The work of Schneider (1990) lends lateral support to the observation that a more normal, or at any rate less abnormal, environment for program delivery tends to enhance program success. Her work with juveniles involved randomly assigning matched samples of offenders to detention, probation or 'programmatic restitution' (roughly akin to intensive community based orders). The findings strongly suggested that positive self-image was the single most potent factor predicting lower recidivism rates, and that this in turn was related to the perceptual impact of the sanction and the setting in which it was imposed. Specifically, a custodial sanction tended to emphasise the fear/remorse end of the penal continuum whereas 'programmatic restitution (community work programs supported by therapeutic guidance) emphasised the 'good citizen' aspects of the state-imposed sanction and the offender's self image. However, one factor that has inhibited to some extent the adoption of community-based programs is the growing understanding of the fact that greater supervision and program resources should be devoted to more serious offenders, for it is with them that the payback is potentially greatest – yet the paradox is that the general community would expect that very category of offender to be imprisoned.

The organisation of community based services for individuals with intellectual disability who offend has often been discussed in terms of whether general disability services should fulfil this function or whether a separate and parallel service is required to manage those who have both a disability and have a history of offending which is both significant and may recur (Gunn, 1997; Gallwey, 1990; Whittle & Scally, 1998; Heilbran & Griffin ,1998). Snowden *et. al.* argue that it is a false dichotomy between parallel and integrated services. One thing is clear that parallel forensic services will only manage the minority of individuals with offending histories, albeit usually those with histories of the most serious criminality.

However, the findings of this study argue for serious consideration to be given to the development of a comprehensive interdepartmental policy and procedural framework designed to protect the rights and needs of people with intellectual disability who offend, including appropriate service provision. This should include a specialist forensic service, focussing on need and involving intensive management, staffed by professionals with the experience and the commitment to work with individuals with disabilities who present particularly with complex and challenging problems. Those without such experience, and more importantly interest and commitment, can all too easily be either dazzled by the offending history so they fail to see the individual, or blind to the offending so they fail to factor in even the most

basic elements of managing the potentially damaging behaviours. Worst of all offenders with intellectual disability are at risk of being inappropriately rejected by general services and denied the care and the support they require.

Minimum issues which need to be addressed for offenders with an intellectual disability are: the response to offenders with an intellectual disability should be based on explicitly expressed principles which should affirm the right of people with an intellectual disability to receive due consideration under the law and to not be disadvantaged in that process by their circumstances and characteristics. Further it should be the responsibility of the state to provide the support services and structures necessary to ensure these rights are addressed.

There is a need to focus on developing modes of non-prison sentences where responsibility and expertise may be shared between the relevant government (and, where appropriate, non-government) agencies. Key areas for development include the provision of accommodation as part of a sentence in an appropriate secure environment and rehabilitative programs for re-offenders. Some people, particularly those with complex needs simply need long-term stable and supported living arrangements if they are to keep out of harm's way and avoid being pushed back into the prisons.

The strongest argument against a devoted community forensic disability service is cost. Arguments about deskilling generic disability professionals carry little weight. Any such deficits in experience are easily accommodated by regular rotations between general and forensic services. Increasing the stigmatisation would be of greater moment as a counter argument if offenders with intellectual disability were not in reality already often exposed to such rejections and stigmatisations in general services. The negative responses to this group are not simply prejudice and ignorance (which can be corrected) but inherent in the service provisions. Individuals who have a history of significant offending and who are both obstructive and potentially intimidating can create inordinate difficulties. This is in no small part because many disability professionals do not regard such people as their business and because the skills and commitments required to manage the more difficult end of the spectrum of offenders are different from those which sustain general disability care delivery. In short there is a need for separate, though interacting, forensic disability services. Such services, like the rest of disability services, would have its primacy commitment to long-term management in the community. It is acknowledged that in forensic disability services the dangers of degeneration into an isolated and oppressive service focussing almost exclusively on security and control are every present (particularly in today's political environment). This risk can be reduced by ensuring forensic disability services are high prestige services attracting among the best of professionals.

A further concern in regards to the scarcity of resources is that services will become available to fewer and fewer people. If the already scarce resources are diverted from the disability sector to fund a new service, this will limit the number of non-offenders given access to services. This situation was highlighted in an evaluation undertaken by Taplin (2002) of the NSW Drug Court, which among some of its objectives, looked at funding. It was determined that during the establishment of the trial drug court, the courts were provided with additional funding from the government. However, treatment providers and the Correctional Health Services (NSW Health Department) were obliged to re-allocate existing funding in order to meet any additional costs associated with the establishment of the court. It was noted that if additional funding is only given to the courts, there many not be enough services available for clients in the community. It may be alternatively argued that offenders should have priority to access to treatment and/or support because they are exhibiting behaviours that are 'harmful' to society, hence require immediate intervention. The provision of adequate government resources can minimise the likelihood of this becoming more of a problem.

The ultimate challenge, however, is more than simply developing new programs. We are living in a law-and-order age, where 'personal responsibility' models of punishment are endorsed. We must create a system that satisfies the public's demand for accountability, while at the same time recognise that individual cognitive differences may limit one's ability to obtain equal justice. Creating such a system represents a formidable challenge and requires Legislative leadership

This situation also represents a formidable challenge to those concerned with persons with disabilities who sit in prisons. Ultimately, of course, reform will only come when we embrace a vision that accords a basic dignity to all citizens regardless of intellectual level, and takes seriously everyone's right to equal justice for all.

Finally, people with intellectual disabilities who have committed offences are a marginal and oppressed group. The glimpses into their worlds afforded by this work, speak of abuses, powerlessness, loneliness, despair and bewilderment. Even though much is stacked against them, something of their experiences and needs has to contribute to changing service responses.

REFERENCES

Access to Justice Working Party (1996). Working Party on Access to Justice for people with disabilities. Perth, Disability Services Commission.

Australian Institute of Health and Welfare (2003*). Disability prevalence and trends.* Canberra: unpublished report (cat. No. DIS34), December 2003.

Balogh, R., Bretherton, K., Whibley, S., Berney, T., Graham, S., Richold, P., Worsley, C. & Firth, H. (2001). Sexual abuse in children and adolescents with intellectual disability. *Journal of Intellectual Disability Research* 45(3): 194-204

Berkowitz (1982). Mental Retardation: An overview. In Santamour, M.B. & Watson, P.S. (eds). *The retarded offender*. New York: Praeger.

Bird, F.L., Sperry, J.M. & Carreiro, H.L. (1998). Community habilitation and integration of responsiveenvironment. *Journal of Developmental and Physical Disabilities*, 10, 331-48.

Bonnie, R.J. (1990). The competence of criminal defendants with mental retardation to participate in their own defense. The Journal of Criminal Law and Criminology 81(3): 419.

Brown, B.S. & Courtless, T.F. (1971). *The mentally retarded offender*. U.S. Government Printing Office, Washington DC: Department of Health Education & Welfare Publication No. (HSM) 72-9039.

Brown, H. & Stein, J. (1997). Sexual abuse perpetrated by men with intellectual disabilities: A comparative study. *Journal of Intellectual Disability Research* 41(3): 215-224.

Burns, B.J. & Santos, A.B. (1995). Assertive community treatment: An update of randomized trials, *Psychiatric Services*, 46, 669-75.

Chellson, J. (1986). Trial competency among mentally retarded offenders: Assessment techniques and related considerations. *The Journal of Psychiatry and Law* l4:177-185.

Cipani, E. (ed.) (1989). The *treatment of sever behaviour disorders: Behavior analyisis approaches.* Washington, D.C: American Association on Mental Retardation.

Cocker, A.G. & Hodgins, S. (1997). The criminality of noninstitutionalised mentally retarded persons: Evidence of a birth cohort followed to age 30. *Criminal Justice and Behaviour* 24(4): 432-454.

Cockram, J. (2005a). Justice or differential treatment: Sentencing of offenders with an intellectual disability. *Journal of Intellectual and Developmental Disability*, 30(1), 3-13.

Cockram, J. (2005b). Careers of offenders with an intellectual disability: The probabilities of rearrest. *Journal of Intellectual Disability Research,* 40(7), 525-536.

Cockram, J. (2005c). People with intellectual disabilities in the prisons. *Psychiatry, Psychology & Law,*12(1), 163-173.

Cockram, J. & Underwood R. (2000). People with an intellectual disability and the arrest process. *Law in Context* 17(1) 101-119

Coucouvanis, K., Polister, B., Prouty, R. & Lakin, C. (2001). Continuing reduction in populations of large state residential facilities for persons with intellectual and developmental disabilities. *Mental Retardation* 41, 67-70.

Craft, M. (1984). Low intelligence, mental handicap and criminal*ity*. In M. & A. Craft (Eds). *Mentally abnormal offenders*. London:Balliere Tindall, 177-185.

Davis, L.A. (July, 2002). *People with cognitive, intellectual and developmental disabilities and sexual offences*. Retrieved October, 2004, from http://www.thearc.org/faqs/sexoffender/htm.

Day, K. (1988). A hospital based treatment programme for male mentally handicapped offenders. *British Journal of Psychiatry*, 153, 635-44.

Day, K. (1990). Mental retardation: Clinical aspects and management. In R. Bluegrass and P. Bowden (Eds). *Principles and practice of forensic psychiatry*. Edinburgh: Churchill Livingstone, 399-418.

Denowski, G.C. & Denowski, K.M. (1985). The mentally retarded offender in the state prison system. *Criminal justice and behaviour*. 12, 1, 55-70.

Disability Services Commission (2003). Retrieved 18 November, 2004 from http://www.dsc.wa.gov.au/

Disability Services Commission (2001). Autism register an invaluable resource. In *Disability Update* December, p.12.

Disability Services Commission (1994). *Annual Report*. Perth: Western Australia.

Endicott, O.R, (1991). *Persons with intellectual disability who are incarcerated for criminal offences:* A literature review. Canadian Association for Community Living. A report prepared under contract to the Research Branch Communications and Corporate Development Correctional Services of Canada.

Everington, C. & Dunn, C. (1995). A second validation study of the competence assessment for standing trial for defendants with mental retardation (CAST-MR*). Criminal Justice and Behavior* 22(1): 44-59.

Everington, C. & Fulero, S.M. (1999). Competence to confess: Measuring understanding and suggestibility of defendants with mental retardation. *Mental Retardation*: 212.

Firth, H., Balogh, R., Berney, T., Bretherton, K., Graham, S. & Whibley, S. (2001). Psychopathology of sexual abuse in young people with intellectual disability. *Journal of Intellectual Disability Research*, 45(3):

Fularo, S.M. & Everington, C. (1995). Assessisng competency to waive Miranda Rights in defendants with mental retardation. *Law and Human Behavior* 19(5): 533.

Gallwey, P. (1990). *The development of a distric-based service for difficult and offender patients*. Journal of Forensic Psychiatry, 1, 52-71.

Gardner, W.I., Graeber, J.L. & Machkovitz, S.J. (1998). Treatment of offenders with mental retardation. In Wettstein, R.M. (ed.). *Treatment of offenders with mental disorders*. New York: The Guildford Press.

Gibbins, T.C.N., and Robertson, G. (1983). A survey of the criminal careers of hospital order patients. *British Journal of Psychiatry*, 143, 362-9.

Glaser, W.F. (1996). A comparison of intellectually disabled and non-disabled sex offenders. *Proceedings of the 12th Annual Congress of the Australian and New Zealand Association of Psychiatry, Psychology and Law: Forensic issues in mental handicap*. Melbourne, 243-248.

Grubb-Blubaugh, V., Shire, B.J. & Balser, M.L. (1994). Behavior management and offenders with mental retardation: The jury system. *Mental Retardation*, 32(3): 213-217.

Grubin, D.H. (1991). Unfit to Plead in England and Wales, 1976-1988: A survey. *British Journal of Psychiatry* 158: 540-548.

Gudjonsson, G.H., CDlare, I.C.H., Rutter, S. & Pearse, J. (1993). *Persons at risk during interview in police custody: The identification of vulnerability*. Research Study No. 12. The Royal Commission on Criminal Justice, London.

Gunn, J. (2000). *Future directions for treatment in forensic psychiatry. British Journal of Psychiatry,* 2000, 176:332-338.

Hahn-Rafter, N. (1997). *Creating Born Criminals*. Chicago: University of Illinois

Harding, R. (2000). *The psycho-social environment of prisons and its relationship to recidivism*: Perth: Crime Research Centre, University of Western Australia.

Harris, G.T., Rice, M.E., Quinsey, V.L., (1993). Violent recidivism of metally disordered offenders: The development of a statistical prediction instrument. *Criminal Justice and Behavior*, 20 315-35.

Hayes, S. & McIlwain, D. (1988). *The prevalence of intellectual disability in the New South Wales prison population: An empirical study*. Report to the Criminology Research Council, Canberra.

Hayes, S. (1993). *People with an intellectual disability and the criminal justice system: Appearances before local courts.* Sydney: New South Wales Law Reform Commission, Research Report No. 4.

Hayes, S. (1996). *People with an intellectual disability and the criminal justice system: Two rural courts.* Sydney: New South Wales Law Reform Commission, Research Report No. 5.

Heilbran, K. & Griffin, P.a. (1998). Community-based forensic treatment. In: Wettstein, R.M. (Ed). Treatment of Offenders with Mental Disorders. New York: Guilford Press.

Hodgins, S. (1992). Mental Disorder, intellectual deficiency and Crime: Evidence from a birth cohort. *Archives of General Psychiatry* 49: 476.

Holland, T., Clare, I.C.H. & Mukhopadhyay, T. (2002). Prevalence of "criminal offending" by men and women with intellectual disability and the characteristics of "offenders": Implications for research and service development. *Journal of Intellectual Disability Research*, 46 (suppl. 2), 6-20.

Holman, CDJ. (2003). *The Way Forward. Recommendtions of the Review of the Criminal Law (Mentally Impaired Defendants) Act 1996*. Perth: Government of Western Australia.

Johnson, W.G., Nicholson, R.A. & Service, N.M. (1990). The relationship of competency to stand trial and criminal responsibility. *Criminal Justice and Behavior* 17(2): 169-185.

Jones, M. & Basser Marks, L.A. (1998). The limitations on the use of law to promote rights: An assessment of the Disability Discrimination Act (1992). In M. Hauritz, C. Sampford, & S. Blencowe (eds.). *Justice for People with Disabilities*. Sydney: Federation Press.

Jones, G. & Coombes, K. (1990). *The prevalence of intellectual deficit among the Western Australian prisoner population*. The Western Australian Department of Corrective Services, Unpublished Report.

Klimecki, M. Jenkinson, J. & Wilson L. (1994). A study of recidivism among offenders with an intellectual disability. *Australian and New Zealand Journal of Developmental Disabilities*, 19, 209-219

Lindsay, W.R. & Smith, A.H.W., (1998). Responses to treatment for sex offenders with intellectual disability: A comparison of men with 1 and 2 year probation sentences. *Journal of Intellectual Disability Research,* 42 346-53.

Lindsay, W.R. (2002). Research and literature on sex offenders with intellectual and developmental disabilities. *Journal of Intellectual Disability Research*, 46 (suppl.1), 74-85.

Linhorst, D.M., McCutchen, T.A. & Bennett, L. (2003). Recidivism among offenders with developmental disabilities participating in a case management programme. *Research in Developmental Disabilities*, 24, 21-30.

Lund, J. (1990). Mentally retarded criminal offenders in Denmark. British *Journal of Psychiatry*, 156, 726-31.

Lyall, I. Holland, J., Collins, S. & Styles, P. (1995). Incidence of persons with learning disability detained in police custody: A needs assessment for service development t, *Medicine, Science and Law* (35), 61-71.

Macmillan, D.L., Gresham, F.M., Siperstein, G.N. & Bocian, K.M. (1996). The labyrinth of IDEA: school decisions on referred students with subaverage general intelligence. *American Journal on Mental Retardation,* 101, 161-174.

Mason, J. & Murphy, G. (2002). Intellectual disability among people on probation: Prevalence and outcome. *Journal of Intellectual Disability Research* 46(3):230.

McBrien, J. (2003). The intellectually disabled offender: methodological problems in identification. *Journal of Applied Research in Intellectual Disabilities,* 16, 95-105.

Munford, R. & Sullivan, M. (1997). Social theories of disability: The insurrection of subjugated knowledges. In P. O'Brien & R. Murray (eds.) *Human Services: Towards Partnerships and Support* (17-33). Palmerston North: Dunmore Press.

Noble, J.H. & Conley, R.W. (1992). Toward an epidemiology of relevant attributes. In R.W. Conley, R. Luckasson & G.N. Bouthilet, *The Criminal Justice System and mental retardation.* Baltimore: Paul H. Brookes.

O'Connor, W. (1996). A problem-solving intervention for sex offenders with an intellectual disability. *Journal of Intellectual and Developmental Disability* 21(3): 219.

Patchett, S. (Convenor), (2003). *Working Party submission on the Criminal Law (Mentally Impaired Defendants) Act 1996,* Western Australia.

Payne, C., McCabe, S. & Walker, N. (1974). Predicting offender-patients reconvictions. *British Journal of Psychiatry*, 125, 60-64.
Press.

Quinsey, V.L., Coleman, G., Jones, B. & Altrows, I. (1997). Proximal antecedents of eloping and reoffending among mentally disordered offenders. *Journal of Interpersonal Violence*, 12, 794-813.

Russell, T. & Bryant, C.A. (1987). The effects of a lecture training program and independent study on the knowledge and attitudes of law students toward the mentally retarded offender. *Journal of Offender Counseling Services and Rehabilitation* 11(2): 53-66.

Sarantakos, S. (1998). *Social Research*. South Yarra: Macmillian.

Schneider, A. (1990). Detertrence and Juvenile Crime. New York:Springer-Verlag.

Scorzelli, J.F., & Reinke-Scorzelli, M. (1979). Mentally retarded offender: A follow-up study. *Rehabilitation Counselling Bulletin, September, 70-73.*

Simpson, M.K. & Hogg, J. (2001) Patterns of offending among people with intellectual disability: A systematic review. Part I: methodology and prevalence data. *Journal of Intellectual Disability Research*, 45, 384-96.

Simpson, M.K. & Hogg, J. (2001b). Patterns of offending among people with intellectual disability: A systematic review. Part II: Predisposing factors. *Journal of Intellectual Disability Research* 45(5): 397-406.

Snowden, P., McKenna, J. & Jasper, A. (1999). *Management of conditionally discharged patients and others who present similar risks in the community: Integrated or parallel*. Journal of Forensic Psychiatry, 10, 583-596.

Soothill, K.L. & Gibbens, T.C. (1978). Recidivism of sexual offenders: A reappraisal. *British Journal of Criminology*, 18, 267-76.

Stanton, J. & Cameron, J. (1998). Fremantle Police Diversion Pilot Project for people with disabilities: Evaluation. Perth: Jo Stanton Consultancy/Jill Cameron & Associates.

Stevens, E.H. & Corbett, G.A. (1990). Incommunicado: The incarceration and institutionalisation of sane but "communicatively" disabled defendants. *Law and Psychology Review* 14:221.

Swanson, C.K., & Garwick, G.B. (1990). Treatment for low functioning sex offenders: Group therapy and interagency co-ordination. *Mental Retardation*, 28(3), 155-61.

Taylor, J.L., Thorne, I., Robertson, A. & Avery, G. (2002). Evaluation of a group intervention for convicted arsonists with mild and borderline intellectual disabilities. *Criminal Behaviour and Mental Health*, 12(4), 282-293.

Tong, J.E. & Mackay G.W. (1969). A statistical follow-up of mental defectives of dangerous or violent propensities. *British Journal of Delinquency*, 9, 276-84.

Walker, N. & McCabe, S. (1973). *Crime and insanity in England*. Edinburgh: Edinburgh University Press.

West, D.J. & Farrington (1997). *The delinquent way of life*. London: Heinemann.

Western Australian Law Reform Commission (1991). *Report on the criminal process and persons suffering from mental disorder*. Perth: Western Australia, Law Reform Commission.

White, D. & Wood, H. (1986). The Lancaster County Pennsylvania mentally retarded offender program. *Prison Journal*, 65(1), 77-84.

Wiederanders, M. (1992). Recidivism of disordered offenders who were conditionally vs. unconditionally released. *Behavioral Sciences and the Law*, 10, 141-8.

Wiederanders, M., Bromley, D.L. & Choate, P.A. (1997). Forensic conditional release programs and outcomes in three states. *International Journal of Law and Psychiatry*, 20, 249-57.

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