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REVIEW ARTICLE

DISABILITY IN THE PRISON SYSTEM

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ABSTRACT

This article is a review of the current state of vulnerable prisoners, individuals with intellectual disabilities in the United States. This article discusses various issues as to the causality of their incarceration. It also explores the ethicality surrounding the incarceration of those who may not entirely understand the predicament they are in or how they go there.

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INTRODUCTION

Intellectual Disability in the Prison System

There are a number of different occasions where clinical psychologists may be called upon to make assessments that could, in turn, effect a person's entire life. When faced with these assessments, psychologists need to evaluate the ethics surrounding the situation and their role within it (Lindsay *et al.*, 2007). Currently, there is a high rate of individuals with an intellectual disability within in the prison system nationwide. Many of these people have borderline intellectual disability (MacMahon and McClements, 2015). There is a higher proportion of individuals with ID in the prison system than in the general population, thus disproportionate, indicating a possible maladaptive trend in the high incidence ID persons that are incarcerated. Courts have a choice, whether to place individuals in the least restrictive environment of the prison system, or place them in a state mental facility for intensive intervention and treatment (Mercier and Crocker, 2011). In *Atkins v. Virginia*, 536 U.S. 304 (2002), the supreme court ruled that it was unconstitutional to sentence a person to death who was intellectually disabled under the 8th amendment. Psychologists, through their evaluations, have influence in this matter. One side of the issue is that psychologists wield a tremendous amount of power because our findings could affect an individual's life. As psychologists, we need to do our due diligence in our assessments to ensure the ethicality of our job is met. We cannot let our personal bias hinder sound

judgement (Singer, 2015). For instance, if a psychologist is adamantly against the death penalty, so they assess a prisoner and falsify the outcome to deem them as intellectually disabled so they can escape the death penalty, this is unethical practice and subject to loss of licensure (APA Code of Ethics 2.06). This dilemma also goes the other way. For instance, if a psychologist was under the belief that prisoners, regardless of intellectual disability, should get the maximum penalty, and then falsifies assessments to say an individual is higher functioning than they were so they would receive strong punishment, this is also unethical. Under American Psychology Association's Code of Ethics under Principal C: Integrity, *psychologists are to be truthful, nor do they engage in fraud, or cheat*". Under principal D: Justice, *"psychologists ... take precautions to ensure that potential biases... do not lead to unjust practices"*. Psychologists also bound by the APA ethics code to be competent. If a psychologist has a personal conflict under 2.06 of the APA code of ethics, where their personal bias may interfere with their ability to do their job adequately, there is a problem. We are also obligated to cause no harm under APA Code 3.04. This raises a dilemma because our findings could lead to the death penalty, which is contrary to the "do no harm" standard of care.

Historical, Social, and Professional Development

Often within the population that encapsulates individuals with intellectual disabilities, there are comorbid mental health concerns that can contribute to deviant behavior. However, these behaviors can, in fact, become more exacerbated due to the stress and lack of resources in prison. For people with intellectual disabilities and in the prison system, life is much

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more difficult than that of a “typical” incarcerated person. They are by far more vulnerable than their counterparts. This is where one must surmise the cost benefit analysis of the least restrictive environment vs adequate and ethical treatment. One must also look at the system we as a society, have in place that contribute to this practice. Prior to trial, individuals with intellectual disabilities face a number of vulnerabilities during the court proceedings themselves. Often, they are unable to fully comprehend the court proceedings process and may try to hide the fact that they do not understand what is happening or why it is happening. Individuals with ID are often assigned court-appointed attorneys since they are not allowed to save much of their own money due to social security benefit regulations, thus unable to hire their own attorney who may serve them better (Sutcliffe, 2015). If there is a problem with the attorney they are appointed, they often do not speak up because they are either afraid to do so, or they do not know that they can request a different one.

Often there are also communication difficulties such as pragmatics and processing speed issues. The legal system is often complex and difficult for even the lay typical person to understand, *let alone* an individual with an intellectual disability. Often the attorneys they are assigned have large caseloads and do not have the time or resources to hire specialists in the field of disability to testify on their behalf. Overall, these contributing factors lead to the disproportionate number of individuals with intellectual disabilities within the prison system (Ali *et al.*, 2016). On the other side of the dilemma, there are a number of instances where a prisoner will falsify their level of cognitive functionality in order to receive a lesser or less harsh sentence (Kelsey, Rogers, & Robinson, 2015). As psychologists, we are in a position of ensuring that our assessments are indeed accurate. This raises another question, how can the judicial system base sentencing solely on intelligence tests. Indeed, there are issues with resources and funding, but at what cost? Ethically, in order to make a well-rounded assessment, psychologists should not base their findings on intelligence tests alone. One needs quantitative as well as qualitative data to ethically support the findings and thus, recommendations. Under APA’s Code of Ethics, doesn’t this violate item APA 1.02 (conflicts between ethics and law, regulations, or other governing legal authority)? I would even argue that the judicial system would be violating APA Code 1.01, *misuse of Psychologist’s work* by only using intelligence testing without a well-rounded accurate assessment.

Synopses of Salient Points

There are contributing factors that relate to the ethical dilemma of placing individuals with disabilities in the prison system. Individuals with intellectual disabilities have a number of vulnerabilities while in prison (Ali *et al.*, 2016). Firstly, there is not adequate training for peace officers to understand the limitations of an individual with a disability (Eadens *et al.*, 2016). Many times, the bar is set too high, and prisoners are subjected to disciplinary action, even if they do not fully comprehend what they did wrong. Many fail to learn and entirely understand the rules as they are held to the same standard as other prisoners, even though they often do not have the cognitive ability to do so. This lack of understanding and being able to carry out expectations adequately means that persons with ID often serve longer sentences. They often have difficulty understanding the parole or probation process as well, again, leading to longer sentences (Ali *et al.*, 2016).

While in prison, they are also the target of other prisoners (Ali *et al.*, 2016). Many want to hide their disability and try to act like everyone else. Having a known disability in the prison system is perceived as “weak” by other prisoners. The weak are preyed upon and grossly taken advantage of. Individuals in this population are also easily influenced by others; some may break the rules unknowingly to gain acceptance from others. Many try to run away because of the negative and often difficult environment of living in the prison system. Others may find the large police presence overwhelming which could lead to mental breakdowns. Individuals with intellectual disabilities are generally people pleasers. They tell people what they want to hear, rather than tell the truth. Often, they do not understand their rights while in prison, and they are again, too afraid to ask for help when they need it. In prison, it is often difficult for persons with intellectual disabilities to gain a support system. They often need mental health services and other services they are accustomed to receiving. On the other side of this argument, individuals with intellectual disabilities may thrive in an environment with those who are not intellectually disabled (Oakes *et al.*, 2016). Aside from the *least restrictive environment*, which will be discussed later, individuals with disabilities may be able to help those who are incarcerated with them. Typically functioning prisoners may have the opportunity to learn about humility, and about the vulnerability of others in general. They may take on the role of protector, role model, and mentor of an individual who is intellectually disabled.

Rationale

Individuals with intellectual disabilities are often at a significant disadvantage when placed in a criminal detention center due to their disability. Firstly, the question arises if they are placed in the correct environment to begin with. This causes one to question whether the “least restrictive environment” i.e. prison, is suitable for a population who may not fully understand the ramifications of their actions. Does this constitute “cruel and unusual punishment”? This becomes an ethical issue as there are cognitive ability issues rather than strictly behavioral. There is a nationwide trend towards placing individuals in the “least restrictive environment” (MacLeod and Causton, 2017). This also bodes true in the prison system. Often if an individual can presumably “get by” in the regular prison system, including being housed in the general population, the individual is placed there. The main idea behind this practice is the belief that individuals with ID get treated differently and get “held back” in their progression towards self-reliance and independence (Giblin *et al.*, 2012). Often people in special education or similar settings have difficulty relating and “getting by” in the outside world. Many special education and adaptive programs are often viewed by disability rights proponents as being restrictive, hence the psychosocial jargon term of the “least restrictive environment” (Axmon *et al.*, 2016).

In the past, there are a number of different rationales that support placing an individual in the least restrictive environment. For instance, when placed in the least restrictive environment, individuals with disabilities are able to model the behavior of their peers and pick up on social skills. Whereas, when placed in a restricted environment where individuals are lower functioning than they are, there may be a propensity for the individual not to succeed at the level they are capable of (Giblin *et al.*, 2012). Under Title II, Section 12132 of the

ADA, prisoners with mental illness cannot "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." By placing individuals with disabilities in protective custody, could violate this law (Knowles, 2015).

Opinion

Prisons were essentially created to protect the whole of society from individuals that could cause harm to others or personal property. They were also created to serve as a rehabilitation facility. By placing individuals into facilities where they could be preyed upon by other prisoners, I consider that cruel and unusual punishment (Dias *et al.*, 2013; Rollin, 2006). The prison system does allow for the safety of vulnerable prisoners, but in cases of prisoners with intellectual disabilities, they need to have someone fight for their protection, especially if the disability is not as obvious. This is also compounded by the practice of some prisoners who take advantage of the protection of vulnerable populations clause. Their quest for protective measures, could be construed as malingering to escape the social aspect of prison life. If I was placed in a situation where I would have to determine competency or not, I would do my due diligence. I would carry out my duties to the best of my ability. This would include completing assessments and clinical interviews as objectively as I could. The real task with regards to who and who does not receive which penalty ultimately does not reside with me. It resides on the judge, jury, and whomever else has a part in the system. As a scientist, my duty would be to only present the facts under Principle C: Integrity, of the APA ethics code.

Found or not found while researching topic

Each state has defined what constitutes an intellectual disability (ID). States vary in who makes that determination, the judge or the jury. Usually, the individual needs to score below 70 before the age of 18. As such, many people have borderline intellectual disability. It would be an arduous task to go through and determine the factors of who and who does not meet the standard according to each state and territory. Each state has laws that pertain to issues such as these. While determining what the appropriate placement should be for an individual with an intellectual disability, one must also ascertain the additional punishments that may be placed on the individual if they are deemed competent. One such factor is the death penalty. Should an individual with intellectual disabilities be put to death even if they committed the crime, but do not fully understand their actions or the ramifications of their actions? Many advocates tout that the punishment is only just if the individual understands what they did wrong (Ali *et al.*, 2016). Interestingly, the Supreme Court did pass a law against executing people with ID. The idea behind this was that the practice violated the 8th amendment. *Atkins V. Virginia*, 536 US 304 (2002). According to the *Americans with Disabilities Act and Prison Conditions under Title II*, judges have the option of placing prisoners in state-run mental health hospitals or in the prison system. Often, they are placed in the prison system. In about half of the states in the country, the prison system is privatized. This practice makes it cheaper to house individuals in prisons, rather than in mental hospitals (Bloom, 2010). Furthermore, many state mental hospitals are shutting down, and prisons are becoming *de facto* mental hospitals.

Again, as psychologists, we have the duty to be neutral and to carry out our duty without bias. Ethically a psychologist may be swayed one way or another and may be tempted to make their findings sway one way or the other. In reality, this is highly unethical under principle C: Integrity of the APA ethical code, "Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology".

Potentials for working with subject

As budding psychologists, we will be tasked someday to evaluate clients and their level of competence within a forensic setting. The field of psychology is largely subjective based on clinical interview and psychological testing. The final determination, however, is based upon how we interpret those interviews and tests (Board, Ali, & Bartlett, 2015). What will we do when tasked with this issue. We can deem the individuals as fully capable, or, at least, able to "get by" knowing that our finding may cause the individual to be a target within the prison population, leading to the ethical issue of cruel and unusual punishment (Paterson, 2008). Alternatively, do we say that the individual is indeed impaired cognitively and as such, should be placed in a mental health facility instead of the prison system? If in finding that an individual indeed has borderline cognitive impairment and the judge decides to place them into the prison system regardless, how does a psychologist go about the ethics surrounding that? Is the individual no longer our responsibility because they are in the prison system? This also places pressure on us, as professionals in the field to do our due diligence and to make sure we complete a comprehensive exam to the best of our ability with the resources that are given to us. This falls in line with APA's ethical code 2.06 under the competence section. We are to remain professional, and "[if we] become aware of personal problems that may interfere with their performing work-related duties adequately" we should cease working in that capacity.

Implications for Social Change

While, psychologists are mandated by different laws and professional standards of conduct, there are a few things we can do to create opportunities for social change (Weinstein, 2006). As we still go about our day-to-day duties in our practices and in whichever capacity we have selected to work in, we can still make a difference without twisting assessment results, and without coming into conflict with ethical standards. One of the best ways we can affect social change is to bring about awareness about individuals with disabilities, from both sides of the dilemma. We can conduct research, and thus provide evidence, for change to happen, and we can work to get the word out. Ways we can get the word out is through publishing and presenting our research (Hage and Kenny, 2009).

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