





Neurodivergent Children in the Justice System

Garden Court Chambers

Tuesday 20 February 2024



GARDEN COURT CHAMBERS



 @gardencourtlaw

Neurodivergence & children



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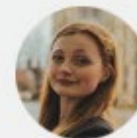
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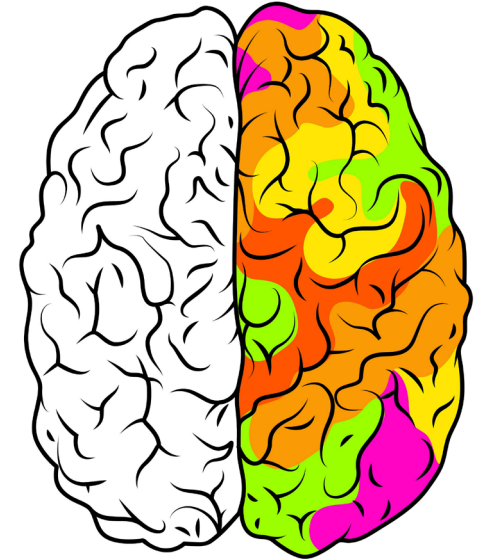


LUCY BARNES



Foster care, Adverse Childhood Experiences (ACEs) and their relationship to neurodivergence

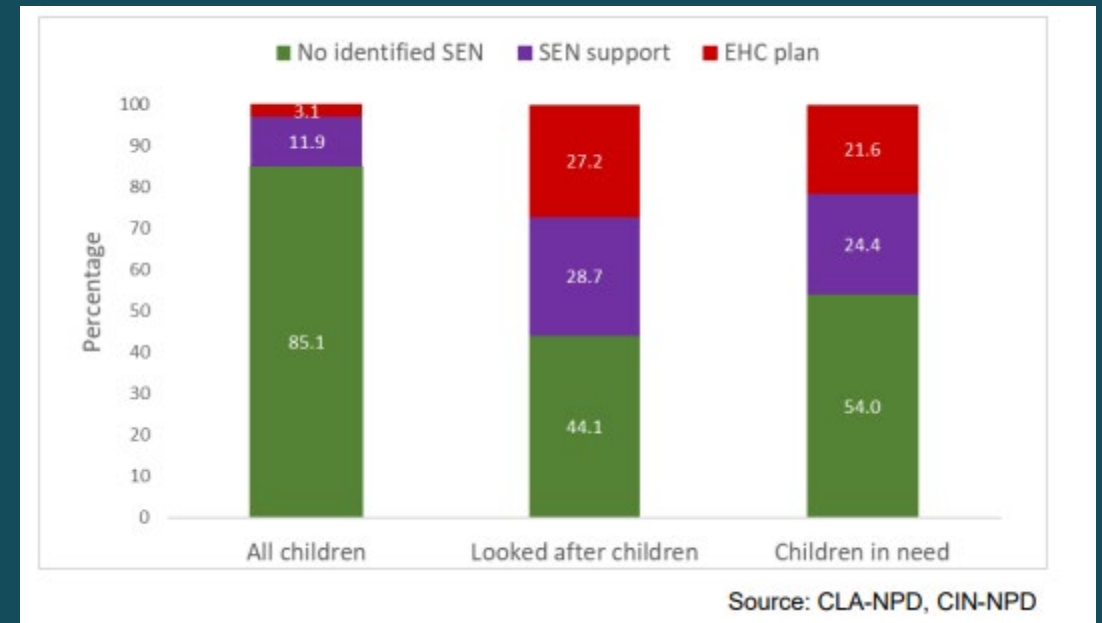
Lucy Barnes



- **Who I am and my lived experience of neurodivergence and foster care, my training by Scottish Law Society in ‘trauma-informed law;’**
 - **Relationship between care experience and neurodivergence;**
 - **Care experienced young people and ACEs**
 - **The relationship with ACEs and neurodivergence**
 - **The practical implications for lawyers**

Double discrimination? Being care experienced and neurodivergent:

- **Looked after children are almost four times more likely to have a special educational need (SEN) than all children;**
- **Looked after children are almost nine times more likely to have an education, health and care (EHC) plan than all children.**
- **In 2019, 55.9% of looked after children had a special educational need, compared to 46.0% of children in need and 14.9% of all children**
- ***(2020 Department for Education 'Outcomes for children looked after by local authorities in England')***

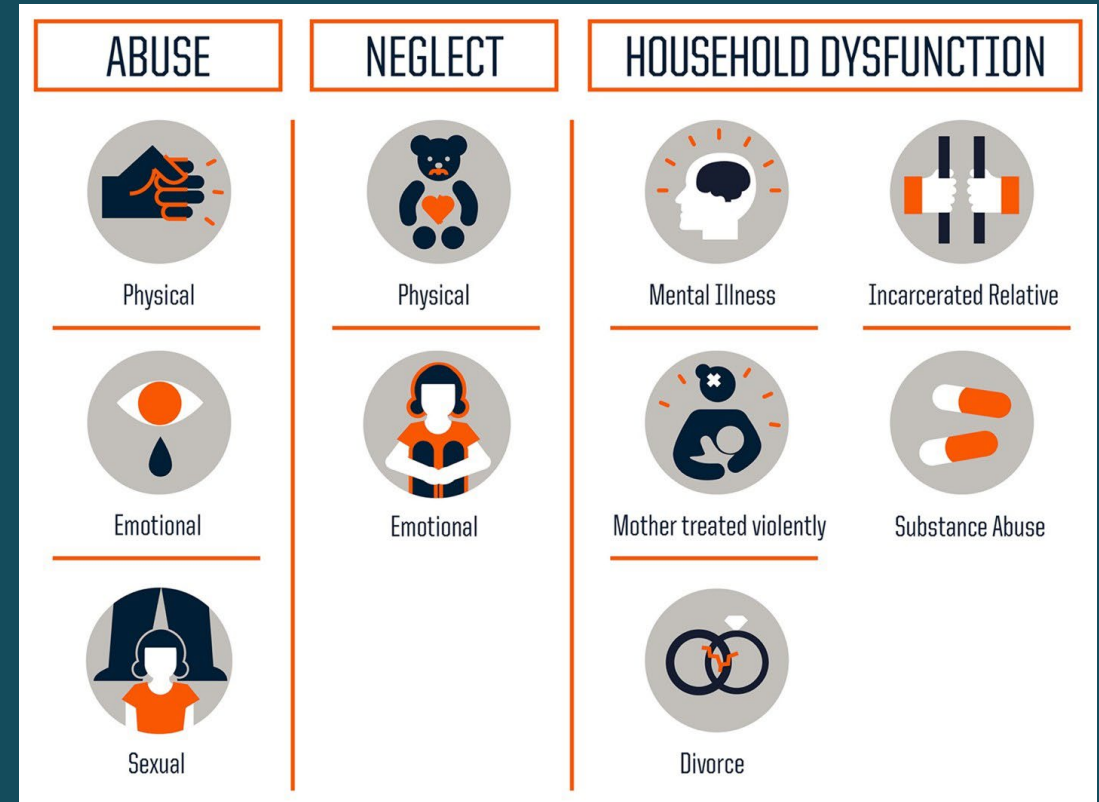


Care experienced young people and trauma

- **The CDC-Kaiser ACE Study (1995-1997)**
- **63% of looked after children were looked after due to abuse or neglect in 2021/22 (Jan 2024 NSPCC Report)**
- **Looked after children are more likely to have poorer health, live in deprivation, or be from lone parent families (50%) or large households**
- **8 in 10 children (81%) were living in a household that was deprived, 51% lived in a socially rented household**
- **Black and mixed children accounted for a higher percentage of children (9% and 7% respectively) entering care**

(Nov 2022 Census – who are the children entering care in England?)

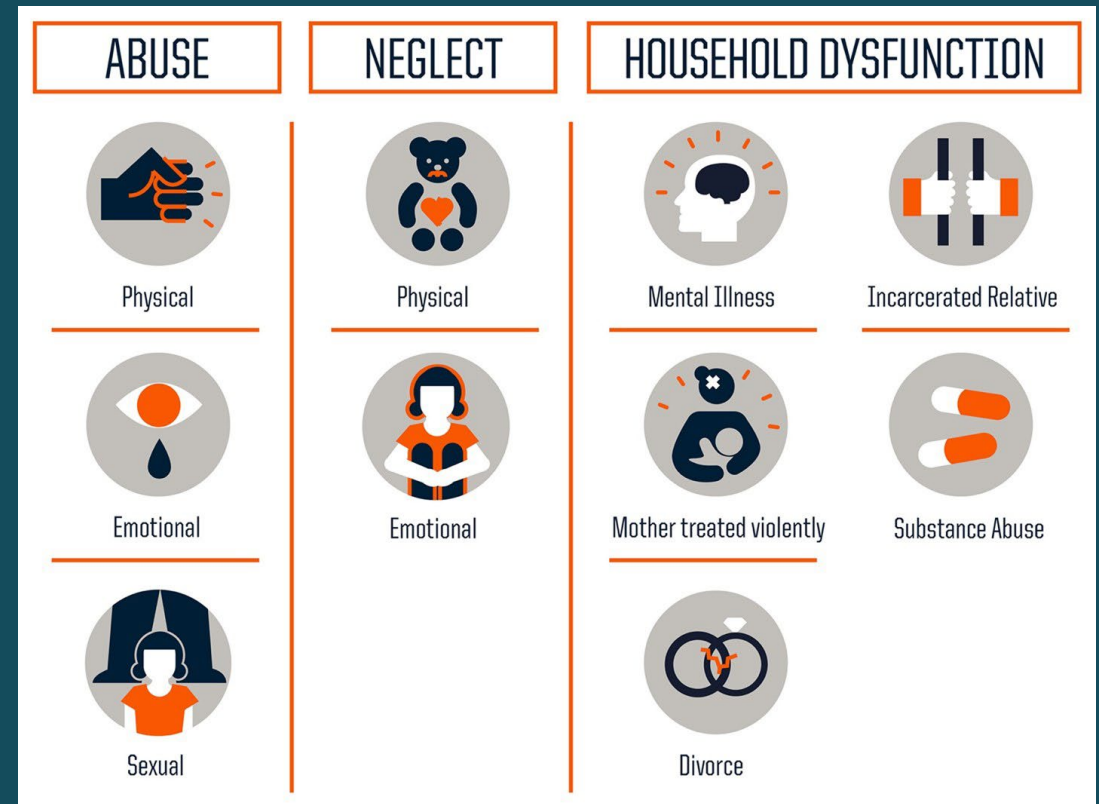
ACE's examples:




Care experience, ACE's and neurodivergence

- **Dr Nadine Burke Harris' work – TED talk 'How childhood trauma affects health across a lifetime'**
- **Cumulative impact of adversity and neurodiversity ('Double jeopardy: implications of neurodevelopmental conditions and ACEs for child health' 2022 study)**
 - **The impact for lawyers – the intersection of neurodivergence and ACEs needs to be understood**

ACE's examples:



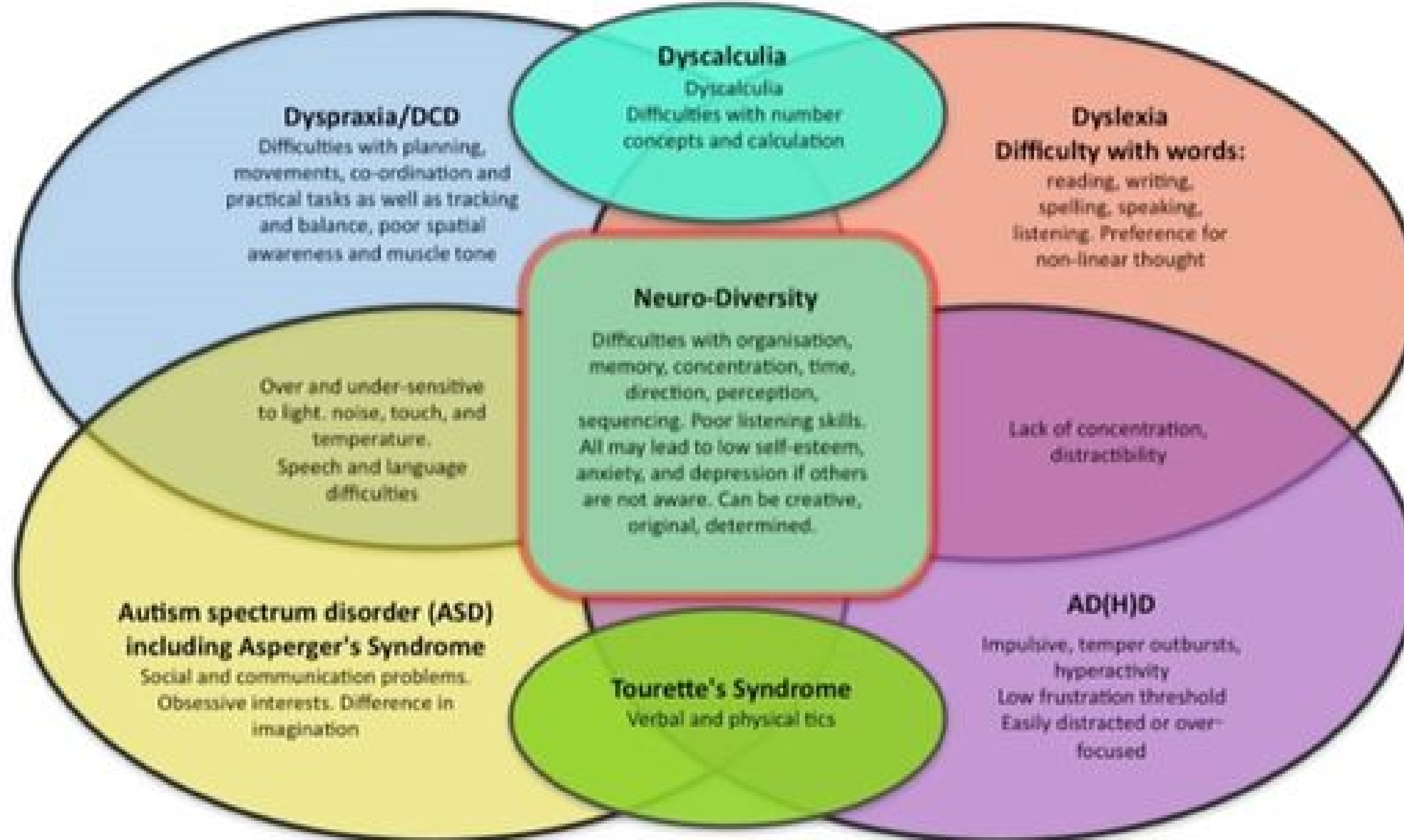


NEURODIVERGENT CHILDREN IN THE JUSTICE SYSTEM

Dr Rhiannon Lewis

The Make-up of Neuro-Diversity

This is a document for discussion, concentrating mainly on the difficulties of those with neuro-diversity. It must however be pointed out that many such people are excellent at maths, co-ordination, reading etc . We are people of extremes.



Created by Mary Colley

The Make-up of Neuro-Diversity - Reproduced with permission from Colley (2006), *Living with Dyspraxia: A Guide for Adults with Developmental Dyspraxia*. Jessica Kingsley Publishers, (London and Philadelphia) and DANDA London Social Group".

ADHD

UK prison studies – 43% in 14-year-old youths and 24% in male adults.

Correlation between ADHD and addiction in adulthood – increased risk of involvement in associated offending.

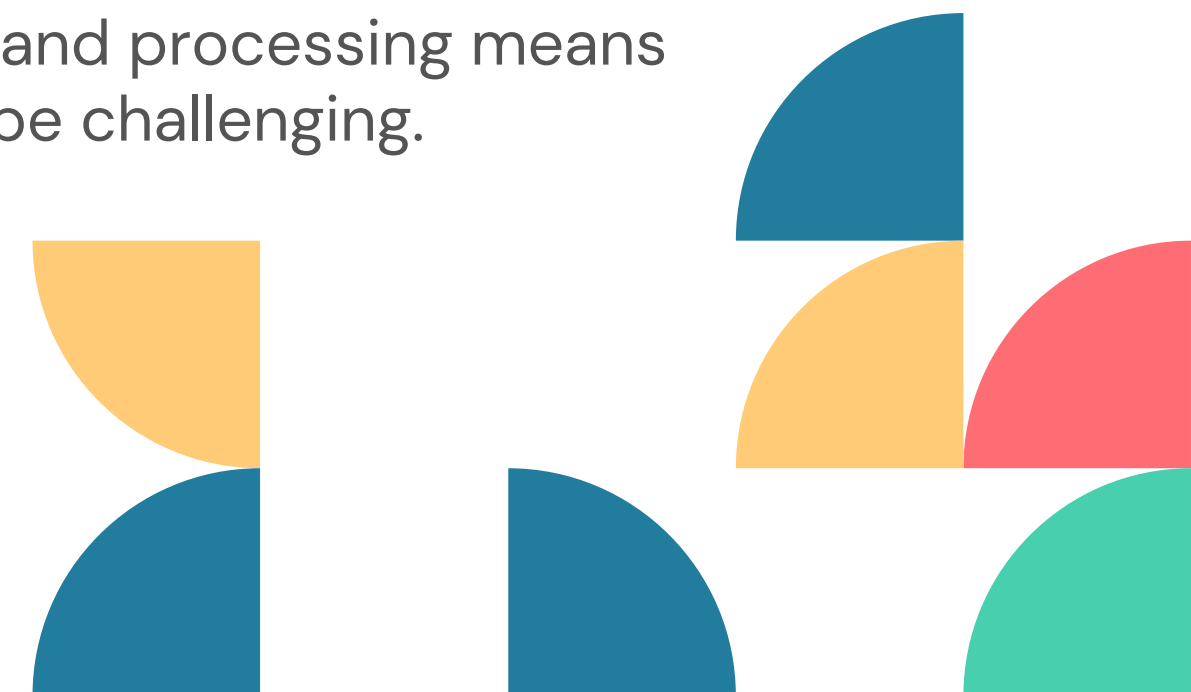
Marginalised young people can face barriers to access to services for identification and treatment of Neurodevelopmental conditions.

High co-occurring rates of Traumatic Brain injury

Associated with lower age of onset of offending, higher recidivism and more likely to be involved in violent incidents in custody.

100 x more likely to be excluded from school – NEET young people at increased risk of criminal exploitation.

Higher rates of false confessions (poor consequential thinking) and difficulties with behavioural regulation and processing means court attendance can be challenging.



AUTISM

Prevalence studies vary – but upto 15% of young people in custody are thought to be Autistic.

Between 60–90% have some form of speech, language and communication difficulties.

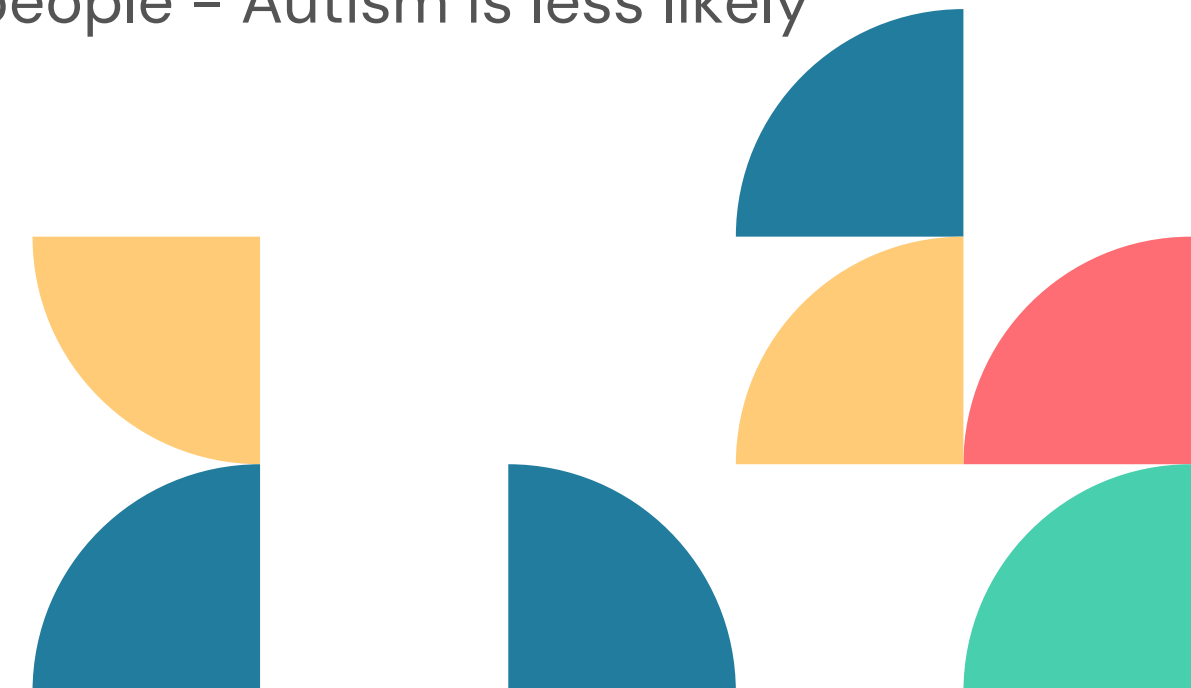
Young people who have a 'special interest' that is non-typical and risk-related – focus of professionals may be on risk rather than considering neurodivergence.

Disproportionately affected by Police Violence.

Difficulties coping with custody environment (loud, unpredictable, stressful) lead to more negative adjudications in custody.


3 x more likely to be suspended from school than non-autistic peers

Non-white young people – Autism is less likely to be identified.





RESOURCES

- National Autistic society – Youth Justice Report
www.autism.org.uk/what-we-do/news/youth-justice-report
 - Advocacy for Vulnerable People and Children – The 20 Principles of Questioning
www.icca.ac.uk/wp-content/uploads/2023/03/20-Principles-of-Questioning.pdf
- 

Resources

- [The Advocate's Gateway Toolkits](#), Criminal Practice Directions [2023], [Twenty Principles of Questioning](#), Advocacy for Vulnerable People and Children, Inns of Court College of Advocacy
- [R v Sossongo \[2021\] EWCA Crim 1777](#) – the Defendant's (post-conviction) diagnosis of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) was relevant to the jury's assessment of whether D was a secondary party in a joint enterprise stabbing. Expert evidence was called at the retrial that he had significant shortcomings in decision-making, consequential reasoning and understanding the motivations of others. These were matters that went to the heart of the issues in his case. He was acquitted.
- [R v PS \[2019\] EWCA Crim 2286](#) on being alert to mental health conditions and disorders when offences are committed by children and the importance of expert reports for sentence.
- Sentencing Council guidelines: [Sentencing children and young people](#) (and offence specific guidelines for [Robbery](#), [Sexual offences](#) and [Bladed articles/offensive weapons](#)), [Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#) (although applicable to adults, provides relevant contextual reading).



Thank you

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