





Neurodisability and Police Custody Suites

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UN General Comment No. 24 on the Convention on the Rights of the Child

- 'Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.'

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Examining the Impact of PACE on the Detention and Questioning of Child Suspects

Final Report : May 2023



<https://www.nottingham.ac.uk/research/groups/criminal-justice-research-centre/research/analysis-of-electronic-police-custody-record-data.aspx>

<https://www.nuffieldfoundation.org/wp-content/uploads/2021/07/Kemp-Examining-the-impact-of-PACE-on-the-detention-and-questioning-of-child-suspects.pdf>



The Project

- An analysis of 51,000+ custody records from 8 police forces in England and Wales
- About 3% relating to children
- Accompanied by interviews/case studies with 32 children in custody

Electronic Custody Record Data

- The Codes of Practice under PACE state that a custody record must be opened for each person detained in custody
- This record must include key information like demographics, requests for legal advice, offence types, vulnerability of people in custody, and the time children spend in custody

Key Findings

- Custody officers refused to authorise detention in less than 1% of cases
- Despite this, 50% of adults, 52% of Vulnerable Adults, and 56% of children resulted in 'No Further Action'
- Average times spent in custody:

Adults

13 hours 54 minutes

Vulnerable Adults

16 hours 48 minutes

Children

11 hours 36 minutes

Force	Outcome Variables				Demographics				Offence description	Contextual Information	
	Legal Advice Requested	PACE Clock	Strip Searched	First and Final Disposals	Ethnicity	Age	Detainee Type (Adult, Vulnerable Adult, Juvenile)	Person Vulnerability Warnings		Offence Description (gravity score, offence type)	Whether the detention was initial or return for that offence
A	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
B	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
C	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
D	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
E	✓	✓	✓	✓	✓	✓	✓	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	✓	Missing	✓
F	✓	✓	✓	Final only	✓	✓	Missing – children calculated from age	9. 10. 13.	✓	Missing	✓
G	✓	✓	✓	✓	✓	✓	✓	9. 10. 13. 14. 15.	✓	✓	✓
H	✓	✓	Missing	Final only	✓	✓	✓	9. 10. 13. 14. 15.	✓	✓	✓
I*	Missing	✓	✓	Final only	Format not comparable	✓	Missing	5. 9 & 10 combined. 15.	✓	Missing	✓
J*	Missing	✓	✓		✓	✓	✓	9. 10. 13.	✓	✓	✓
K*	Missing	Missing	✓	Format not comparable	✓	✓	Missing	Missing	✓	Missing	✓
L*	✓	✓	✓	Format not comparable	Missing	Only provided in bands	✓	Missing	Missing	✓	✓

1.	Ailment
2.	Alleges
3.	Conceals Items
4.	Contagious
5.	Drugs
6.	Escaper
7.	Firearms
8.	Mental Disorder
9.	Self-Harm
10.	Suicidal
11.	Violent
12.	Weapons
13.	Mental Health
14.	Child at Risk
15.	Disability

Key Findings

- In our 32 case studies, 22 of the children reported having mental or physical health issues during the risk assessment: 11 reported having ADHD (with two of these also reporting being Autistic), three reported being Autistic, two had mental health problems and another two had anxiety.
- While some child participants had received a diagnosis of ADHD or Autism, others were either waiting for a diagnosis or waiting for an appointment to be screened by Child and Adolescent Mental Health Services (CAMHS).

Key Findings

- Of our 32 participants, 18 said that they did not understand their legal rights while held in police custody
- "I've been in youth custody before, and I'd rather be there than here because at least I have my TV to watch. It's more comfortable. I have better food to eat. You don't have anything that's so hard as it is in here."
- "It's everything. The door, the mattress - it's so hard. The food is horrible. They offer me food, but I just don't eat. I haven't had anything to eat since 5 pm yesterday [this was 19 hours later], except biscuits."

Recommendations

- Refuse detention in more instances?
- Better data collection - capturing and reporting this data publicly will help to increase transparency and fairness regarding police powers and suspects' legal rights
- Mandatory vulnerability flags relating to Neurodisability with oversight from the Home Office
- Particularly for children - improving accessibility and procedures for **all** children



Thank you

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Neurodivergence in the Criminal Justice System: Criminal Courts

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What is 'neurodivergence'?

Humans, generally, are neurodevelopmentally diverse (neurodiversity)

Some individuals have an atypical neurodevelopmental profile (neurodivergent)

➤ e.g. autism, ADHD, dyslexia, dyspraxia, acquired brain injury, FASD

Being ND usually means differences in:

- Social communication and language
- Learning, memory and executive function
- Sensory processing
- Motor skills
- Attention and mood regulation

ND in the CJS

ND individuals are regularly drawn into criminal justice processes

- e.g. 50% of E&W prisoners estimated to be ND (CJJI, 2021))

Differences in ND individuals are not inherently barriers to justice; but may become so without recognition and adaptation

- Verbal; unfamiliar processes/language; chaotic; pressured; sensory challenges
- May affect understanding; engagement; evidence; outcomes
- Without recognising and responding to this, CJS may fail ND individuals

Existing evidence suggests **general** systemic failure to adequately recognise and support ND in CJS

- CJJI (2021): 'serious gaps, failings, and missed opportunities'
- 'Widespread ignorance' amongst legal professionals about ND
- Under-identification of ND at all stages

ND in Criminal Courts

Barriers for ND defendants/witnesses:

- Complex/vague/non-literal/idiomatic language by court professionals
- Questioning styles (e.g. open, multi-part, tag)
- Challenges with memory and cognitive processing
- Misinterpretation of language, demeanour, behaviour of ND individuals
- Reliance on stereotypical understandings of ND and dismissing vulnerability
- Sensory overwhelm (e.g. sound, light)
- Failure to offer support (e.g. special measures, sensory aids)

Results:

- Communication breakdown
- Misinterpretation of ND individuals (possibly as incriminating/aggravating)
- Inability of ND individuals to meaningfully engage with proceedings
- Trauma/harm as a result of court experience
- Negative impact on ABE and accurate CJS outcomes

ND in Criminal Courts

Example: Slavny-Cross et al (2022)

- Jury not informed about defendants being autistic; or potential impact of this in half of cases
- 60% prosecutors said/did something suggesting inadequate understanding of autism

Example: *R v RT and Stuchfield* [2020])

- witness with ADHD; long wait to give evidence; inappropriate questioning; refused to return to court
- Equally applicable to suspects and defendants in custody and courts – overwhelm may lead to disengagement and/or meltdown

Example: Hobson et al (2023)

- '[Mock jurors] who did not know about the defendant's [developmental language disorder (DLD)] considered them to be more cognitively able, less likeable, more dishonest, and more blameworthy, than those informed about his DLD.'

Supporting ND in Courts

Identification

- Screening for ND in CJS is currently inadequate/fragmented
- Onus on individuals (e.g. lawyers; judges) to 'spot the signs' - can they?

Adaptation

- Communication (with consent) of ND and what this means to relevant parties
- Providing/requesting more time (e.g. to process and assess questions)
- Coordination/planning a common 'best' approach
- Requesting adjustments to procedures (e.g. special measures, sensory adjustments, communication aids, personal items)
- Accessing external support (expert evidence, intermediaries, supporters)

How can this be achieved?

- Improved awareness and understanding (e.g. variable presentation of different types of ND and the possible impact); training (note: risks of 'stereotyped' knowledge)
- Provision of basic and easy-to-use screening tools, checklists
- Access to/signposting for referrals and additional assessment
- Cultural willingness to provide support and adaptation
- Proactivity - not waiting to be told by ND individuals !

NEURODIVERSITY & ACCESS TO JUSTICE



CALL FOR PARTICIPANTS



SEEKING
BARRISTERS, POLICE
STATION REPS AND
SOLICITORS

COULD YOU HELP:

- Participate in a one hour interview via telephone or teams
- *Prior experience of supporting neurodiverse clients not necessary*

RESEARCH AIMS:

- Understand how effectively Autistic clients are represented
- Explore best practice
- Develop research materials to help those working in CJS and Autistic suspects/defendants.

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Autism and Criminal Law

Tom Wainwright, Garden Court Chambers



GARDEN COURT CHAMBERS

 @gardencourtlaw

R v TS [2008] EWCA Crim 6

- Reasonable belief in consent
- Autism *‘impacted on his ability adequately to determine another's intentions or beliefs or desires in ambiguous situations; and that unless an unequivocal statement or set of actions was made by [the complainant] to ensure that he ceased his unwanted attentions and left the premises, he was compromised by his disorder.’*



R v Jacobs [2024] 1 Cr. App. R. 13

- Reasonable belief in consent: Objective test, but which may include specific characteristics of the defendant.
- May be cases *‘in which the reasonableness of such belief depends on the reading by the defendant of subtle social signals , and in which his impaired ability to do so is relevant to the reasonableness of his belief’*.
- Depending on the evidence, the fact that a defendant accused of rape has autism may be relevant.



R v Thompson [2014] EWCA Crim 836

- Sexual assaults
- Touching in question must be ‘sexual’. Either inherently so, or because that was the defendant’s purpose / motivation.
- Defendant’s difficulties included ‘*inability to understand social situations and the thoughts and feelings of others*’ and ‘*rule-bound and somewhat obsessive about personal hygiene*’.





R v Dunleavy [2021] EWCA Crim 39

- Preparation of Acts of Terrorism (s.5(1) Terrorism Act 2000).
 - Link between autism and obsession with firearms which was relevant to undermining suggestion that motivated by terrorist mindset.
- Possessing documents of Use to a Terrorist (s.58(1)(b) Terrorism Act 2000)
 - ‘...cannot make an unreasonable excuse reasonable, but it is a potentially relevant factor when considering whether to accept the excuse advanced by the defendant’



R v Dunleavy [2021] EWCA Crim 39

Expert Report:

- Not focused with any particularity on the defendant, addressed range of possible effects of autism generally.
- *‘The obligation is on the applicant to ensure that the report rehearses the relevant material with sufficient particularity and clarity for the judge to make a ruling on admissibility.’*



R v BRM [2022] EWCA Crim 385

Murder

- Autism diagnosis not relevant to issue of intent to kill / cause serious harm.
- Could be relevant to honest belief in need to use force in self-defence / defence of another.



R v Sussongu [2021] EWCA Crim 1777

Murder (Joint Enterprise)

Autism and ADHD:

- Severe difficulties with social interaction skills
- Interfered with his logical decision-making and consequential thinking skills
- Vulnerable to manipulation by others
- Suggestible



R v Sussongo [2021] EWCA Crim 1777

‘...his ASD and ADHD may well have had an impact on his ability to recollect and process relevant information and interpret the actions and intentions of his co-accused.

‘[evidence in relation to his] consequential thinking could also have had an impact on the jury’s sure conclusion (necessary to convict of murder) that he intended that the victim of the stabbing should suffer really serious bodily injury.’



