

A literature review about the prevalence and identification of people with an intellectual disability within Court Liaison and Diversion Services.

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A literature review about the prevalence and identification of people with an intellectual disability within Court Liaison and Diversion Services.

Purpose

Expert consensus is that people with an intellectual disability are over represented across the Criminal Justice Setting. Primary research studies have been conducted in police stations and prisons but little is known about the prevalence of this population in the Court setting. A literature review was conducted to find out more about the prevalence of defendants with an intellectual disability in Court.

Design/method/approach

A literature review was conducted using standard systematic review methodology (Higgins & Green 2011) and the PRISMA reporting guidelines (Moher et al., 2009).

Findings

Two papers met the inclusion criteria and were critically appraised. The papers reported prevalence findings ranging from 10-20%.

Limitations/implications

Differences in study design, sampling, recruitment and diagnostic criteria affect the ability to make comparisons or synthesise findings.

Practical implications

It is important that future primary and secondary research studies standardise operational terms to enable true comparison between studies, systematic reviews and evidence syntheses.

Social Implications

Defendants with an intellectual disability need to be identified to enable Criminal Justice Professionals to make reasonable adjustments to proceedings and consider diversion and alternative disposal options. This will likely improve outcomes for this population and reduce recidivism.

Originality/value

This literature review contributes to the growing evidence base about meeting the criminal justice needs of people with a learning disability and recognition of the increased prevalence across the Criminal Justice System and specifically within the Court setting.

Introduction

People with an intellectual disability are overrepresented in the criminal justice system (CJS) (Hellenbach *et al.* 2017) and particularly in prison setting (Hayes 2007, Søndena *et al.* 2008, and Mason & Murphy 2002) and to a lesser degree in police stations (Young *et al.*, 2013; McKinnon 2015). However little is known about the numbers of people with an intellectual disability in the Court setting. This literature review examines prevalence and identification of people with an intellectual disability in the Court setting.

Background

People with an intellectual disability have a unique set of needs relating to their disability. These can include difficulties in understanding information, acquiescence, suggestibility and poor decision making during the CJS process (Murphy & Mason 2014) in some cases leading to false confessions (Gudjonsson & McKeith 1994). Furthermore, people with an intellectual disability are more likely to experience multiple mental and physical health comorbidities across the life span (Cooper *et al.* 2015) which can deteriorate or be more likely to present in criminal justice environments. There is evidence that people with an intellectual disability face significant inequalities in accessing justice, healthcare services, and opportunities for diversion to health and social care services (Murphy & Mason 2014; Talbot & Riley 2007). Access to such services can lead to reduced recidivism, improved health outcomes and quality of life, where the risk to the public is low (Talbot & Riley 2007; Bradley 2009). Therefore, it is imperative that this population is identified so that they can be given the opportunity to fully access health and justice services during all stages of the criminal justice process.

Court Liaison and Diversion Services (CL&D) were developed to address this need by diverting those with mental illness or other vulnerabilities such as intellectual disability, autism spectrum disorders and attention deficit hyperactivity disorders out of the criminal justice system. CL&D services have existed in different formats in the UK since the 1980s however their implementation and functions vary between countries and jurisdictions (Srivastava *et al.* 2013). Moreover, with little statutory guidance and operational variations, mental illness and associated risks have often been prioritised over other vulnerabilities (Dyer 2013). In the light of this and increasing numbers of people with a mental illness or intellectual disability found across the criminal justice system, the UK government commissioned a review of the its criminal justice system. This review, known as 'The Bradley Report' (Bradley 2009) raised specific concerns about people with an intellectual disability including: poor

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3 identification and a lack of '*consensus in defining the boundaries between intellectual disability,*
4 *borderline intellectual disability and learning difficulty*'; along with no agreement on the most
5 effective way to identify and assess this vulnerable population (Bradley 2009 p20). In 2014, NHS
6 England launched a national operating manual to standardise CL&D services and to collect datasets
7 to measure effectiveness and outcomes (NHS England 2014). The operating manual also specified
8 that CL&D Services should be able to identify and screen for vulnerabilities such as intellectual
9 disabilities (NHS England 2014) as did national guidance about offender mental health (NICE 2017).
10 However, neither guidance specifies how to do this. Therefore the challenges to understanding how
11 many people with an intellectual disability use CL&D services and how indeed they are identified
12 persist.
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23 **Prevalence of intellectual disability across the criminal justice system**

24 **Prison**

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28 A review of the literature has found that there is a variation in estimates of intellectual disability
29 prevalence across prison services. In the UK, figures from No One Knows (Talbot, 2008) suggest that
30 assuming a prison population of 82 000, there will be around 5740 people with an IQ <70 and about
31 20 500 with an IQ 71–80. A primary study by Hayes et al. (2007) took a random sample of 140
32 prisoners from one English prison, their IQ was measured using standardised, validated diagnostic
33 assessments of cognitive function and adaptive function and found that 7.1% had an IQ ≤70. A later
34 study by Young et al. (2017) screened 390 English prisoners for the presence of an intellectual
35 disability, autism or ADHD and detected rates of 9%, 9% and 25% respectively. A Norwegian primary
36 study (Söndena et al., 2008) of prisoners screened for the presence of an intellectual disability
37 using the Wechsler Abbreviated Scale of Intelligence (Wechsler, 1999) and the Hayes Ability
38 Screening Index (Hayes, 2000). A random selection of 143 prisoners were examined of whom 15
39 prisoners (10.8%) had an IQ below 70; this figure increased to 23% when borderline IQ (IQ<79) was
40 included.
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51 Evidence from two systematic reviews (Fazel et al., 2008; Hellenbach et al. 2017) were also
52 considered. Fazel et al. (2008) completed a systematic review of 10 primary studies totaling 11,969
53 prisoners. A pooled prevalence rate could not be calculated due to the heterogeneity of the sample
54 however a descriptive analysis found a prevalence of between 0.5-1.5%. Hellenbach et al. (2017)
55 completed a systematic review of four papers published after the time frame used by Fazel et al.,
56 (2008). Due to '*significant methodological incoherencies*' such as differences in definition,
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3 classification and assessment of intellectual disability across the studies a meta-analysis was not
4 possible. Hellenbach et al. (2017) reported prevalence rates of intellectual disability to be between
5 4-69%. The systematic review highlighted significant rates of psychiatric comorbidity and substance
6 misuse amongst this population indicating the clinical importance of being able to identify this
7 population and offer appropriate services.
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15 **Police Stations**

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17 In English police stations Gudjonsson (1993) carried out IQ tests on 156 police detainees. They found
18 that 9% had a full-scale IQ of <70 and that a further 42% had a full-scale IQ of <79). In Northern
19 Ireland, Scott et al. (2006) screened 9000 police custody records and found that one per cent of
20 prisoners showed signs of an intellectual disability. A third study, based in an inner London custody
21 suite, invited those brought into custody to participate in a screening programme using the Learning
22 Disability Screening Questionnaire (LDSQ) (McKenzie et al., 2012) to identify detainees with an
23 intellectual disability. 195 detainees completed the LDSQ of which 13 (6.7%), positively screened for
24 the presence of an intellectual disability (Young et al. 2013).
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35 **Probation**

36 Mason and Murphy published three key papers about intellectual disabilities and probation in 2002.
37 These papers presented an initial scoping study where probation officers asked questions about the
38 likely presence of intellectual disability of probationers and found that 5.7% met intellectual
39 disability diagnostic criteria (Mason & Murphy 2002a). A second paper was published detailing the
40 development of an intellectual disability screening tool for probation officers based on the findings
41 of the scoping study; the Learning Disabilities in the Probation Service (LIPS) (Mason & Murphy
42 2002b). The LIPS comprises two brief tests of cognitive function and went on to be used in the final
43 study that reported on the prevalence of intellectual disabilities in the probation service. Mason &
44 Murphy screened 90 probationers for the presence of intellectual disability using the LIPS. They
45 found that six individuals (7%) had an IQ of <70 and that 17 (19%) had an intellectual disability or
46 were functioning at borderline levels (2002c).
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58 The range of prevalence estimates across the CJS illustrate the challenges with identifying this
59 population. The literature has also shown that differences in study methods, diagnostic criteria and
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3 definitions of an intellectual disability can account for some variation in the prevalence figures given.
4 A literature review of the prevalence in the Court setting can help to increase knowledge about this
5 and therefore target services to better meet the needs of this population.
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10 Method

11 The research question and search strategy were developed using the PEO framework as outlined in
12 table 1.
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16 **Table 1 PEO framework**

17 Participants	18 Exposure	19 Outcome
20 Adults with ID	21 Criminal Justice 22 System 23 Liaison & 24 Diversion Court 25 (Magistrate or 26 Crown)	27 Detection 28 Screening 29 Identification 30 outcomes 31 identification 32 appropriate adult

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38 The PEO formulated the research question as 'How many PIDs are identified in the Court?'. Study
39 designs that could provide the best answers to this question could include:

- 40 • Cohort studies
- 41 • Secondary Analysis of existing data
- 42 • Systematic Reviews
- 43 • Prospective descriptive studies
- 44 • Evaluation studies

45 Search Strategy

46 This review was conducted in accordance with standard systematic review methodology (Higgins &
47 Green 2011) and the PRISMA reporting guidelines (Moher *et al.* 2009). Four electronic databases
48 were systematically searched in July 2018 for studies published from the inception of the database
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to date). These included Cumulative Index to Nursing and Allied Health (CINAHL), Embase, Medline, and PsychINFO, A set of search terms was devised using facet analysis, Boolean operators; subject headings, keywords and truncation as shown in Table 2.

Table 2 Facet Analysis

Concept 1 AND	Concept 2 AND	Concept 3 AND
intellectual disability (subject heading for UK and Europe based PsychInfo and CINAHL)	identification (subject heading)	criminal justice service (subject heading)
OR	OR	OR
mental retardation (subject heading) for Medline only as based in USA	identif* OR detect* OR screen* OR diagnos* OR assessment	court OR magistrate court OR crown court OR custody OR remand OR prison OR probation
OR		
learning disabilit* OR neurodevelopmental dis* OR developmental dis*		

Standard search limits of English language papers and studies involving adults were applied. **Error! Reference source not found.** shows the inclusion and exclusion criteria that was used to find relevant papers.

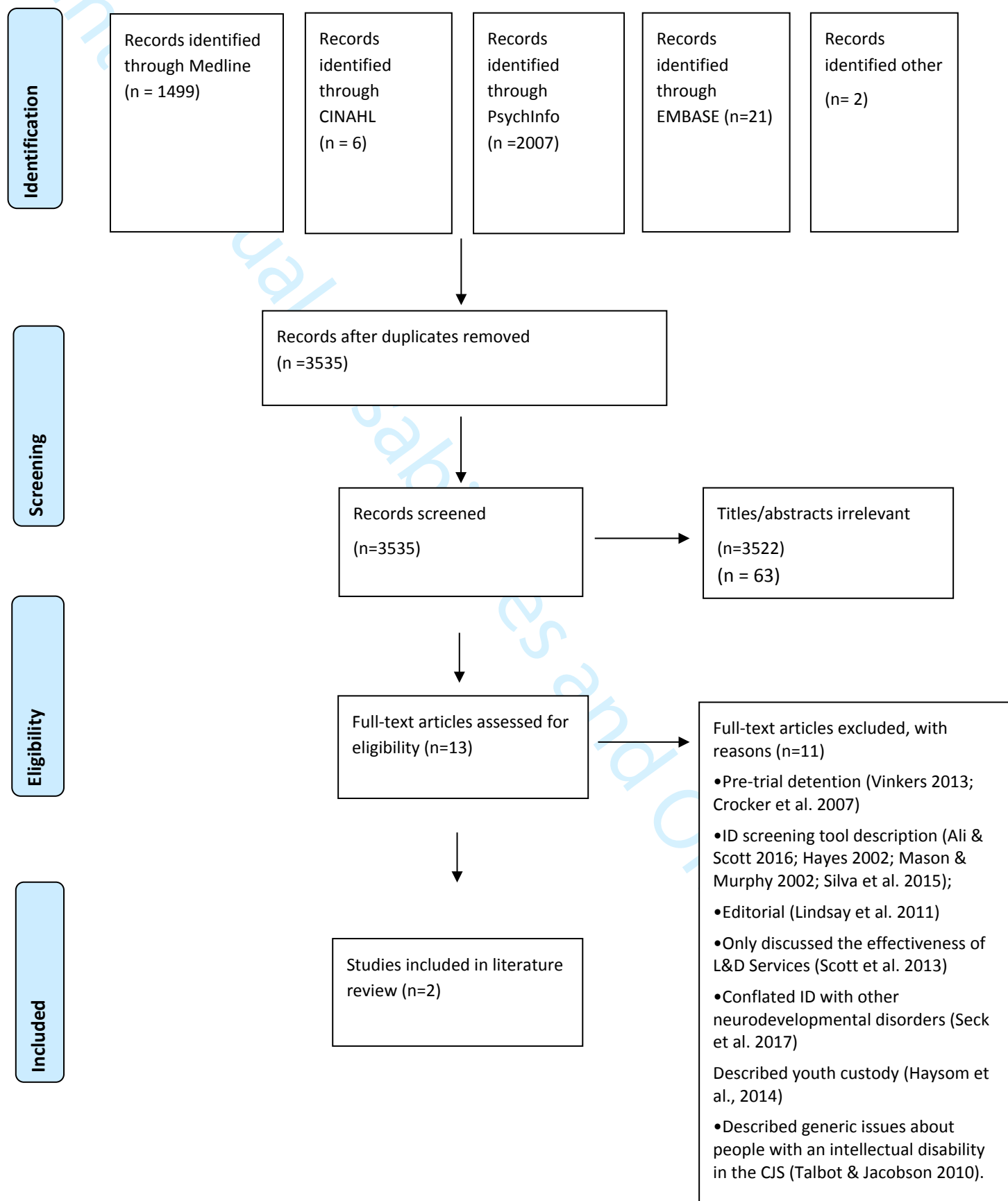
Table 3 Inclusion and exclusion criteria

Inclusion	Exclusion
<ul style="list-style-type: none"> • Adults with an ID (≥ 18 years) • Research studies, qualitative and quantitative • Published in English Language • Criminal Court setting 	<ul style="list-style-type: none"> • Children and young people with ID • Non-ID populations • Populations mixed with other neurodevelopmental disorders such as Autism or ADHD • Published in other languages • Family Courts

The results were filtered by title and abstract, then full text articles of the eligible manuscripts were read and either excluded or included in the literature review. In total 3555 articles were screened of which 13 met eligibility criteria for a full text review, see PRISMA flow diagram (see figure 1). Two papers met the inclusion criteria (Vanny *et al.* 2009; Burke *et al.* 2012) and were critically appraised using the 'Checklists for finding, appraising and implementing evidence' (Greenhalgh 2014).



Figure 1 PRISMA (2009) Flow Diagram



Results

The two included papers were quantitative studies that explored the identification and prevalence of people with an intellectual disability in a Court setting. The first study described the American CJS and Mental Health Courts (Burke *et al.* 2012) and the second study took place in a Magistrates Court in New South Wales, Australia (Vanny *et al.* 2009).

The American Mental Health Court (MHC) paper studied existing Court data to identify defendants with an intellectual disability and determine the prevalence of: people with an intellectual disability; people with an intellectual disability with a mental illness or substance misuse; index offences; and Court outcomes. The Australian paper carried out primary research amongst defendants in a Magistrates Court and recruited participants to undergo psychometric and functional skills testing to identify people with an intellectual disability. The results on the identification and subsequent prevalence of people with an intellectual disability in the Courts varied from 10% to 20%. A summary of the included studies and their findings is presented in table 4.

Table 4 Included papers

Author	Method	Participants	Sample Size	Setting	Main findings	Strengths and weaknesses
Burke <i>et al.</i> 2012 USA	Cross-sectional study. Court records were read and coded according to researchers' criteria to determine presence of intellectual disability. Those with intellectual disability were compared to those without.	Mental health court defendants with and without IDs (N=841)	n=93 people with an intellectual disability	Mental Health Court, USA	11.6% defendants had intellectual disability (93/841). Defendants with intellectual disability more likely to be African American and younger. No difference in personal characteristics, mental health care or types of offence.	Highlighted increased prevalence and need for services. The study was reliant on the accuracy of the records that they searched. Changes in USA special schooling could have affected the identification of people with an intellectual disability in the records.
Vanny <i>et al.</i> 2009 Australia	Not stated. Participants were screened for intellectual disability. Then diagnostic assessments of ID (cognitive and social functioning tests) were undertaken	Adults >18years from custody or community who attended four Courts	N=250 defendants were screened. n=60 defendants went on to have full diagnostic assessment	Four Courts in New South Wales, Australia	10% IQ<70 20% IQ<79	Participants may not be representative of the wider population. Reveals that defendants with low IQs but who are not intellectually disabled are likely to benefit from intellectual disability support mechanisms.

Discussion

The findings from the review about the prevalence of people with an intellectual disability in the Court setting suggest a prevalence rate of up to 10% which is significantly higher than the global prevalence of intellectual disability of one per cent (Maulik *et al.* 2011). The results on the identification and subsequent prevalence of people with an intellectual disability in the two Court papers in this literature review varied from 10% to 20%.

The variations in prevalence can be explained by differences in study design and methods, sampling and recruitment, and choice of diagnostic criteria. For example, the study by Burke *et al.* (2012) relied on existing Court reports where Court health and social care staff decided about the presence of ID based on the defendants' self-reporting and access to medical records. Moreover, where a diagnosis was not clear the Court health and social care staff made a clinical judgement based on DSM Axis I-V criteria (American Psychiatric Association 2013). This approach is open to subjectivity and a risk of bias from the Court staff.

The study by Vanny *et al.* (2009), which reported the highest prevalence rate, included those with both intellectual disability (IQ<70) and borderline intellectual disability (IQ<79) which could explain why the prevalence rate is so much higher than the study by Burke *et al.* (2012) who had a cut off of an IQ<70. The definition and diagnostic criteria to determine intellectual disability can vary internationally and this has been a critique of the research in the field and a limitation when attempting systematic reviews about it (Murphy & Mason, 2014; Jones, 2007). Furthermore, as defendants self-selected to participate in the study there is a risk of selection bias. Therefore, although all participants had an equal chance of being selected to participate in the study by Vanny *et al.* (2009), their motivations to do so could bias it. For example, it is known that some people with an intellectual disability may not come forward to participate in such studies for fear of stigmatisation and a desire to mask their difficulties and 'fit in' (Talbot & Jacobson, 2010). It is also possible that defendants without an intellectual disability may try to feign being intellectually disabled as they consider this may offer less restrictive sentencing or exemption from criminal responsibility (Merton & Rogers, 2017). The researchers could have considered randomising participants to receive the psychometric testing or not which would have reduced the risk of bias. Subsequently, the results from Vanny *et al.* (2009) should be interpreted with caution as the sample may not have been truly representative. However, their method of administering psychometric

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3 testing of intelligence and social functioning is considered the gold standard for identifying and
4 diagnosing an intellectual disability (The British Psychological Society 2015) and is more robust than
5 relying on existing Court records as chosen by Burke et al. (2012).
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9 There is no agreement on the best screening tool(s) to use to detect the likely presence of an
10 intellectual disability. This is for a number of reasons, for example, some screening tools are known
11 to be over inclusive and may provide false positives. For example, the mean IQ amongst prisoners is
12 lower than that of the wider population which can cause difficulties when differentiating between
13 those who have low levels of functioning and those with a diagnosable intellectual disability.
14 Additionally, the presence of health comorbidities that may require immediate assistance can divert
15 attention away from other needs (Silva *et al.* 2015). This can be compounded by a lack of awareness
16 about intellectual disabilities or available training to inform its identification (Bradley 2009; Talbot &
17 Jacobson 2010). That said, under the requirements of PACE, CJS staff need to identify '*mental*
18 *vulnerability*' and therefore even if a defendant does not have an intellectual disability but does
19 screen positive then it is likely that they will still fall under the category of mental vulnerability and
20 therefore be entitled to assistance and adjustments (Hayes, 2002; Vanny, 2009). Additionally, the
21 high paced, frenetic CJS environment is not conducive to undertaking full diagnostic assessments
22 which typically involve an IQ test such as the WAIS-r III (Wechsler, 2008) and measures of social
23 functioning such as the Vineland Adaptive Behaviour Scale (Sparrow *et al.* 1984) or specialist
24 measures of mental health for intellectual disability and autism such as the Psychiatric Assessment
25 Schedule for Adults with Developmental Disabilities (Moss 1998). Such testing can only be carried
26 out by experienced clinicians and they are time consuming and not conducive to the environments
27 of the CJS (McKinnon & Finch 2018).
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43 **Limitations**

44 Only two papers were retrieved during this literature review and the study designs of each were
45 different therefore a comparison between the prevalence rates cannot be made. Both studies
46 revealed weaknesses in their design and a risk of bias therefore the findings should be interpreted
47 with caution.
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55 **Conclusion**

56 This literature review has demonstrated that there is a paucity of studies investigating the
57 prevalence and identification of defendants with an intellectual disability in the Courts. The existing
58 studies indicate that prevalence of people with an intellectual disability in the CJS is greater than the
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3 prevalence of intellectual disability in the general population and there is consensus amongst
4 researchers that this population is over represented across the CJS. The studies also revealed that
5 there is an increase in psychiatric and physical health comorbidities amongst this population which
6 can complicate their journey through the CJS (Vanny *et al.* 2009; Søndena *et al.* 2010; Hellenbach *et*
7 *al.* 2017). The variations in prevalence can be explained by differences in study design and methods,
8 sampling and recruitment, and choice of diagnostic criteria. It is therefore important that future
9 primary and secondary research studies standardise operational terms to enable true comparison
10 between studies, systematic reviews and evidence syntheses. This could include the standardisation
11 of screening tools for use in the CJS, as is currently missing from the NHS operating manual (NHS
12 England 2014).

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A literature review about the prevalence and identification of people with an intellectual disability within Court Liaison and Diversion Services.

Purpose

Expert consensus is that people with an intellectual disability are over represented across the Criminal Justice Setting. Primary research studies have been conducted in police stations and prisons but little is known about the prevalence of this population in the Court setting. A literature review was conducted to find out more about the prevalence of defendants with an intellectual disability in Court.

Design/method/approach

A literature review was conducted using standard systematic review methodology (Higgins & Green 2011) and the PRISMA reporting guidelines (Moher et al., 2009).

Findings

Two papers met the inclusion criteria and were critically appraised. The papers reported prevalence findings ranging from 10-20%.

Limitations/implications

Differences in study design, sampling, recruitment and diagnostic criteria affect the ability to make comparisons or synthesise findings.

Practical implications

It is important that future primary and secondary research studies standardise operational terms to enable true comparison between studies, systematic reviews and evidence syntheses.

Social Implications

Defendants with an intellectual disability need to be identified to enable Criminal Justice Professionals to make reasonable adjustments to proceedings and consider diversion and alternative disposal options. This will likely improve outcomes for this population and reduce recidivism.

Originality/value

This literature review contributes to the growing evidence base about meeting the criminal justice needs of people with a learning disability and recognition of the increased prevalence across the Criminal Justice System and specifically within the Court setting.

Introduction

People with an intellectual disability are overrepresented in the criminal justice system (CJS) (Hellenbach *et al.* 2017) and particularly in prison setting (Hayes 2007, Søndena *et al.* 2008, and Mason & Murphy 2002) and to a lesser degree in police stations (Young *et al.*, 2013; McKinnon 2015). However little is known about the numbers of people with an intellectual disability in the Court setting. This literature review examines prevalence and identification of people with an intellectual disability in the Court setting.

Background

People with an intellectual disability have a unique set of needs relating to their disability. These can include difficulties in understanding information, acquiescence, suggestibility and poor decision making during the CJS process (Murphy & Mason 2014) in some cases leading to false confessions (Gudjonsson & McKeith 1994). Furthermore, people with an intellectual disability are more likely to experience multiple mental and physical health comorbidities across the life span (Cooper *et al.* 2015) which can deteriorate or be more likely to present in criminal justice environments. There is evidence that people with an intellectual disability face significant inequalities in accessing justice, healthcare services, and opportunities for diversion to health and social care services (Murphy & Mason 2014; Talbot & Riley 2007). Access to such services can lead to reduced recidivism, improved health outcomes and quality of life, where the risk to the public is low (Talbot & Riley 2007; Bradley 2009). Therefore, it is imperative that this population is identified so that they can be given the opportunity to fully access health and justice services during all stages of the criminal justice process.

Court Liaison and Diversion Services (CL&D) were developed to address this need by diverting those with mental illness or other vulnerabilities such as intellectual disability, autism spectrum disorders and attention deficit hyperactivity disorders out of the criminal justice system. CL&D services have existed in different formats in the UK since the 1980s however their implementation and functions vary between countries and jurisdictions (Srivastava *et al.* 2013). Moreover, with little statutory guidance and operational variations, mental illness and associated risks have often been prioritised over other vulnerabilities (Dyer 2013). In the light of this and increasing numbers of people with a

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3 mental illness or intellectual disability found across the criminal justice system, the UK government
4 commissioned a review of the its criminal justice system. This review, known as 'The Bradley Report'
5 (Bradley 2009) raised specific concerns about people with an intellectual disability including: poor
6 identification and a lack of '*consensus in defining the boundaries between intellectual disability,*
7 *borderline intellectual disability and learning difficulty*'; along with no agreement on the most
8 effective way to identify and assess this vulnerable population (Bradley 2009 p20). In 2014, NHS
9 England launched a national operating manual to standardise CL&D services and to collect datasets
10 to measure effectiveness and outcomes (NHS England 2014). The operating manual also specified
11 that CL&D Services should be able to identify and screen for vulnerabilities such as intellectual
12 disabilities (NHS England 2014) as did national guidance about offender mental health (NICE 2017).
13 However, neither guidance specifies how to do this. Therefore the challenges to understanding how
14 many people with an intellectual disability use CL&D services and how indeed they are identified
15 persist.

26 **Prevalence of intellectual disability across the criminal justice system**

27 **Prison**

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29 A review of the literature has found that there is a variation in estimates of intellectual disability
30 prevalence across prison services. In the UK, figures from No One Knows (Talbot, 2008) suggest that
31 assuming a prison population of 82 000, there will be around 5740 people with an IQ <70 and about
32 20 500 with an IQ 71–80. A primary study by Hayes et al. (2007) took a random sample of 140
33 prisoners from one English prison, their IQ was measured using standardised, validated diagnostic
34 assessments of cognitive function and adaptive function and found that 7.1% had an IQ ≤70. A later
35 study by Young et al. (2017) screened 390 English prisoners for the presence of an intellectual
36 disability, autism or ADHD and detected rates of 9%, 9% and 25% respectively. A Norwegian primary
37 study (Söndena et al., 2008) of prisoners screened for the presence of an intellectual disability
38 using the Wechsler Abbreviated Scale of Intelligence (Wechsler, 1999) and the Hayes Ability
39 Screening Index (Hayes, 2000). A random selection of 143 prisoners were examined of whom 15
40 prisoners (10.8%) had an IQ below 70; this figure increased to 23% when borderline IQ (IQ<79) was
41 included.

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43 Evidence from two systematic reviews (Fazel et al., 2008; Hellenbach et al. 2017) were also
44 considered. Fazel et al. (2008) completed a systematic review of 10 primary studies totaling 11,969
45 prisoners. A pooled prevalence rate could not be calculated due to the heterogeneity of the sample

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3 however a descriptive analysis found a prevalence of between 0.5-1.5%. Hellenbach *et al.* (2017)
4 completed a systematic review of four papers published after the time frame used by Fazel *et al.*,
5 (2008). Due to 'significant methodological incoherencies' such as differences in definition,
6 classification and assessment of intellectual disability across the studies a meta-analysis was not
7 possible. Hellenbach *et al.* (2017) reported prevalence rates of intellectual disability to be between
8 4-69%. The systematic review highlighted significant rates of psychiatric comorbidity and substance
9 misuse amongst this population indicating the clinical importance of being able to identify this
10 population and offer appropriate services.
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20 **Police Stations**

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22 In English police stations Gudjonsson (1993) carried out IQ tests on 156 police detainees. They found
23 that 9% had a full-scale IQ of <70 and that a further 42% had a full-scale IQ of <79). In Northern
24 Ireland, Scott *et al.* (2006) screened 9000 police custody records and found that one per cent of
25 prisoners showed signs of an intellectual disability. A third study, based in an inner London custody
26 suite, invited those brought into custody to participate in a screening programme using the Learning
27 Disability Screening Questionnaire (LDSQ) (McKenzie *et al.*, 2012) to identify detainees with an
28 intellectual disability. 195 detainees completed the LDSQ of which 13 (6.7%), positively screened for
29 the presence of an intellectual disability (Young *et al.* 2013).
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40 **Probation**

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42 One UK paper about probation was found. Mason & Murphy (2002a) screened 90 probationers for
43 the presence of intellectual disability using a probation service screening tool. The Learning
44 Disabilities in the Probation Service (LIPS) tool comprises two brief tests of cognitive function and is
45 designed to be used by probation officers (Mason & Murphy 2002b). They found that six individuals
46 (7%) had an IQ of <70 and that 17 (19%) had an IQ of <79.
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51 The range of prevalence estimates across the CJS illustrate the challenges with identifying this
52 population. The literature has also shown that differences in study methods, diagnostic criteria and
53 definitions of an intellectual disability can account for some variation in the prevalence figures given.
54 A literature review of the prevalence in the Court setting can help to increase knowledge about this
55 and therefore target services to better meet the needs of this population.
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Method

The research question and search strategy were developed using the PEO framework as outlined in table 1.

Table 1 PEO framework

Participants	Exposure	Outcome
Adults with ID	Criminal Justice System Liaison & Diversion Court (Magistrate or Crown)	Detection Screening Identification outcomes identification appropriate adult

The PEO formulated the research question as ‘How many PIDs are identified in the Court?’. Study designs that could provide the best answers to this question could include:

- Cohort studies
- Secondary Analysis of existing data
- Systematic Reviews
- Prospective descriptive studies
- Evaluation studies

Search Strategy

This review was conducted in accordance with standard systematic review methodology (Higgins & Green 2011) and the PRISMA reporting guidelines (Moher *et al.* 2009). Four electronic databases were systematically searched in July 2018 for studies published from the inception of the database to date). These included Cumulative Index to Nursing and Allied Health (CINAHL), Embase, Medline,

and PsychINFO, A set of search terms was devised using facet analysis, Boolean operators; subject headings, keywords and truncation as shown in Table 2.

Table 2 Facet Analysis

Concept 1 AND	Concept 2 AND	Concept 3 AND
intellectual disability (subject heading for UK and Europe based PsychInfo and CINAHL)	identification (subject heading)	criminal justice service (subject heading)
OR	OR	OR
mental retardation (subject heading) for Medline only as based in USA	identif* OR detect* OR screen* OR diagnos* OR assessment	court OR magistrate court OR crown court OR custody OR remand OR prison OR probation
OR		
learning disabilit* OR neurodevelopmental dis* OR developmental dis*		

Standard search limits of English language papers and studies involving adults were applied. **Error! Reference source not found.** shows the inclusion and exclusion criteria that was used to find relevant papers.

Table 3 Inclusion and exclusion criteria

Inclusion	Exclusion
<ul style="list-style-type: none"> • Adults with an ID (≥ 18 years) • Research studies, qualitative and quantitative • Published in English Language • Criminal Court setting 	<ul style="list-style-type: none"> • Children and young people with ID • Non-ID populations • Populations mixed with other neurodevelopmental disorders such as Autism or ADHD • Published in other languages

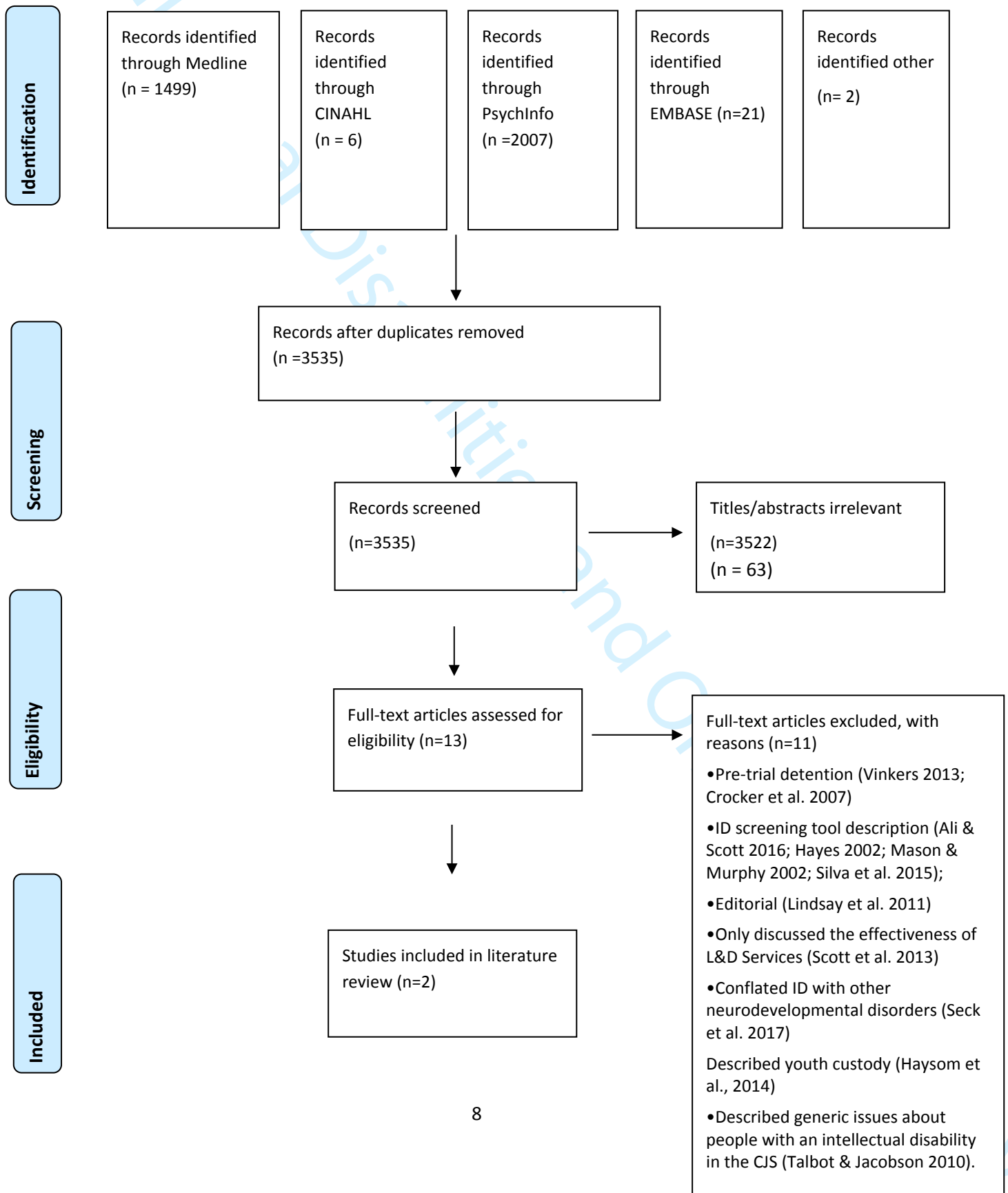
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- Family Courts
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The results were filtered by title and abstract, then full text articles of the eligible manuscripts were read and either excluded or included in the literature review. In total 3555 articles were screened of which 13 met eligibility criteria for a full text review, see PRISMA flow diagram (see figure 1). Two papers met the inclusion criteria (Vanny *et al.* 2009; Burke *et al.* 2012) and were critically appraised using the 'Checklists for finding, appraising and implementing evidence' (Greenhalgh 2014).

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Figure 1 PRISMA (2009) Flow Diagram



Results

The two included papers were quantitative studies that explored the identification and prevalence of people with an intellectual disability in a Court setting. The first study described the American CJS and Mental Health Courts (Burke *et al.* 2012) and the second study took place in a Magistrates Court in New South Wales, Australia (Vanny *et al.* 2009).

The American Mental Health Court (MHC) paper studied existing Court data to identify defendants with an intellectual disability and determine the prevalence of: people with an intellectual disability; people with an intellectual disability with a mental illness or substance misuse; index offences; and Court outcomes. The Australian paper carried out primary research amongst defendants in a Magistrates Court and recruited participants to undergo psychometric and functional skills testing to identify people with an intellectual disability. The results on the identification and subsequent prevalence of people with an intellectual disability in the Courts varied from 10% to 20%. A summary of the included studies and their findings is presented in table 4.

Table 4 Included papers

Author	Method	Participants	Sample Size	Setting	Main findings	Strengths and weaknesses
Burke <i>et al.</i> 2012 USA	Cross-sectional study. Court records were read and coded according to researchers' criteria to determine presence of intellectual disability. Those with intellectual disability were compared to those without.	Mental health court defendants with and without IDs (N=841)	n=93 people with an intellectual disability	Mental Health Court, USA	11.6% defendants had intellectual disability (93/841). Defendants with intellectual disability more likely to be African American and younger. No difference in personal characteristics, mental health care or types of offence.	Highlighted increased prevalence and need for services. The study was reliant on the accuracy of the records that they searched. Changes in USA special schooling could have affected the identification of people with an intellectual disability in the records.
Vanny <i>et al.</i> 2009 Australia	Not stated. Participants were screened for intellectual disability. Then diagnostic assessments of ID (cognitive and social functioning tests) were undertaken	Adults >18years from custody or community who attended four Courts	N=250 defendants were screened. n=60 defendants went on to have full diagnostic assessment	Four Courts in New South Wales, Australia	10% IQ<70 20% IQ<79	Participants may not be representative of the wider population. Reveals that defendants with low IQs but who are not intellectually disabled are likely to benefit from intellectual disability support mechanisms.

Discussion

The findings from the review about the prevalence of people with an intellectual disability in the Court setting suggest a prevalence rate of up to 10% which is significantly higher than the global prevalence of intellectual disability of one per cent (Maulik *et al.* 2011). The results on the identification and subsequent prevalence of people with an intellectual disability in the two Court papers in this literature review varied from 10% to 20%.

The variations in prevalence can be explained by differences in study design and methods, sampling and recruitment, and choice of diagnostic criteria. For example, the study by Burke *et al.* (2012) relied on existing Court reports where Court health and social care staff decided about the presence of ID based on the defendants' self-reporting and access to medical records. Moreover, where a diagnosis was not clear the Court health and social care staff made a clinical judgement based on DSM Axis I-V criteria (American Psychiatric Association 2013). This approach is open to subjectivity and a risk of bias from the Court staff.

The study by Vanny *et al.* (2009), which reported the highest prevalence rate, included those with both intellectual disability (IQ<70) and borderline intellectual disability (IQ<79) which could explain why the prevalence rate is so much higher than the study by Burke *et al.* (2012) who had a cut off of an IQ<70. The definition and diagnostic criteria to determine intellectual disability can vary internationally and this has been a critique of the research in the field and a limitation when attempting systematic reviews about it (Murphy & Mason, 2014; Jones, 2007). Furthermore, as defendants self-selected to participate in the study there is a risk of selection bias. Therefore, although all participants had an equal chance of being selected to participate in the study by Vanny *et al.* (2009), their motivations to do so could bias it. For example, it is known that some people with an intellectual disability may not come forward to participate in such studies for fear of stigmatisation and a desire to mask their difficulties and 'fit in' (Talbot & Jacobson, 2010). It is also possible that defendants without an intellectual disability may try to feign being intellectually disabled as they consider this may offer less restrictive sentencing or exemption from criminal responsibility (Merton & Rogers, 2017). The researchers could have considered randomising participants to receive the psychometric testing or not which would have reduced the risk of bias. Subsequently, the results from Vanny *et al.* (2009) should be interpreted with caution as the sample

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3 may not have been truly representative. However, their method of administering psychometric
4 testing of intelligence and social functioning is considered the gold standard for identifying and
5 diagnosing an intellectual disability (The British Psychological Society 2015) and is more robust than
6 relying on existing Court records as chosen by Burke et al. (2012).
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11 There is no agreement on the best screening tool(s) to use to detect the likely presence of an
12 intellectual disability. This is for a number of reasons, for example, some screening tools are known
13 to be over inclusive and may provide false positives. For example, the mean IQ amongst prisoners is
14 lower than that of the wider population which can cause difficulties when differentiating between
15 those who have low levels of functioning and those with a diagnosable intellectual disability.
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17 Additionally, the presence of health comorbidities that may require immediate assistance can divert
18 attention away from other needs (Silva *et al.* 2015). This can be compounded by a lack of awareness
19 about intellectual disabilities or available training to inform its identification (Bradley 2009; Talbot &
20 Jacobson 2010). That said, under the requirements of PACE, CJS staff need to identify '*mental*
21 *vulnerability*' and therefore even if a defendant does not have an intellectual disability but does
22 screen positive then it is likely that they will still fall under the category of mental vulnerability and
23 therefore be entitled to assistance and adjustments (Hayes, 2002; Vanny, 2009). Additionally, the
24 high paced, frenetic CJS environment is not conducive to undertaking full diagnostic assessments
25 which typically involve an IQ test such as the WAIS-r III (Wechsler, 2008) and measures of social
26 functioning such as the Vineland Adaptive Behaviour Scale (Sparrow *et al.* 1984) or specialist
27 measures of mental health for intellectual disability and autism such as the Psychiatric Assessment
28 Schedule for Adults with Developmental Disabilities (Moss 1998). Such testing can only be carried
29 out by experienced clinicians and they are time consuming and not conducive to the environments
30 of the CJS (McKinnon & Finch 2018).
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45 **Limitations**

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47 Only two papers were retrieved during this literature review and the study designs of each were
48 different therefore a comparison between the prevalence rates cannot be made. Both studies
49 revealed weaknesses in their design and a risk of bias therefore the findings should be interpreted
50 with caution.
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Conclusion

This literature review has demonstrated that there is a paucity of studies investigating the prevalence and identification of defendants with an intellectual disability in the Courts. The existing studies indicate that prevalence of people with an intellectual disability in the CJS is greater than the prevalence of intellectual disability in the general population and there is consensus amongst researchers that this population is over represented across the CJS. The studies also revealed that there is an increase in psychiatric and physical health comorbidities amongst this population which can complicate their journey through the CJS (Vanny *et al.* 2009; Søndena *et al.* 2010; Hellenbach *et al.* 2017). The variations in prevalence can be explained by differences in study design and methods, sampling and recruitment, and choice of diagnostic criteria. It is therefore important that future primary and secondary research studies standardise operational terms to enable true comparison between studies, systematic reviews and evidence syntheses. This could include the standardisation of screening tools for use in the CJS, as is currently missing from the NHS operating manual (NHS England 2014).

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