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Autism in the Courtroom

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To appear in: Encyclopedia of Autism Spectrum Disorders

DEFINITION* (650 – 1000 words)

A. Synonyms

Law; Justice; Legal system; Judgements.

B. Definition

Autistic people are thought to be more likely than non-autistic people to come into contact with the justice system, including the courts. This does not imply that autistic people are more likely to offend; indeed, the limited available evidence suggests that autistic people are generally as law abiding (if not more so) than the general population. Due to vulnerabilities experienced by some autistic people (for example, diminished social insight coupled with feelings of social alienation and eagerness for peer approval), much of the contact that autistic people have with the justice system may be as victims or witnesses (e.g., because of a limited ability to detect suspicious behaviour and mal-intent by others, heightening their risk of manipulation).

Different countries have different judicial systems, but research on autism in the courtroom has tended to focus on criminal proceedings (addressing matters in relation to criminal law, e.g., murder, robbery, motoring offences) or family proceedings (addressing matters in relation to family law, e.g., custody of children, divorce proceedings). Irrespective of the type of court (e.g., criminal or family), or the capacity in which the autistic person is involved in the justice system (e.g., witness or defendant), there are aspects of the courtroom environment and proceedings that are likely to be particularly problematic for an autistic person.

'Unusual' behaviour or communication in the courtroom may lead to negative perceptions of autistic people (particularly as defendants). This may be particularly relevant if an autism diagnosis is not known or disclosed. Allely and Cooper (2017), for example, refer to the case of *R v Sultan*. Mr Sultan was a defendant diagnosed as autistic after his trial for rape and indecent assault. Mr Sultan's "strange behaviour in court, such as reading a book while [the alleged victim] gave her evidence" was noted. Even if an autism diagnosis is known pre-trial, the autistic witness/defendant may choose not to disclose their diagnosis: research has shown that autistic people are reluctant to tell legal professionals about their diagnosis due to fear of discrimination.

Knowledge and experience of autism amongst courtroom professionals may be pertinent. Whilst many courtroom professionals (e.g., barristers, judges) report that they feel knowledgeable about autism, they often add that they do not feel confident about working with autistic people and are not overly satisfied with their interactions with autistic people in the courtroom. Calls for greater training on supporting autistic people in the courtroom should,

* Please avoid foreign terms in the definition.

therefore, have a distinctly practical focus; improving legal professionals' self-efficacy, and not just their knowledge of autism.

Research on how autistic people are perceived in the courtroom by judges and juries has yielded mixed findings. Whilst concerns have been raised about the perceived unreliability of autistic witnesses, mock jurors' perceptions of autistic witnesses tend to be positively impacted by the knowledge of a person's autism diagnosis. This does, however, appear to depend on the degree of 'unusual' behaviours displayed by the witness. Moreover, some evidence suggests that an autism diagnosis may have little impact on decisions of criminal responsibility, while others have reported that judges and jurors may take autism into account as a mitigating factor or that an autistic offender may be less likely to receive a custodial sentence (and instead diverted out of the justice system). Legal professionals report that they struggle to determine what emphasis to place on diagnosis and other information from psychiatric reports; while some use it as a mitigating factor, others consider autism to be an aggravating factor.

Overall, autistic people and their families often feel dissatisfied with their experiences in the courtroom. To improve their experiences, an autism diagnosis should, at least, enable reasonable adjustments to ensure fair access to trial; for example, with the provision of an intermediary (a trained professional whose role is to facilitate effective communication between vulnerable witnesses and members of the justice system; a role that is limited to a few countries at present, e.g., England, Wales, Australia). It is also vital that appropriate support is provided for both witnesses and defendants (some support, e.g., from an intermediary, is limited to witnesses only). Finally, assistance should also be given to juries, to make decisions informed by expert insights of the needs and complexities associated with autism.

Given the reportedly high rates of autistic people engaged with the courts, this topic is an important avenue for future research, alongside more general awareness and consideration of autism within the courtroom.

C. See also

- Police citizen interactions, theory of mind and ASD (Brewer and Young)
- Law Enforcement Agencies and Autism (Holmes)
- Law Enforcement Knowledge of Autism (Gardner)
- Criminality, Interactions with Law Enforcement, and Potential Correlates of Juvenile Justice-Involvement Among Youth with Autism (Grigorenko)
- Court Decision (ASD related) (Thomas)

D. References and Readings

Please enter your references here following the APA reference style (see Guidelines for Authors for more information on the reference style.) Please include a maximum of 5 references focusing on the most important contributions. Where possible, include articles in the *Journal of Autism and Developmental Disorders* (to facilitate hypertext links).

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