Interaction of people with disability and the justice system in NSW

Summary of NDDA Pilot findings

December 2021

National Disability Data Asset

The information gap

It is vital that criminal justice systems provide equitable access to justice for people with disability. However, people with disability are not readily identifiable in criminal justice system data collections. To plan appropriate supports and services for people with disability interacting with the justice system we need to quantify and understand the characteristics of the people and their needs. This New South Wales (NSW) test case used the power of data linked across jurisdictions and service systems to identify people with disability in contact with the justice system.

Key findings from the NDDA Pilot for NSW residents

- Nearly 1 in 3 NSW people accessing a core disability support were victims of a crime reported to the police during the period 2009-2018.
- NSW First Nations people with disability are particularly vulnerable to experiencing violent crimes. 38% of NSW First Nations young women with disability (15-19 years) were victims of violent crimes during the period 2014-2018.
- People with disability in NSW were more likely to experience another violent incident within 12 months than people not receiving core disability supports (18% vs. 13% respectively).
- NSW First Nations women with a disability were particularly likely to experience another violent incident within 12 months (31%).
- Around 1 in 4 of all NSW young and adult offenders were identified with disability.
- NSW First Nations offenders were more likely to have a disability identified (43%) than non-First Nations offenders (25%).
- Around 1 in 2 of those who had a custodial episode in NSW were identified with disability (47%), with around 1 in 3 accessing a core disability support (27%).
- NSW Young people with disability were more likely to re-offend within two years than young people with no disability (60% vs. 42%).
- A low proportion of NSW adult offenders with cognitive disability received a mental health dismissal (13%).
- Mental health dismissals in NSW were lower in areas of greater socioeconomic disadvantage (11% vs 21%, for most and least disadvantaged areas respectively).

Implications and actions

Through this linked data asset, we were able to identify NSW people with disability in contact with the justice system: Further work is required to understand access to supports throughout the different stages of contact with the justice system, including before and after. This can enable the planning of better supports and services.

We need better protections for people with disability, particularly First Nations women: The design of supports must be disability and culturally appropriate to be effective.

Diversionary options are under-utilised in people with cognitive disability, particularly in socioeconomically disadvantaged areas: Further work required to explore mental health dismissals and options to better support people with disability who have offended.
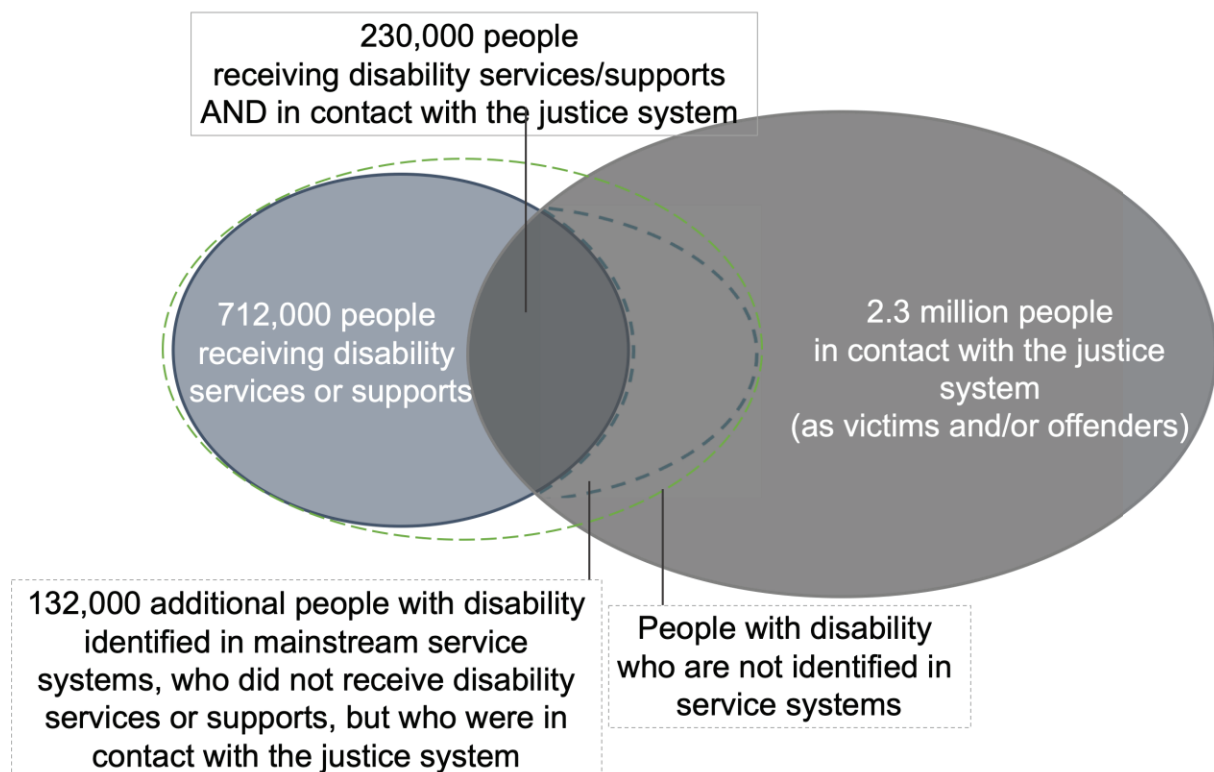
1.1 Background

People with disability are not easily identified in the administrative data of the justice system, either as victims or offenders. Without this information we are unable to plan and develop supports required for a contact with the justice system including the initial contact, navigating the court system, and accessing supports during and after a custodial episode.

By having a deeper understanding of the extent to which people with disability interact with the justice system, and the impact of services and supports on their outcomes, governments will be able to plan for better support services.

This test case included 2.8 million people who received a core disability support and / or who had contact with the criminal justice system as a victim, offender or both in NSW over a 10-year period. A core disability support includes the National Disability Insurance Scheme (NDIS), Disability Support Pension and Specialist Disability Services[1].

The linked dataset provides information on 2.8 million individuals

230,000 people
receiving disability services/supports
AND in contact with the justice system

712,000 people
receiving disability
services or supports

2.3 million people
in contact with the justice
system
(as victims and/or offenders)

132,000 additional people with disability
identified in mainstream service
systems, who did not receive disability
services or supports, but who were in
contact with the justice system

People with disability
who are not identified in
service systems

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[1] Specialist disability support services provided under the National Disability Agreement (source: Disability Services National Minimum Dataset).

*Defining and identifying disability for this NSW test case*

In this NSW test case two definitions of disability were used to explore the data:

1. Original disability indicator: People eligible and accessing a core disability support or service

2. Expanded disability indicator: People identified as likely to have a disability through mainstream service systems

230,000 people in NSW accessing a core disability support or service recorded at least one contact with the criminal justice system as a victim and / or offender during the period 2009-2018.

People with disability may not need or be eligible for a core disability support, or they may not be aware of their disability or want to accept a support. People with disability access a range of supports through mainstream service systems such as Medicare, housing services and hospitals.

Demonstrating the power of linked data, information from health, housing, and social services was used to identify additional people likely to have a disability, beyond those receiving a core disability support. This identified an **additional 132,000 people** in contact with the justice system during the 10-year period who are likely to have a disability in NSW.
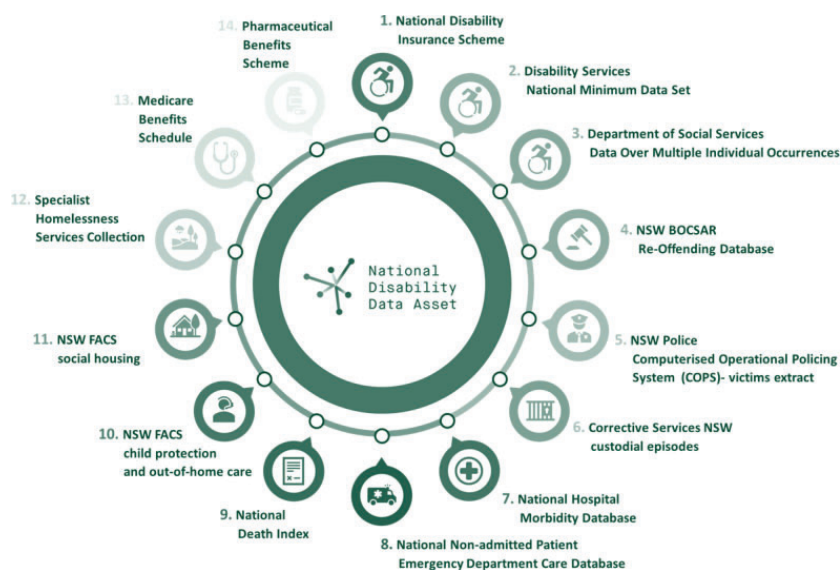
Clues in the mainstream services datasets are indictive of disability.

e.g. Housing: disability services needed – Hearing

Previous research tells us that people with disability, particularly cognitive and psychosocial disability are over-represented in the criminal justice system as victims and offenders[2]. This suggests that better identification and supports are needed to reduce the risk of people with disability coming into contact with the justice system. This is particularly relevant for First Nations Australians who are over-represented at all stages of the justice system.

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[2] Baldry, E., Clarence, M., Dowse, L., & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. Journal of Policy and Practice in Intellectual Disabilities, 10(3), 222-229.

> **Implications**
>
> This is the most comprehensive view of people with disability in contact with the criminal justice system in NSW, including for the first time quantifying the proportion of victims with disability.

**Identification of Disability: A First Nations Australians´Perspective**

- **There is no word for disability in First Nations languages**
    The concept is not well understood in Community leading to under-identification and under- supporting.
- **Under-reporting can be driven by fear**
    When a support need is recognised the disability may not be disclosed or supports accepted for fear of greater surveillance and other consequences.
- **Complex trauma is prevalent and disabling**
    Cumulative and compounded effects of disabilities, intergenerational trauma and complex needs are particularly prevalent.
    We currently have no administrative data to capture this.
- **Identification as a First Nations person is under-reported**
    To address support needs for First Nations people with disability in the data there are double disclosure challenges.

1.2 Key tables / figures

People with disability are over-represented in all types of criminal justice system contacts, NSW

Between 10% and 25% of NSW people in contact with the justice system were identified with a disability through accessing core disability supports. With use of additional indicators from mainstream services between 18% and 47% of people with justice system contacts were identified as having a disability.

Figure 1. Proportion of NSW people in contact with the criminal justice system with a disability,
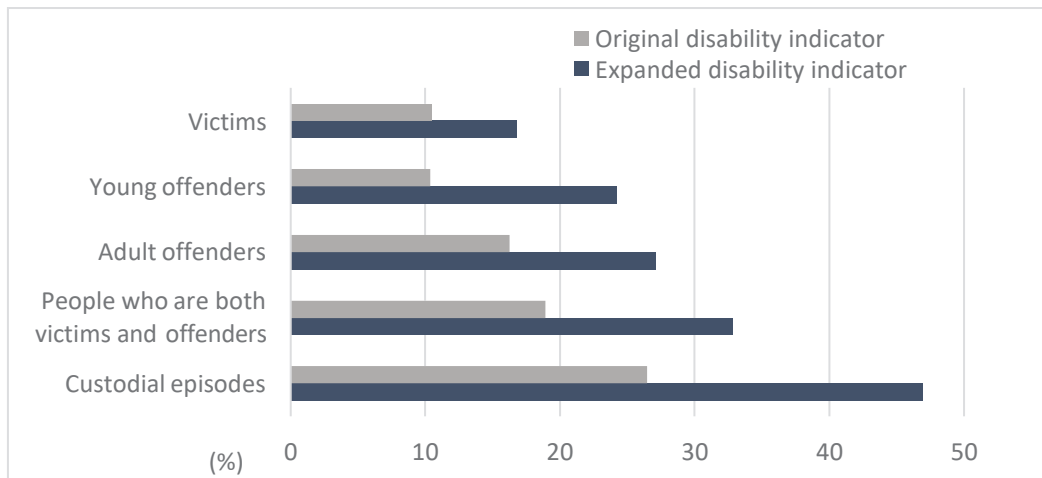
by contact type

Figure 2. Percentage of NSW custodial cohort with a disability, by disability type
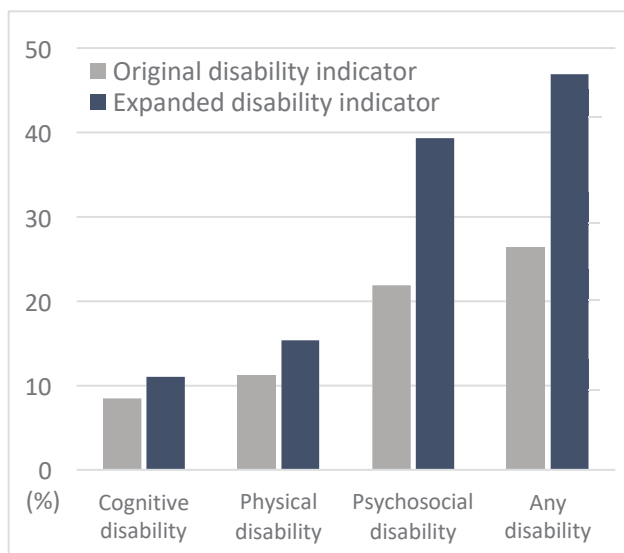
The expanded indicator particularly identified more people with psychosocial disability.

Due to the data available and how this was used to identify people with psychosocial and cognitive disability in the expanded indicator this is likely to be an overestimate (see Appendix).

Around 13% of Australians aged 15-64 are with disability[3] according to figures derived from the Survey of Disability, Ageing and Carers (SDAC). The results from this test case (though not directly comparable with this data) support **an over-representation of people with disability in all areas of the justice system.**

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[3] Australian Institute of Health and Welfare 2020. People with disability in Australia. Cat. no. DIS 72. Canberra: AIHW. Viewed 01 November 2021

> ## Implications
>
> The power of linked, de-identified person-centred data was used in this NSW test case to produce detailed characteristics such as disability types for groups in contact with the justice system.
>
> This enables planning of disability and culturally appropriate supports to better address needs.

People with disability are over-represented as victims of crimes in NSW

Nearly **1 in 3 people** in NSW accessing a core disability support were recorded as a victim of a crime reported to the police during the period 2009-2018. Not all crimes are reported to the police, so this is likely to be an underestimate of the actual rate of victimisation. However, **this is the most comprehensive population view of people with disability who have been victims of reported crimes in NSW.**

12.5% of people accessing a core disability support in NSW were the victim of a **violent crime** reported to police. Furthermore, people with disability are more likely to experience another violent incident within 12 months:

18% of people accessing a core disability support in NSW experienced **a violent re-victimisation incident within 12 months** compared to 13% in people not accessing core disability supports.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability public hearing 17[4] focussed on the experience of women and girls with disability with a particular focus on family, domestic and sexual violence. In the opening address the Chair commented:

> *"A critical step towards developing measures that can reduce family, domestic and sexual violence against women and girls with disability is to collect data on the phenomenon. Obviously, collection of data is not sufficient to address and redress the problem, but it is a necessary starting point."*
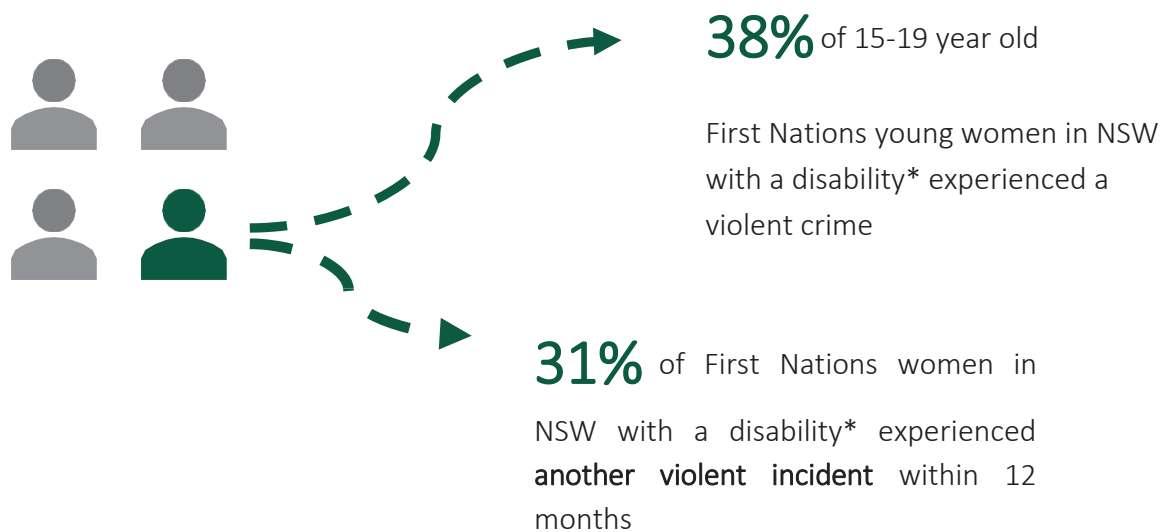>
> *~ The Hon Ronald Sackville AO QC, Chair~*

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[4] https://disability.royalcommission.gov.au/rounds/public-hearing-17-experience-women-and-girls-disability-particular-focus-family-domestic-and-sexual-violence-part-1

Whilst this pilot dataset will need to be developed, this test case takes us a critical step further in this knowledge and ability to provide appropriate actions.

First Nations young women with disability in NSW stand out as a particularly vulnerable group for violent crime

24% of First Nations women in NSW with disability* aged 15 years and over experienced a violent crime during the period 2014-2018.

38% of 15-19 year old

First Nations young women in NSW with a disability* experienced a violent crime

31% of First Nations women in NSW with a disability* experienced **another violent incident** within 12 months

*These findings on First Nations women in NSW with disability experiencing violence refer to those accessing core disability supports. Findings are likely to be underestimates, impacted by poor data quality in terms of:

- Disclosing First Nations identity
- Disclosing a disability
- Reporting a crime to the police

"It hurts because you know that is the reality on the ground. Intergenerational trauma, complex trauma fits into all these statistics."

"There is not enough support. Not enough programs dealing with Aboriginal women in these situations."

~Members of Aboriginal Perspectives Expert Panel~

> **Implications**
>
> These novel NSW population level insights on the proportion of people with disability who were victims of crimes reported to the police provide a picture of the scale and complexities that need to be considered when designing protections and services.

There is overlap between NSW people who are victims and who are offenders

Of the people who had contact with the justice system as both offenders and as victims, **1 in 3 were identified as having a disability.** Less than 1 in 5 were identified as accessing a core disability support.

<p align="center">"For many people the first time they get to report as a victim is when they are taken in as an offender."</p>

<p align="center">~Member of Aboriginal Perspectives Expert Panel~</p>

Around 1 in 4 young and adult offenders in NSW were identified with a disability

Around half of these individuals (16% of offenders) were accessing a core disability support, and 75% of these individuals (**1 in 8** adult offenders) were identified with a psychosocial disability.

The prevalence of disability was particularly high in First Nations offenders: **43% identified with a disability** and 24% accessed core disability supports.

The proportion of NSW adult offenders with cognitive disability who received a mental health dismissal was low

Section 32 and 33 of the now repealed Mental Health (Forensic Provisions) Act 1990 gave the court the power to divert a defendant who is suffering from a mental health condition into the care and treatment of mental health professionals, discharged unconditionally or discharged under treatment and /or assessment conditions[5] rather than the criminal justice system[6.] This option applies to people who are:

1. Cognitively impaired (includes borderline intellectual function, foetal alcohol spectrum disorder), or
2. Suffering from a mental illness (e.g. hallucinations, mood disorders), or
3. Suffering from a mental condition for which treatment is available in a mental health facility.

If a defendant is deemed eligible then the magistrate decides whether it is more appropriate to dismiss the matter or deal with it in accordance with the ordinary criminal law, depending on factors such as the seriousness of the offence, criminal history, a treatment plan, limited period of conditional orders, and sentencing options[7].

> *"From my experience when I was practicing there was massive **under use of the diversion mechanism,** especially the lack of use of that option in regional remote areas."*
>
> *~Member of Aboriginal Perspectives Expert Panel~*

Of the adult offenders in this cohort who were identified as having **cognitive disability, 13% received a dismissal** under sections 32 and 33 of the Mental Health (Forensic Provisions) Act 1990.

The proportion of offenders who received a dismissal varied by the level of socioeconomic disadvantage of their area of residence: the proportion of offenders who received a section 32/33 outcome was lowest in the most disadvantaged area. Some of this variation may be due to differences across areas in prior offending histories and/or offence seriousness to be explored in more detail.

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[5] This court-mandated plan may include, for example, attendance with a psychologist on a regular basis, taking prescribed medication, an assessment or detainment in a mental health facility.

[6] https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0004/41899/A-Practical-Guide-to-MH-Issues-in-the-NSWLC-Part-1-ss-32-33-MHFPA.pdf

[7] https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0004/41899/A-Practical-Guide-to-MH-Issues-in-the-NSWLC-Part-1-ss-32-33-MHFPA.pdf

Figure 3 Proportion of NSW adult offenders with cognitive disability who received an s32/s33 outcome by socioeconomic disadvantage[8]
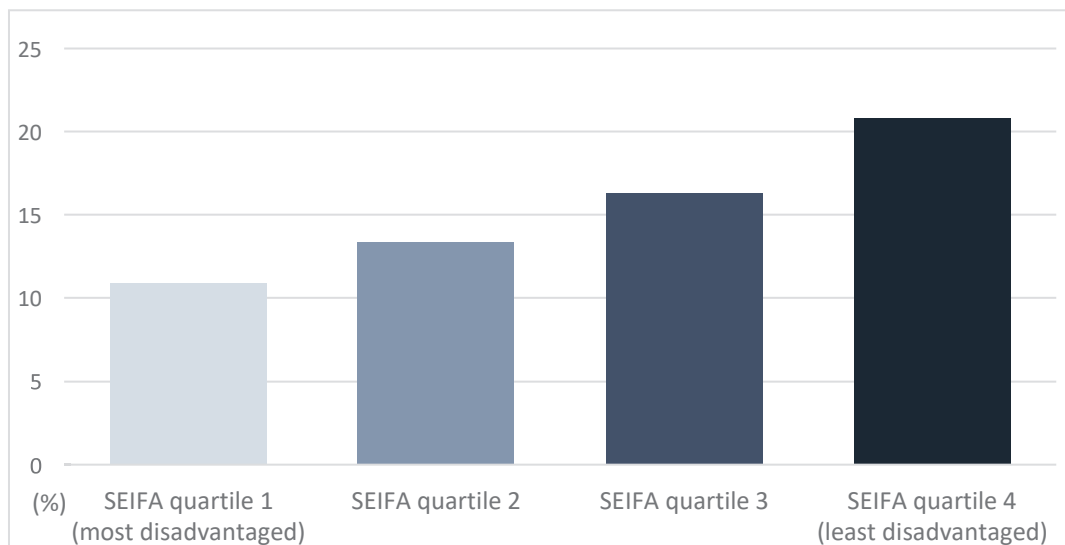
Implications

This NSW test case provides key insights on the number of people with cognitive disability and psychosocial disability who could be eligible for diversion. This information is pivotal to the development of initiatives to support people with cognitive impairment in the justice system.

Supporting People with Cognitive Impairment

"People with a cognitive impairment will receive greater support across the criminal justice system following the NSW Government's $28 million investment in the statewide Justice Advocacy Service (JAS) and a nation-leading court-based diversion program.

It will help these defendants access a cognitive assessment, develop tailored support plans, connect them with relevant services like the NDIS and provide accurate and relevant information to assist magistrates with their decision making."

~Department of Communities and Justice Media Release~

3 June 2021

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[8] For any non-driving offence finalised in the Local Court between 2009-2018.

NSW people with disability are particularly over-represented in custody

Nearly half (47%) of NSW people who have been in custody were identified with disability, with 27% accessing a core disability support. 1 in 10 had a cognitive disability and nearly 4 in 10 had a psychosocial disability. Over a third (36%) had multiple disabilities.

> *"If you take a broad definition around disability and include further factors around trauma, **you'd be pretty unique not to have a disability in prison**."*
>
> *~Member of Aboriginal Perspectives Expert Panel~*

From experience on the ground, the Aboriginal Perspectives Expert Panel described over-representation of people with cumulative disabilities and complex needs in the criminal justice system.

> *"We repeatedly see the **compound cumulative effects** .... cognitive impairment, mental health problems and hearing loss. None of which is a severe disability on its own, but combined leaves someone very vulnerable."*
>
> *~Member of Aboriginal Perspectives Expert Panel~*

Figure 4. Proportion of NSW custodial cohort, by number of disability types and disability services contact type
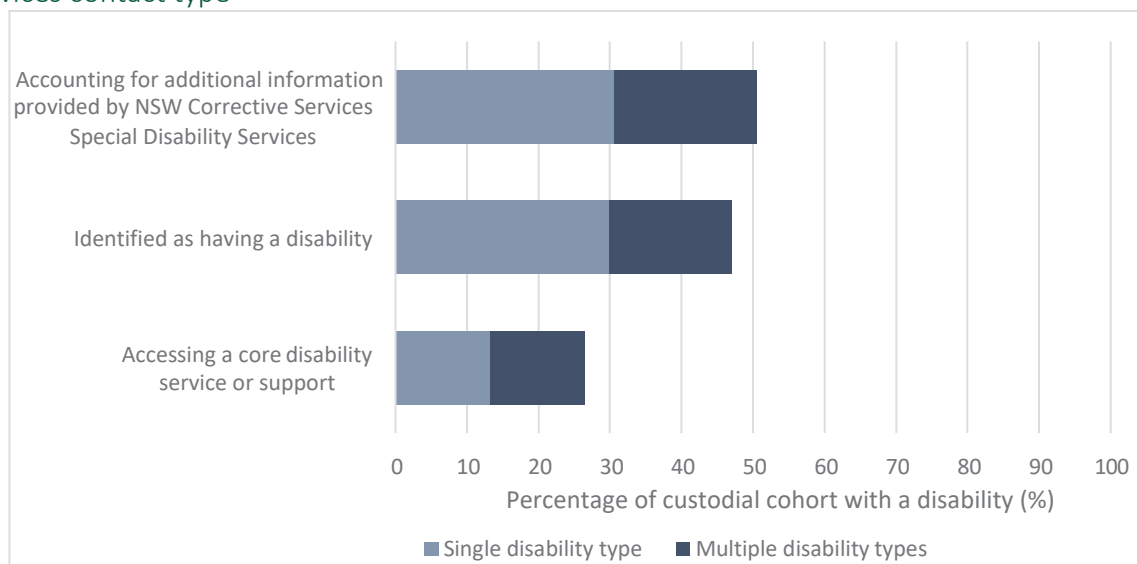

Insights from this linked dataset indicated as many as 20% of the NSW custodial cohort have multiple disabilities indicative of complex needs.

The Disability Royal Commission Public Hearing 15 focused on People with cognitive disability and the criminal justice system: NDIS interface[9]. **This test case quantifies at a NSW level, the proportion of people transitioning between the justice and disability systems** (27% of people in custody accessing core disability supports).

Young people in NSW with disability were more likely to re-offend within two years than young people with no disability

Within 2 years of a finalised court appearance, young offenders (10-17 years of age) identified with a disability were more likely to re-offend than those without disability. More work is required to understand the patterns of reoffending, whether the offence types are similar for people with disability, and whether offending varies in severity when people receive supports or not.

Figure 5. Proportion of people in NSW who reoffended within two years, by disability service contact type
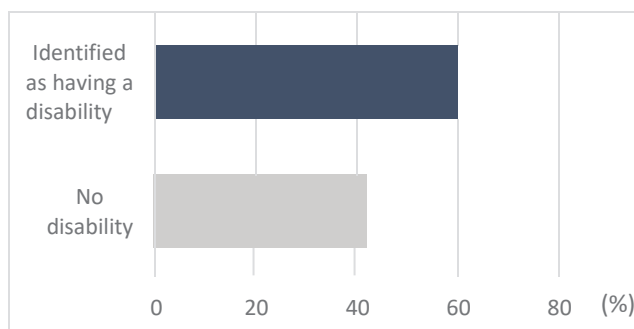
60% of young offenders identified with disability went on to reoffend compared with 42% of young offenders not identified with a disability.

Implications

These population level insights of the interactions through all levels of contact indicate the extent of awareness and support required for people with disability in contact with the justice system.

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[9] https://disability.royalcommission.gov.au/public-hearings/public-hearing-15

"Talking to men in prisons with serious mental health issues who have committed very violent offences. The struggles they experience in managing their progress through the justice system with their disability (e.g. cognitive impairment, hearing impairment)
it is setting the bar too high*"*

~Member of Aboriginal Perspectives Expert Panel~

Implications

The power of linked, de-identified person-centred data was used in this NSW test case to quantify and understand the characteristics of people with disability interacting with the justice system. These insights will be key to designing appropriate supports and services:

➢ To increase awareness and supports at all levels of contact with the justice system
➢ To design systems to protect the high number of people with disability, particularly First Nations (young) women with disability who are victims of crimes
➢ To advance programs supporting people with cognitive impairment in the justice system

1.3 APPENDIX: Overview of methodology

Project team

Research team NSW Bureau of Crime Statistics and Research (BOCSAR)

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Implementation teams

Celia Walker (NSW DCS), Ana Sartbayeva (DSS), Jo Maning (DSS), Seb Dunne (AIHW), Ximena Camacho (NPT)

Advisory project team members

Julian Trollor (UNSW), Philip Snoyman (NSW Corrective Services)

Study design

Study period

1 January 2009 - 31 December 2018

Cohort definition

The scope for analysis is individuals, resident in NSW at any time, aged 10 years and over who between 1 January 2009 and 31 December 2018 satisfied any of the following conditions:

1. are individuals (offenders/defendants) identified in the NSW Re-offending Database
2. are individuals (victims of crime) identified in an extract of NSW Police Victims' records
3. are identified in the NDIS dataset who met the eligibility requirements of the NDIS or were working towards getting a plan. To be eligible for the NDIS an individual must:
   - be under 65 when an application is made;
   - be an Australian Citizen or resident or permanent visa holder;
   - meet the disability or early intervention requirements.

4. were previously funded Disability Services clients (regardless of their NDIS status), to ensure coverage prior to the complete rollout of the NDIS throughout NSW
5. were in receipt of the Disability Support Pension.

Datasets

Agency (Data Custodian)	Data Collection
National Disability Insurance Agency	National Disability Insurance Scheme (NDIS)
Commonwealth Department of Social Services	Data Over Multiple Individual Occurrences (DOMINO)
Commonwealth Department of Health	Medicare Benefits Scheme (MBS) Pharmaceutical Benefits Scheme (PBS)
Australian Institute of Health and Welfare	National Death Index (NDI) Specialist Homelessness Services Collection (SHSC)
NSW Health	National Non-admitted Patient Emergency Department Care Database National Hospital Morbidity Database
NSW Department of Communities and Justice	NSW Re-offending Database (ROD) NSW Police Victims' records NSW Social housing data NSW Child Protection NSW Out of Home Care (OOHC) Disability Services NMDS

Identifying disability

1. **Original Disability Indicator** derived from data indicated in green
2. **Expanded Disability Indicator** includes all indicators listed in the table

Data source	Identifier of disability	Disability sub-groups based on:
Original Disability Indicator		
National Disability Insurance Scheme (NDIS)	**All persons accessing NDIS** All persons with conditions indicative of disability	Participant disability ICD codes
Disability Services National Minimum Data Set (DS NMDS)	**All recipients of disability services[10]**	Primary and other significant disability codes

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[10] Excluding services relating to research and evaluation, training and development, peak bodies.

Social security (DOMINO[11])	All Disability Support Pension (DSP) recipients AND All social security payment recipients and carers with selected permanent medical conditions[12]	Broad medical condition codes[4]
Expanded disability indicator (in addition to the above 3 data sets)		
Medicare Benefits Schedule (MBS)	Persons receiving disability-specific medical services	MBS Item numbers
National Hospital Morbidity Database (NHMD)	Persons with diagnoses indicative of disability	Primary and additional diagnoses based on ICD codes
Specialist Homelessness Services Collection (SHSC)	All people identified in SHSC data as needing disability services (information collected only pertains to physical and /or intellectual)	n/a
Public Housing (PH)	All people identified in PH data as having disability	Recorded disability groups
Specific to justice offending cohort		
NSW Reoffending Database (ROD)	All offenders who ever had mental health outcome for any offence AND All people in custody referred to Statewide Disability Services (SDS) AND All people with IQ < 70	Disability codes recorded in SDS referral

Caveats of expanded indicator of disability

- The inclusive approach is likely to result in some people falsely identified as with a disability. Insufficient detail was included in the DOMINO diagnostic data; it is likely that the use of higher order categories is too broad.
- Additional data sources (education, repeat emergency department presentations, non-government services and supports) are likely to yield valuable additional information to identify disability.
- In this test case timing of disability identification and contact with the justice system was not considered

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[11] DOMINO stands for Data Over Multiple INdividual Occurrences.

[12] Medical codes in DOMINO were provided for the NDDA Pilot as broad groupings only. Broad medical groups were classified as disability if more than 50 per cent of specific conditions within that group were indicative of disability. This may result in some false positives and false negatives in identifications of disability.