

Brain Injury and the Criminal Justice System

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Traumatic Brain Injury (TBI) is the leading cause of death and disability in children and young people in the UK aged 1-40 ([Parsonage, 2016](#), and [Williams et al., 2018](#)). Furthermore, worldwide research has shown that the number of people with a previous TBI is far higher among the convicted offender population than the general population ([Parsonage, 2016](#)). This trend is the same when the youth justice population is looked at, as [McMillan et al. \(2023\)](#) discovered in their study of young men aged 16 plus in Polmont Young Offenders Institute (YOI). This study revealed that out of 103 young men and boys, 82, or 80%, had a previous head injury.

The terms head injury, brain injury and TBI are all used interchangeably to refer to an incident where there has been some kind of impact to the head which has caused the brain to move within the skull. Common causes include falls, car accidents, sports injuries, and assaults/abuse. Head injuries can be classified as mild, moderate, or severe depending on the extent of the injury. The age of the person when the injury occurs, and the area of the brain affected also contributes to the lasting effect of the injury ([Parsonage, 2016](#), and [Hughes et al., 2015](#)).

Following an injury of this kind an individual could potentially experience a range of issues which affect them emotionally, psychologically, and behaviourally:

- Cognitive skills can be impacted, resulting with difficulty in engaging in education/training/employment.
- Ability to recall ideas and events.
- Ability to concentrate.
- Ability to control impulses.
- Increased irritation, frustration and agitation which can potentially cause stress and anxiety and leave children and young people vulnerable to peer influence and make it difficult to try to diffuse a tense situation.
- Increased aggression has been linked with earlier, more prolific, and more violent offending.

([Hughes et al., 2015](#), [Kent and Williams 2021](#), and [The Disabilities Trust, 2019](#)).

Research has also shown that there is a cumulative impact of sustaining several, seemingly mild, blows to the head over a period ([Kent and Williams, 2021](#)). This is exacerbated by the fact that individuals may not recognise the seriousness of the injury and do not seek medical help or support ([Parsonage, 2016](#)). Also, where the head injury has occurred because of illegal behaviour or due to prolonged substance use, this can prevent the seeking of help ([Kent and Williams, 2021](#)). Furthermore, if it is an injury sustained during an incident of domestic violence then this can compromise the person's ability to seek help ([Kent and Williams, 2021](#)). In cases where injury is sustained due to illegal behaviour, repeat injury is also very common ([Williams et al., 2010b](#)). Hospital admission for head injury is most common in the 75 and over age range but there is also a higher number in children, adolescents, and young people ([Parsonage, 2016](#)).

Brain Injury in Children and Young People

It is estimated that 30% of children and young people who have been in conflict with the law have a history of TBI, and it is often multiple injuries that have been sustained ([Parsonage, 2016](#)). When a brain injury occurs during childhood or adolescence, when the brain is still developing, this can significantly disrupt normal brain development ([Kent and Williams, 2021](#)). It is said that sustaining a TBI in childhood or early adolescence can increase the likelihood of criminal activity by at least 50% ([Parsonage, 2016](#), [Sheahan et al., 2021](#), and [Williams et al., 2010a](#)).

Research tells us that while sustaining a head injury in childhood and adolescence is more likely, so too is a child or young person coming into conflict with the law (**Parsonage, 2016**). This is due to the teenage and early adulthood years being the stage when children and young people are most likely to take risks and mix with peers engaging in risk taking behaviour. **Williams et al. (2010b)** found from their study that for children and young people, the main reason for sustaining a head injury was violence, followed by falls while under the influence of substances.

Impact on the Criminal Justice System

The justice system is complex, with many moving parts. A courtroom is a tense, fast-moving environment that is difficult to prepare a child or young person for. When you add in the potential complication of a brain injury, it can prove even more difficult to follow and understand proceedings. The aftereffects of a brain injury could also prevent someone from remembering appointments, thus compromising their ability to engage with services and understand what they have agreed to in court in terms of their sentence (**Lansdell et al., 2021**, and **Kent and Williams, 2021**).

Eriksson et al.'s (2019) Australian study of individuals with a brain injury and involvement with the justice system revealed that participants felt bewilderment at courtroom procedures and found the whole situation stressful. Due to this, it is vital that those working with children and young people in conflict with the law recognise the potential for a previous brain injury to impact on the child's ability to engage with processes/procedures (**Hughes et al., 2015**).

The Way Forward

Due to the overrepresentation of children and young people in the justice system who have a brain injury, it is vital that professionals working with children and young people in conflict with the law are trained to understand not only the impact of a brain injury, but also to recognise when there may be someone in court who has a brain injury that has not been acknowledged previously (**Kent and Williams, 2021**).

There is currently no routine screening for a brain injury in individuals accused of a crime and appearing in court. There is also no mandatory training regarding brain injury in prison staff (**The Disabilities Trust, 2019**). If there was a process in place which screened for brain injuries, then they would be quickly recognised and this would ensure that the person gets the proper support to try to prevent further offending (**Eriksson et al., 2019**). There is also a need to ensure that any child or young person attending court with a brain injury is properly supported before, during and after court to enable them to understand and participate in the process.

Williams et al. (2018) suggest better linking of systems within health and education, so information is shared to allow for early identification of a head injury to a child.

CYCJs Youth Court Blueprint details the ways in which Youth Courts could be ran which considers children's rights and any issues they may be facing such as trauma, TBI and neurodiverse conditions. It can be read **here**.

For further info/support contact CYCJ on 0141 444 8622 or cycj@strath.ac.uk