# **Introduction**

## **Intellectual Disability and Unjust Injustice**

People with an intellectual disability (PWID) are a sizeable and vulnerable group (Brown et al., 2015). Globally, estimates of the prevalence of intellectual disability (ID) range from 1-3% (World Health Organization [WHO] & The World Bank [WB], 2011; McKenzie et al., 2016; Armstrong et al., 2013), and in New Zealand, 2% of the population (≈100,000 people) have an ID (Statistics New Zealand, 2013; Intellectually Handicapped Children [IHC], 2017). This demographic, compared to the general population, is at an increased risk of social stigma and exclusion, discrimination, and abuse (Hughes et al., 2012). Additionally, PWID are more likely to be victims of crime (Fogden, et al., 2016; WHO & WB, 2011), or even perpetrators in some categories (e.g., violent crime) (cf. Nixon et al., 2017). Thus, PWID are more likely than the general population to depend on the efficacy of their respective justice systems (Brookbanks, 2019). Regularly, however, their needs are not met.

PWID that are victims of crime are less likely to have their complaints investigated and taken to court (Brown & Lewis, 2013), and when they are, conviction rates are lower (Williams, 1995; Agnew et al., 2006). An explanation for this “paradox” (Brown & Lewis, 2013) is that ableist discrimination (Hehir, 2002; Miller et al., 2004) against PWID seeps into the courtroom, and juries have misconceptions of the competencies of PWID (Stobbs & Kebbell, 2003; Westcott & Jones, 1999; Henry et al., 2011b). Yet, PWID do have various deficits (American Psychiatric Association [APA], 2013; Brown et al., 2015), so understanding juror perception, and when they are accurate or erroneous, is critical to judicial outcomes. Accordingly, this study will examine how juror beliefs compare to the capabilities of PWID in the courtroom.

## **Understanding ID’s**

Whilst understanding ID goes beyond clinical definitions, these are a good starting point. ID is a neurodevelopmental disorder (American Psychiatric Association [APA], 2013) that originates during a person's development period (before 18 years of age), is intellectual (e.g., problem solving, abstract thinking) and adaptive (e.g., personal independence, communication) functioning deficits. These demonstrate in conceptual, social, and practical domains, and can range in severity (mild, moderate, severe, and profound) (APA, 2013; WHO, 2018). Typically, these deficits mean PWID have a mental age (MA) that is lower than peers of the same chronological age (CA) who are typically developing (TD), meaning their developmental level is analogous of younger peers (APA, 2013; Henry et al., 2011b). ID’s are lifelong (Armstrong et al., 2013), and mild ID is the most common (Boat & Wu, 2015) classification (85% of PWID) (Armstrong et al., 2013).

To understand ID’s further, theory is likewise useful, and two central developmental theories for PWID exist. The ‘developmental model’ (Zigler & Balla, 1982) assumes TD people’s cognitive development is approximately linear and increasing throughout their lives, and PWID progress similarly, but at a slower rate. Conversely, the ‘difference model’ (Ellis, 1969, as cited in Brown et al., 2015) assumes that PWID have qualitatively, cumulatively, and increasing differences in cognitive development compared to TD peers. Overall, there is evidence for both theories depending on the severity of the person’s ID. The development for people with milder ID’s has been shown to follow a ‘developmental model’ trajectory (Henry et al., 2011a), and people with severer forms of ID follow a ‘difference model’ trajectory (Brown et al., 2012). Despite their deficits (e.g., memory, and adaptive and social skills), however, PWID have been shown to be able to handle courtroom stressors (Agnew et al., 2006; Armstrong et al., 2013).

## **1.3. ID in the Courtroom**

PWID will be considered on their competency with factors important in the courtroom such as exhibiting good memory of events, testifying well, and not appearing suggestible. PWID are often worse at all of the above compared to TD counterparts, and difficulties with these factors can compound and interact (Gudjonsson, 2003). For instance, should a PWID have poor memory, they are susceptible to confusion and vulnerable to leading questions by police/lawyers (Gudjonsson, 2003), and thus their testimony may appear unacceptable (Bowles & Sharman, 2014).

Regardless, research on PWID has shown how able this group is. CWID have been shown to have as good, and sometimes better, memory capabilities as their MA match (Henry & Gudjonsson, 1999; Michel et al., 2000; Brown et al., 2015). However, suggestibility findings are mixed (e.g., Henry & Gudjonsson, 1999; Henry & Gudjonsson, 2007; Michel et al., 2000; Young et al., 2003) but overall, suggestibility seems to be mitigated by improved, evidence-based interviewing techniques for CWID and AWID (e.g., Bull, 2010; Bowles & Sharman, 2014). Likewise, evidence-based additions in the courtroom such as expert evidence (Goodman-Delahunty, 2011) can mitigate the testimony pitfalls for PWID, and ensure their deficits are not the sole focus of their evidence.

A final note on ID severity, and which categories are likely in court, needs to be considered. Given most PWID have mild ID, jurors are more likely to encounter witnesses and defendants with mild ID. Likewise, the rigours of trial proceedings are extensive for PWID (Stevenson, 2019), and potentially beyond the capacities of severer sufferers. Literature supporting this is minimal, however a study of Australian offenders found 88.4% of PWID in custody as having milder forms of ID (Cockram, 2005). Thus, by applying the ‘developmental model’ for mild ID, jurors should expect most witnesses and defendants with ID’s to have more deficits than their CA match, but be as capable as a TD person with the same MA.

## **1.4. Jurors’ perceptions of PWID**

Jurors seldom have access to the literature regarding PWID, and as such, can inadvertently bring biases and misconceptions with them when hearing trials (Brookbanks, 1999; Patton & Keyes, 2006). Historically, for instance, AWID have erroneously been considered “eternal children" (Emerson et al., 1999; Brookbanks, 1999), which can manifest in the courtroom (Keyes, et al., 1998). AWID have been shown to be seen by jurors as less credible than TD counterparts (Stevenson, 2019), though research in this area is scarce. More research exists regarding children, however, and jurors often perceive CWID and MA matches who are TD as equally credible and competent (Peled et al., 2004; Brown & Lewis, 2013). This finding seems typical in the absence of the disclosure of, and information about, ID’s (e.g., Henry et al., 2011b; Brown & Lewis, 2013; Crane et al., 2020). Further, PWID are seen to be trustworthy (Brown & Lewis, 2013) and honest (Stobbs & Kebbell, 2003).

## **The Present Study**

We explored hypotheses relating to measures (memory, suggestibility, and ability to testify in court) of credibility of child (early [ages 3-5] and middle [ages 6-11] childhood) and adult witnesses among jurors, and the impact an ID have on these perceptions. We expect:

1. the trajectory of the ‘developmental model’ will replicate, and children will be seen evaluated more negatively than adults in our measures.

2a) CWID will be evaluated more negatively in our measures than TD children.

2b) AWID will be evaluated more negatively in our measures than TD adults, but in accordance with the ‘developmental model’, be evaluated more positively than children.