

People with disability and offending in NSW: Results from the National Disability Data Asset pilot

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AIM

To describe the proportion of people with disability in New South Wales who offend, and the proportion of offenders who have a disability, separately for young and adult offenders.

METHOD

Data were obtained for individuals in contact with the criminal justice system and/or specific disability support services between 1 January 2009 and 31 December 2018. For those who accessed these core disability support services (the “disability cohort”), we report frequencies and percentages relating to whether individuals had offending and/or custodial records during the 10-year period. Similarly, for the young and adult offender cohorts, we report frequencies and percentages relating to whether individuals had a disability, as per the disability cohort definition or a broader disability indicator. The following characteristics were also considered: age, sex, Aboriginality, type of disability (cognitive, psychosocial, physical), offence type (violent, domestic violence (DV) related, property), whether custodial episodes were sentenced episodes, and whether individuals were recorded as victims of crime during the same 10-year period.

RESULTS

Sixteen per cent of the disability cohort had a finalised matter (caution, youth justice conference, or court appearance) during the 10-year period; 5 per cent had a custodial episode. Across all offence types, rates were highest for those with psychosocial disability, particularly those with both cognitive and psychosocial disabilities. Rates were also higher for males (vs. females), for those aged 15–34 years (vs. <15 years and 35–64 years), for Aboriginal people, and for those recorded as victims of crime. Almost a quarter of young offenders were identified as people with disability (10% in the disability cohort), with rates of disability highest for DV offenders (42% identified with disability, 19% in the disability cohort). Similarly, 27 per cent of adult offenders were identified as people with disability (16% in the disability cohort), with highest rates of disability for property offenders (45% identified with disability, 25% in the disability cohort). Rates of disability were higher in Aboriginal offenders than non-Aboriginal offenders. Aboriginal offenders were also more likely than non-Aboriginal offenders to have been victims of crime during the period. For example, 90 per cent of Aboriginal female young offenders with disability were recorded as victims of crime during the period, versus 59 per cent of non-Aboriginal female young offenders with no identified disability. More than 2 in 5 young people and around 1 in 2 adults with sentenced custodial episodes were identified as people with disability.

CONCLUSION

A significant proportion of young and adult offenders were identified as people with disability and many of these individuals had also been victims of crime. There is an urgent need for further disability focused research to identify opportunities for strengthened support and diversion for this vulnerable group.

KEYWORDS

Disability

Offending

Young offender

Prison

Aboriginal Australians

INTRODUCTION

There is strong evidence, internationally and in Australia, that people with cognitive and mental health impairments are over-represented throughout the criminal justice system (New South Wales (NSW) Law Reform Commission, 2012). However, disability research in justice settings has been piecemeal, focusing on disparate cohorts and specific types of disability, often defined differently across studies (Boiteux & Poynton, 2022; Llewellyn, 2017). These methodological differences make it difficult to interpret and compare results between studies, and have led to highly variable estimates of prevalence. For example, systematic reviews have reported that between 0.5–1.5 per cent (Fazel, Xenitidis, & Powell, 2008) and 7–10 per cent (Hellenbach, Karatzias, & Brown, 2017) of adult prisoners have an intellectual disability. Recently, using linked administrative data from NSW, and measures of intellectual disability from a range of datasets, Trofimovs, Dowse, Srasuebkul, and Trollor (2021) estimated that 4.3 per cent of the adult custody population in NSW have an identified intellectual disability. High rates of disability have also been reported for young offenders, particularly for young people in custody, but again estimates vary significantly across studies. A review focusing on the prevalence of disability in youth custody populations in the United States estimated that between 28 and 58 per cent of young people in custody have a disability (Morris & Morris, 2006). Meanwhile, Borschmann et al. (2020) in their recent global review of 245 studies examining specific types of disability and health problems amongst adolescents in detention, reported that between 2 and 47 per cent of young people have a neurodevelopmental disability, and between 0 and 95 per cent a mental health disorder. These differences in prevalence estimates, which can largely be attributed to differing diagnostic criteria and sampling methods (Trofimovs et al., 2021), significantly hinder attempts to develop, monitor and evaluate criminal justice disability policies and programs.

Australian research

Prevalence estimates of disability in the Australian criminal justice system are commonly derived from cross-sectional custodial surveys. One notable example is a regular small and unrepresentative¹ adult prisoner entrant survey (n=803) undertaken by the Australian Institute of Health and Welfare (AIHW), which incorporates information from all Australian states except NSW. In the latest wave of this survey, 29 per cent of prison entrants self-reported a chronic condition or disability that affected their participation in day-to-day activities, education, or employment, with 1.4 per cent of these prisoners reporting always or sometimes needing help with at least one activity (AIHW, 2019). Similar results emerged from a large, representative adult prisoner survey undertaken in NSW. In this health survey, 28 per cent of the prison population self-reported experiencing difficulties with everyday activities² related to long-term health conditions or disabilities (Justice Health & Forensic Mental Health Network [JHFMHN], 2017a), and around one quarter reported having previously received the Disability Support Pension. Rates of disability differed by gender and Aboriginality (JHFMHN, 2017b), with the highest rates reported by Aboriginal women (43%). Additionally, around half of all adult prisoners in NSW reported receiving psychiatric care before entering prison, and a large proportion reported previously receiving a diagnosis for mental health conditions such as anxiety (24%), drug abuse or dependence (20%), and psychosis including schizophrenia (17%).

Large, representative youth custodial surveys have also been undertaken in NSW and report that 17 per cent of young people in custody in NSW have an intellectual disability and that a further 39 per cent have a borderline intellectual disability (JHFMHN & Juvenile Justice NSW, 2017). Particularly high rates of cognitive disability have been reported for Aboriginal young people in custody, with almost one in four Aboriginal young people likely to have an intellectual disability compared with one in 12 non-Aboriginal young people (JHFMHN & Juvenile Justice NSW, 2017). Young people in custody were also found to experience psychological disorders at a high rate (83%), and Aboriginal young people experienced psychological disorders at a higher rate than their non-Aboriginal peers (87% vs. 79% for

¹ The survey is conducted in a limited set of prisons in each state, excludes NSW prisons from disability reporting, and self-documents additional sources of bias related to selective participation.

² Activities are measured across nine domains proposed as relevant by the National Disability Insurance Agency.

one psychological disorder; 69% vs. 57% for two more psychological disorders). Largest proportional differences were seen in the rate of young Aboriginal people in custody with schizophrenia or psychotic disorders, which was around seven times higher than the equivalent rate for their non-Aboriginal peers (7% vs. 1%).

Few Australian studies have assessed disability prevalence among arrestees but those that exist suggest that people with disability also have disproportionately high levels of contact at earlier stages of the criminal justice process.³ Surveys relying on self-report have estimated that around 12 per cent of defendants appearing in NSW criminal courts may have an intellectual disability (Vanny, Levy, Greenberg, & Hayes, 2009), between 33–55 per cent may have a cognitive disability (Hayes, 1993; 1996), and between 38–55 per cent experience mental health concerns or mental illness (Jones & Crawford, 2007; Vanny et al., 2009). These studies have generally employed small samples and different methods to identify disability. A larger, whole-of-population linkage study in Western Australia reported that 32 per cent of people with psychiatric illness were arrested over a 12-year period, with the highest prevalence in those with substance use disorders; conversely, 11 per cent of offenders had a mental illness (Morgan et al., 2013). Compounding effects of cognitive and psychosocial disability have also been found. For example, both Fogden, Thomas, Daffern, and Ogloff (2016) and Thomas, Nixon, Ogloff, and Daffern (2019) report that people with intellectual disability and comorbid mental illness are around 2–4 times more likely than those with intellectual disability alone to have a history of criminal charges.

Although people with disability are thought to comprise a large proportion of arrestees and prisoners, less is known about their profile of offending. Recent research comparing age and sex adjusted rates of offending for people with disability with the NSW population, reported higher rates of offending for people with disability across all offence types assessed, but particularly high rates of violent offending, property offending and offences against justice procedures (about three times those in the total population; Ringland, Boiteux, & Poynton 2022a). Smaller studies focusing on the experiences of people with intellectual disability have produced somewhat mixed results. For example, Fogden et al. (2016) found that people with intellectual disability who had experienced a restrictive intervention⁴ in Victoria between 2007–2012 were equally likely to be charged with any offence (around 9 per cent) as people drawn from a community sample, but were more likely to record a violent (7% vs. 2%) or sexual offence (3% vs. 0.3%). Meanwhile, similar work by Nixon, Thomas, Daffern and Ogloff (2017) found that people with intellectual disability were more likely to offend than a community sample across all offence types including violent (13% vs. 4%), sexual (5% vs. 0.3%), and other non-violent offending (17% vs. 9%).

While multiple studies have reported increased victimisation rates for people with disability,⁵ less is known about the intersection of offending and victimisation. The limited evidence available suggests that many people with disability who offend have also been victims of crime. For example, Baldry, Clarence, Dowse and Trollor (2013) reported that more than 90 per cent of all prisoners had police contact as victims of crime, with rates significantly higher for those with cognitive disability and/or mental disorder. Further, Anstis and Thomas (2022) examined overlapping experiences of criminal victimisation and offending amongst people with intellectual disability in Victoria. Compared to offenders with no recorded victimisation episode, those who experienced victimisation more often offended at an earlier age, had a co-occurring psychosocial disability, and offended at a higher frequency. Aboriginal women in prison are also thought to have particularly long and serious histories of abuse (Lawrie, 2003).

³ See Marshall-Tate, Chaplin, McCarthy and Grealish (2020) for a systematic review of intellectual disability prevalence in a court setting. Given limitations of research, the review was only able to identify two relevant studies concerning the prevalence of intellectual disability in court.

⁴ Under the *Disability Act 2006* (Vic), a restrictive intervention can include chemical restraint, mechanical restraint or seclusion.

⁵ See for example, Dowse, Soldatic, Spangaro and van Toorn (2016); Emerson, Newland, Vaughan and Llewellyn (2017); Fogden et al. (2016); Nixon et al. (2017); Centre of Research Excellence on Disability and Health (2021); and Ringland et al. (2022a; 2022b).

The current study

This Bureau Brief uses linked NSW population level data, from the Justice Test Case of the National Disability Data Asset pilot, to examine the prevalence of offending for people with disability, and the prevalence of disability for the offending population. We consider both young and adult offenders, including those with custodial episodes, and focus on type of disability (cognitive, physical, psychosocial), type of offending (violent, domestic violence (DV) related, property), demographic characteristics (age, sex and Aboriginality), and contact with the criminal justice system as a victim of crime.

METHOD

Sample

Offending and custody records from the NSW Bureau of Crime Statistic and Research's (BOCSAR) Re-offending Database (ROD) and victim records from the NSW Police Force,⁶ were provided to the Australian Institute of Health and Welfare (AIHW) for linkage with other State and Commonwealth data collections.⁷ Included in the Justice Test Case cohort were individuals who were aged 10 years or over between 1 January 2009 and 31 December 2018 (i.e., born before 1 January 2009), who resided in NSW, and who had records in any of the following:

- the NSW Re-offending Database (offenders⁸);
- NSW Police Force Victims data (victims of crime);
- the National Disability Insurance Scheme (NDIS) dataset, having met the eligibility requirements of the NDIS⁹ or working towards getting a plan;
- the Disability Services National Minimum Data Set (DS NMDS), being a NSW funded Disability Services client prior to the rollout of the NDIS (regardless of their NDIS status);
- Department of Social Services Data Over Multiple Individual Occurrences (DOMINO), as a recipient of the Disability Support Pension (DSP).

After applying some additional inclusion criteria (see Ringland et al. [2022b] for further details), the final Justice Test Case cohort included 2,332,763 individuals: 209,243 individuals who received a disability service and had at least one Criminal Justice System (CJS) contact between 2009 and 2018; 392,791 individuals who received a disability service or support only; and 1,730,729 individuals who had CJS contact as a victim or offender but who did not receive a disability service. The current study includes a subset of the Justice Test Case cohort: those who received disability services and supports covered by the NDIS, DS NMDS and the DSP (referred to as the "disability cohort"), and those who had an offending and/or custodial contact during the period 2009–2018.

Data sources

Disability indicators

The identification of people with disability based on whether they receive the DSP and/or a disability service or support through the NDIS, or through state-based disability services (pre-NDIS) potentially underestimates the prevalence of disability for the offending population. This is because some people

⁶ These records are provided by the NSW Police Force to the NSW Bureau of Crime Statistics and Research (BOCSAR) for routine reporting purposes.

⁷ ROD and victims data were pre-linked by BOCSAR. Individuals with CJS contacts between 2009 and 2018 were then linked to the AIHW National Linkage Map, which was done using a statistical linkage key (SLK) that allowed privacy preservation. Specifically, SLK-581 was used – a concatenation of 2nd, 3rd and 5th letters of surname, 2nd and 3rd letters of first name, date of birth and sex. The AIHW National Linkage Map contains all individuals who have registered with Medicare since 1984, those in DOMINO since 2000, and those included in the National Death Index since 1997.

⁸ While we use the term "offenders", this includes both defendants with proven and unproven offences.

⁹ To be eligible for the NDIS an individual must be under 65 years of age when an application is made, be an Australian Citizen or resident or permanent visa holder, and meet the disability or early intervention requirements.

with disability will not access disability-specific services and supports, and some will not be eligible. To address this limitation we also use a broader range of data collections to identify an additional group of individuals likely to have a disability but who did not appear in the disability-specific data sources previously described. The broader datasets included:

- medical codes in DOMINO for recipients of Job Seeker, Youth Allowance or Parenting payments who have reduced capacity to work (including temporary or ongoing partial capacity);
- disability-specific diagnosis codes recorded in the National Hospital Morbidity Database;
- Medicare Benefits Schedule item codes for services relating to autism, pervasive developmental disorder or disability, or a small group of consultant psychiatrist attendances to which no other item applies;
- disabilities recorded in the NSW Housing data;
- disability service needs recorded in the Specialist Homelessness Services Collection.

Individuals identified as having a disability through these sources alone are referred to as the “other disability identifier” group.

Box 1. Examples of conditions and disorders by disability type

Condition/Disorder/Disease	Disability type		
	Cognitive	Physical	Psychosocial
Intellectual Disability (mild to profound)	yes		
Traumatic brain injury	yes		
Autism	yes		
Fetal alcohol syndrome	yes	yes	
Down syndrome	yes	yes	
Cerebral palsy		yes	
Visual impairment (including blindness)		yes	
Hearing loss		yes	
Alcohol or other substance dependency			yes
Schizophrenia			yes
Bipolar affective disorder			yes
Major depressive illness			yes
Borderline personality disorder			yes

People with disability, both the disability cohort and the other disability identifier group, were further classified as having a cognitive, physical and/or psychosocial disability.¹⁰ These indicators were developed by researchers from Swinburne University in conjunction with the Commonwealth Department of Social Services (DSS), as part of the Justice Test Case. Some examples of the most common conditions and disorders within each disability type are presented in Box 1. However, a large proportion of individuals were identified as having a disability solely based on records in DOMINO, and only broad groupings of conditions were available for this data collection (e.g., intellectual/learning, psychological/psychiatric). For a further description of the data collections, variables and values that contributed to these indicators see Ringland et al. (2022b; particularly Appendix A, Table A1).

¹⁰ In this study we report disability indicators derived from records over the 10-year period – we do not take into account the timing of disability onset/identification in relation to the offending contact.

As shown in Box 1, some conditions may have resulted in an individual being classified as having more than one type of disability. For example, a person recorded as having fetal alcohol syndrome was classified as having both a cognitive and a physical disability. Further, an individual may have been classified as having multiple disability types due to having multiple conditions. There were also some individuals who were identified as having a disability without being classified as having any particular type of disability (referred to elsewhere as “unspecified” disability); these individuals received disability services and supports, but no condition/diagnosis details were available.

Offending data

Data on cautions and youth justice conferences under the *Young Offenders Act 1997* (NSW), cannabis cautions, and court appearances finalised in NSW Children’s, Local, District and Supreme Courts, were included.¹¹ Contacts are further examined according to whether the principal offence¹² at the finalisation was a violent, DV-related or property offence, based on the following:¹³

- Violent — Australian and New Zealand Standard Offence Classification (ANZSOC; Australian Bureau of Statistics, 2011) divisions 1, 2, 3, 5, 6, relating to homicide, assault, sexual assault, abduction and harassment, and robbery
- Domestic violence — in accordance with the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), including breaches of apprehended violence orders (AVOs)
- Property — ANZSOC divisions 7, 8, 9, relating to break and enter, theft and fraud

Contacts for young people are defined as cautions, youth justice conferences and Children’s Court finalisations where the individual was aged up to 21 years, and other finalisations where the individual was between 10 and 17 years of age at the time of finalisation. Contacts for adults are defined as cannabis cautions, and finalisations in NSW Local, District, Supreme and Drug Courts where the individual was 18 years or older at the time of finalisation.¹⁴

Custodial data

Information on custodial episodes was also sourced from ROD. We present data on any custodial episode,¹⁵ as well as episodes in juvenile and adult settings, and episodes where the legal status at discharge was recorded as “sentenced”.¹⁶

Other data sources

In addition to disability and offending data, we present demographic characteristics of the disability and offending cohorts. More specifically, for the disability cohort, we examine the proportion of individuals who had offending contact according to age at the beginning of the 10-year period (grouped into <15 years, 15–24 years, 25–34 years, 35–44 years, 45–54 years, and 55–64 years), sex and Aboriginality. When looking at the offending cohort we examine disability indicators by sex and Aboriginality.¹⁷ Demographic variables (age, sex and Aboriginality) were compiled from numerous data collections included in the National Disability Data Asset pilot.¹⁸

We also include a flag for whether individuals had a victim contact recorded by the NSW Police Force during the 10-year period. The victim incident may have taken place before or after the offending contact, and could have been an incident of any type (e.g., violence or property).

11 In this study we include contacts regardless of whether the individual was found guilty.

12 The principal offence is the offence that received the most serious penalty at the finalisation.

13 Not all offence categories are examined separately. For example, we do not look specifically at drug or driving/traffic offences, or offences against justice procedures. Some information on these offence categories can be found at Ringland et al. (2022a).

14 A small proportion of these matters would have related to offences that occurred prior to 18 years of age.

15 Including sentenced and remand episodes, regardless of length.

16 We compared rates relating to sentenced custodial episodes with rates relating to finalisations that resulted in a prison penalty and found very similar results.

17 A small proportion of individuals with unknown Aboriginality were included with non-Aboriginal females and males.

18 See Ringland et al. (2022a) for further details.

Statistical Analysis

For the disability cohort we present frequencies and percentages relating to whether individuals had an offending contact during the 10-year period, and whether contacts related to violent, DV or property offending. We do the same for any custodial episode and for sentenced custodial episodes. Similarly, for the young and adult offending cohorts, we report frequencies and percentages relating to whether individuals were people with disability, as defined by the disability cohort or other disability identifiers, and the type of disability recorded. Disability profiles of young and adult offenders (relating to any offence) are also examined by sex and Aboriginality (i.e., non-Aboriginal females, Aboriginal females, non-Aboriginal males, Aboriginal males). Further, we present frequencies and percentages relating to those who had records of victim contacts during the period.

RESULTS

People with disability and offending contact

In this section we focus on the disability cohort and the number and proportion of individuals who had an offending-related contact. Based on the disability cohort definition, there were 602,034 individuals in NSW identified as having a disability between 2009 and 2018. During the 10-year period, 15.9 per cent of these individuals had a finalised court appearance, cannabis caution, or a caution or youth justice conference under the Young Offenders Act.¹⁹ In Table 1, we present the count and percentage of individuals who had offending and/or custodial contact by disability type/s, as well as by key demographic characteristics such as age, sex and Aboriginality.

Looking at disability type overall, the proportion of people with disability (in the disability cohort) who had an offending contact ranged from 14.3 per cent of those with physical disability through to 21.1 per cent of those with psychosocial disability. In terms of combinations of disability type/s, rates of offending contact ranged from 7.3 per cent of those with both cognitive and physical disabilities, through to 23.3 per cent of those with psychosocial disability only.

Similar patterns were seen for violent, DV-related and property offending, although rates were lowest in those with unspecified disability and highest in those with both cognitive and psychosocial disability. Overall, 6.7 per cent of the disability cohort had a contact for a violent offence, with the percentage ranging from 2.2 per cent of those with unspecified disability only, through to 12.5 per cent of those with both cognitive and psychosocial disability. Similarly, 4.2 per cent of the disability cohort had a contact for a DV-related offence, ranging from 1.3 per cent of those with unspecified disability through to 8.3 per cent of those with both cognitive and psychosocial disability. Only 3.5 per cent of the disability cohort had a contact for property offending, ranging from 0.9 per cent of those with unspecified disability through to 7.4 per cent of those with cognitive and psychosocial disability.

Overall, 5.2 per cent of the disability cohort had a custodial episode during the 10-year period, with half of these individuals (2.5%) having a custodial episode as a sentenced prisoner. The percentage of individuals having custodial contact was also lowest for those with unspecified disability only (1.4%), and highest for those with both cognitive and psychosocial disability (9.8%).

Looking at demographic characteristics, rates of offending and custodial contact were highest in those aged 25–34 years at the start of the study period. In this age group, almost 3 in 10 individuals had an offending contact, 14.2 per cent had contact for a violent offence, 9.6 per cent had contact for a DV-related offence and 7.9 per cent had contact for a property offence. Around 1 in 8 people with disability

¹⁹ We haven't restricted our figures to proven offences, however, 92 per cent of those with any offending contact had a conviction or a caution (where guilt is assumed).

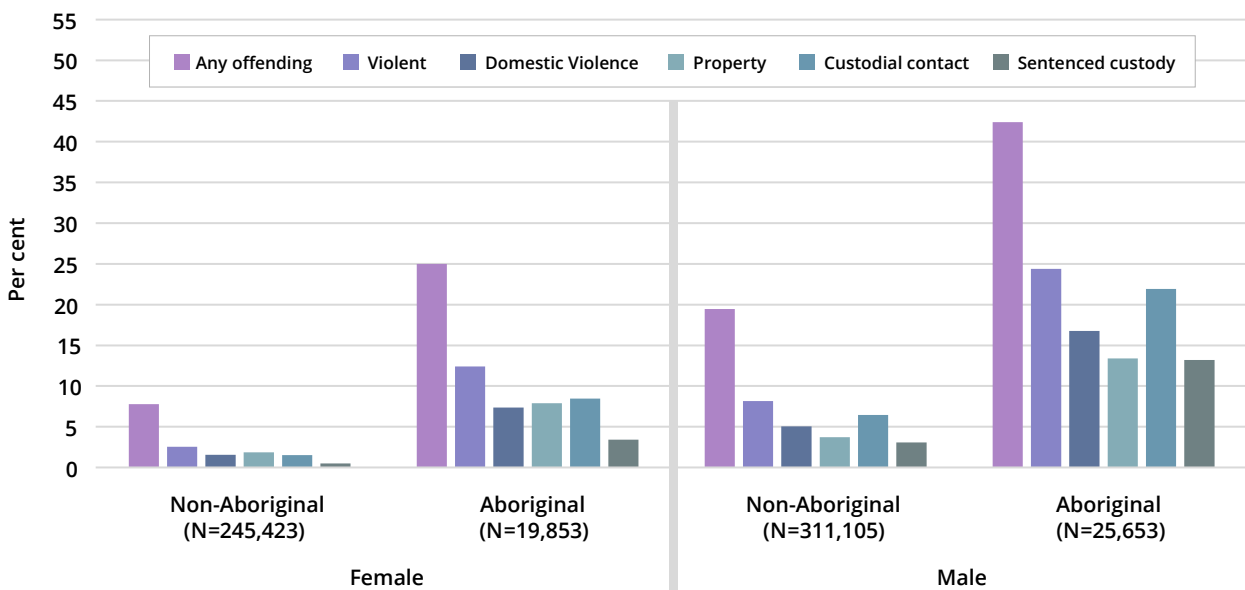
aged 25–34 years had a custodial episode, with more than half of these individuals (6.6%) having a sentenced custodial episode. Rates of offending and custodial contact were much lower in those aged less than 15 years²⁰ and 45 years and over, than in those aged 15–44 years at the start of the period.

Rates of offending contact were 2 to 3 times higher in males than females. Around 1 in 5 males with disability had an offending contact, and almost 1 in 10 had contact for a violent offence, with 5.9 per cent having a contact for a DV-related offence, and 4.5 per cent contact for a property offence. Almost 1 in 13 males in the disability cohort had a custodial episode during the period, with more than half of these (3.9%) having a sentenced custodial episode. In comparison, 1 in 50 females in the disability cohort had a custodial episode during the 10-year period.

Rates of offending and custodial contact by sex and Aboriginality are presented in Figure 1 (as well as Table 1). Rates were particularly high for Aboriginal males with disability, with more than 2 in 5 having an offending contact, 1 in 4 having a contact for violent offending, and 1 in 6 having a contact for DV-related offending. More than 1 in 5 Aboriginal males in the disability cohort had a custodial episode and more than half of these individuals had a sentenced custodial episode (13.2%). Rates of offending and custodial contact were also high for Aboriginal females in the disability cohort – 3 to 7 times higher than for non-Aboriginal females with disability. For example, 25.0 per cent of Aboriginal females had an offending contact versus 7.8 per cent of non-Aboriginal females, and 3.4 per cent of Aboriginal females had a custodial episode as a sentenced prisoner versus 0.5 per cent of non-Aboriginal females.

Almost 30 per cent of the disability cohort had a victim contact recorded by the NSW Police Force during the 10-year period. Compared with the disability cohort overall, rates of offending contact were twice as high in those recorded as being a victim of a criminal incident. More than one-third of those with a victim record had an offending contact, with nearly half of these individuals (16.4% of those with a victim record) having a contact for violent offending, and more than 3 in 10 (10.8% of those with a victim record) having a DV-related offending contact. Around 1 in 8 of those with a victim record had a custodial episode, and almost half of these had a sentenced custodial episode.

Figure 1. People with disability, 2009–2018: offending and custodial contacts by sex and Aboriginality



20 One possible reason for this lower rate of offending and custodial contact in this group is the principle of *doli incapax*, which presumes children aged 10–14 are not sufficiently intellectually and morally developed to appreciate the difference between right and wrong, and therefore lack the *mens rea* or mental element for an offence. Amongst other elements, this places an onus of proof on the prosecution to raise and rebut this presumption, to satisfy the court that the child knew the act was “seriously wrong”, and to provide strong and clear evidence beyond all doubt or contradiction. For a detailed discussion of *doli incapax* and offending in people under the age of 15, see NSW Parliamentary Research Service (2022).

Table 1. People with disability and offending contact, 2009–2018

	Disability cohort		Offending contact								Custodial contact			
			Any		Violent		Domestic violence		Property		Any		Sentenced	
			N	per cent (col)	n	per cent (row)	n	per cent (row)	n	per cent (row)	n	per cent (row)	n	per cent (row)
Total	602,034	100.00	95,400	15.85	40,316	6.70	25,259	4.20	21,118	3.51	31,096	5.17	14,842	2.47
Disability type														
Cognitive	172,107	28.59	27,474	15.96	13,378	7.77	8,662	5.03	7,481	4.35	9,880	5.74	4,703	2.73
Physical	309,191	51.36	44,297	14.33	17,831	5.77	11,326	3.66	8,859	2.87	13,170	4.26	6,113	1.98
Psychosocial	336,357	55.87	71,057	21.13	32,086	9.54	20,344	6.05	17,042	5.07	25,706	7.64	12,345	3.67
Combinations of disability type														
Cognitive only	29,073	4.83	5,098	17.54	2,271	7.81	1,361	4.68	1,460	5.02	1,598	5.50	768	2.64
Physical only	91,243	15.16	8,195	8.98	2,457	2.69	1,484	1.63	1,043	1.14	1,591	1.74	726	0.80
Psychosocial only	128,300	21.31	29,873	23.28	13,239	10.32	8,134	6.34	7,074	5.51	11,155	8.69	5,371	4.19
Cognitive & Physical	48,311	8.02	3,542	7.33	1,325	2.74	815	1.69	688	1.42	801	1.66	336	0.70
Cognitive & Psychosocial	38,420	6.38	8,624	22.45	4,798	12.49	3,183	8.28	2,840	7.39	3,773	9.82	1,923	5.01
Physical & Psychosocial	113,334	18.83	22,350	19.72	9,065	8.00	5,724	5.05	4,635	4.09	7,070	6.24	3,375	2.98
Cognitive & Physical & Psychosocial	56,303	9.35	10,210	18.13	4,984	8.85	3,303	5.87	2,493	4.43	3,708	6.59	1,676	2.98
Unspecified only	97,050	16.12	7,508	7.74	2,177	2.24	1,255	1.29	885	0.91	1,400	1.44	667	0.69
Age group at 1/1/2009 (years)														
<15 years	60,013	9.97	7,989	13.31	4,140	6.90	2,651	4.42	3,174	5.29	2,400	4.00	871	1.45
15–24	55,989	9.30	14,934	26.67	7,509	13.41	4,935	8.81	4,408	7.87	5,841	10.43	2,782	4.97
25–34	64,173	10.66	19,043	29.67	9,138	14.24	6,136	9.56	5,078	7.91	8,097	12.62	4,251	6.62
35–44	102,422	17.01	25,016	24.42	10,717	10.46	6,703	6.54	4,946	4.83	8,742	8.54	4,229	4.13
45–54	154,841	25.72	20,045	12.95	6,477	4.18	3,736	2.41	2,613	1.69	4,651	3.00	2,079	1.34
55–64	164,592	27.34	8,373	5.09	2,335	1.42	1,098	0.67	899	0.55	1,365	0.83	630	0.38
Sex														
Female	265,276	44.06	24,049	9.07	8,718	3.29	5,295	2.00	6,132	2.31	5,444	2.05	1,854	0.70
Male	336,758	55.94	71,351	21.19	31,598	9.38	19,964	5.93	14,986	4.45	25,652	7.62	12,988	3.86
Sex/Aboriginality														
Female/Non-Aboriginal	245,423	40.77	19,088	7.78	6,257	2.55	3,832	1.56	4,567	1.86	3,763	1.53	1,177	0.48
Female/Aboriginal	19,853	3.30	4,961	24.99	2,461	12.40	1,463	7.37	1,565	7.88	1,681	8.47	677	3.41
Male/Non-Aboriginal	311,105	51.68	60,476	19.44	25,341	8.15	15,661	5.03	11,548	3.71	20,029	6.44	9,599	3.09
Male/Aboriginal	25,653	4.26	10,875	42.39	6,257	24.39	4,303	16.77	3,438	13.40	5,623	21.92	3,389	13.21
Victim contact	171,845	28.54	58,676	34.14	28,139	16.37	18,467	10.75	15,160	8.82	21,695	12.62	10,316	6.00

Note. People may have more than one disability type – percentages do not add up to 100. Included in the <15 years age group are 31,705 individuals who were <10 years at the beginning of the period.

Offending cohort and disability

In this section we focus on the cohort of individuals who had offending and/or custodial contacts during the period 2009 to 2018, and we examine the proportion identified as people with disability. We use two indicators of disability – the disability cohort definition and the other disability identifier (as described in the Method section). Further, we look at the disability type/s identified, where this was determined from all available data collections (i.e., from those used to define the disability cohort and other disability indicators). Offending and custodial contacts are split into those relating to young people and those relating to adults.

Young offenders

We begin with young offenders. Table 2 shows that there were 73,910 young offenders during the 10-year period. Almost a quarter of these young people were identified as people with disability, either through the disability cohort definition (10.4%) or the other disability identifier (13.6%). In Figure 2 we include rates of disability by offending type (information also presented in Table 2). Young offenders with disability most commonly had psychosocial disability (16.5% of all young offenders, and almost 70% of young offenders with disability), while around half had cognitive disability (12.3% of all young offenders and 51.1% of young offenders with disability). More than 2 in 5 young offenders (44.0%) had contact for a property offence; 26 per cent of these young people were identified as people with disability (based on the disability cohort or other disability identifier). In contrast, more than 30 per cent of young offenders who had contact for a violent offence, and 42.5 per cent of those who had contact for a DV-related offence, were identified as people with disability. Most commonly these young people had cognitive and/or psychosocial disability.

Of the 10,886 young people who had a custodial episode, 2 in 5 were identified as people with disability, 18.3 per cent through the disability cohort definition and 22.6 per cent through the other disability identifier. Most commonly these young people were identified as having a psychosocial disability (29.2% of all young offenders with custodial contact and 71.6% of those with a disability), however more than 1 in 5 had a cognitive disability (54.0% of those with disability). Looking at combinations of disability type, 14.7 per cent of young people who had a custodial episode were identified as having a psychosocial disability only, 9.9 per cent a cognitive and psychosocial disability, and 7.8 per cent a cognitive disability only. Similar percentages were seen for young people with sentenced custodial episodes.

Also included in Table 2 are the proportions of offenders who were recorded as victims of crime during the 10-year period. Overall, 56.0 per cent of young offenders were recorded as a victim of crime, 59.7 per cent of property offenders through to 74.2 per cent of domestic violence offenders. In a later table we look more closely at the proportion of young offenders recorded as victims of crime, by disability type, sex and Aboriginality (see Table 4).

Figure 2. Young offenders by disability, 2009–2018

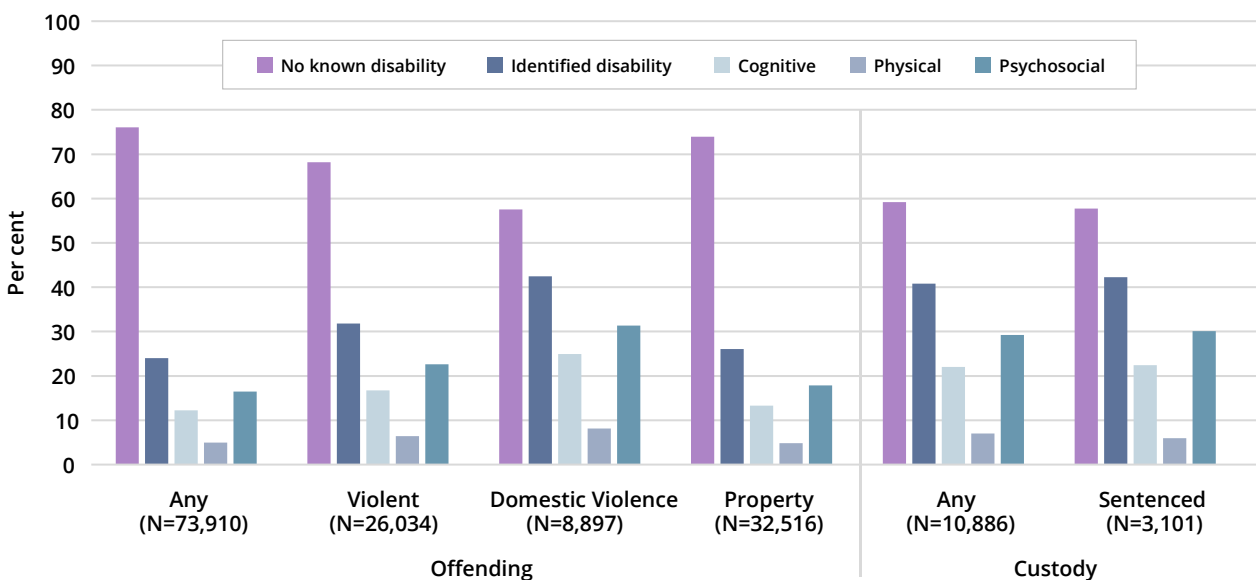


Table 2. Young people with offending and custodial contacts, by disability indicator, disability type/s and victim contact, 2009–2018

	Offending contact								Custodial contact			
	Any		Violent		Domestic violence		Property		Any		Sentenced	
	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)
Total	73,910	100.00	26,034	100.00	8,897	100.00	32,516	100.00	10,886	100.00	3,101	100.00
Disability indicator												
No known disability	56,191	76.03	17,755	68.20	5,119	57.54	24,048	73.96	6,442	59.18	1,791	57.76
Disability cohort	7,667	10.37	3,610	13.87	1,732	19.47	3,547	10.91	1,989	18.27	570	18.38
Other disability identifier	10,052	13.60	4,669	17.93	2,046	23.00	4,921	15.13	2,455	22.55	740	23.86
Disability type												
Cognitive	9,053	12.25	4,357	16.74	2,215	24.90	4,324	13.30	2,399	22.04	696	22.44
Physical	3,674	4.97	1,671	6.42	725	8.15	1,570	4.83	765	7.03	185	5.97
Psychosocial	12,175	16.47	5,884	22.60	2,788	31.34	5,801	17.84	3,182	29.23	934	30.12
Combinations of disability type												
Cognitive only	3,421	4.63	1,489	5.72	687	7.72	1,703	5.24	853	7.84	271	8.74
Physical only	891	1.21	353	1.36	97	1.09	390	1.20	146	1.34	37	1.19
Psychosocial only	6,371	8.62	2,940	11.29	1,235	13.88	3,109	9.56	1,602	14.72	501	16.16
Cognitive & Physical	623	0.84	268	1.03	107	1.20	270	0.83	116	1.07	29	0.94
Cognitive & Psychosocial	3,644	4.93	1,894	7.28	1,032	11.60	1,782	5.48	1,077	9.89	314	10.13
Physical & Psychosocial	795	1.08	344	1.32	132	1.48	341	1.05	150	1.38	37	1.19
Cognitive & Physical & Psychosocial	1,365	1.85	706	2.71	389	4.37	569	1.75	353	3.24	82	2.64
Unspecified only	609	0.82	285	1.09	99	1.11	304	0.93	147	1.35	39	1.26
Victim contact	41,419	56.04	17,390	66.80	6,597	74.15	19,398	59.66	7,882	72.40	2,262	72.94

In Table 3, we present disability profiles of young offenders, by sex and Aboriginality. Non-Aboriginal females comprised 21.6 per cent of young offenders, Aboriginal females 7.5 per cent, non-Aboriginal males 56.0 per cent and Aboriginal males 14.9 per cent. Around 1 in 5 non-Aboriginal young offenders were identified as people with disability, with similar rates for males and females; greater proportions of Aboriginal young offenders were identified as people with disability – 31.4 per cent for females and 36.0 per cent for males.

In terms of disability type/s, psychosocial disability was the most identified disability for all groups (76–80% of females with disability and 63–65% of males with disability; with the range shown coming from estimates for Aboriginal and non-Aboriginal young people), however, cognitive disability was also frequently identified in both non-Aboriginal and Aboriginal males (57–61% of those with disability had cognitive disability).

Table 3. Young people with offending contact (N = 73,910), by sex and Aboriginality, 2009–2018: disability identifier and disability type/s

	Females				Males			
	Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal	
	n	per cent	n	per cent	n	per cent	n	per cent
Total (row %)	15,969	21.61	5,529	7.48	41,416	56.04	10,996	14.88
Disability indicator								
No known disability	12,787	80.07	3,793	68.60	32,569	78.64	7,042	64.04
Disability cohort	1,124	7.04	610	11.03	4,106	9.91	1,827	16.62
Other disability identifier	2,058	12.89	1,126	20.37	4,741	11.45	2,127	19.34
Disability type								
Cognitive	981	6.14	557	10.07	5,090	12.29	2,425	22.05
Physical	571	3.58	377	6.82	1,915	4.62	811	7.38
Psychosocial	2,561	16.04	1,332	24.09	5,783	13.96	2,499	22.73
Combinations of disability type								
Cognitive only	310	1.94	167	3.02	1,972	4.76	972	8.84
Physical only	131	0.82	100	1.81	495	1.20	165	1.50
Psychosocial only	1,751	10.96	871	15.75	2,661	6.43	1,088	9.89
Cognitive & Physical	62	0.39	49	0.89	338	0.82	174	1.58
Cognitive & Psychosocial	432	2.71	233	4.21	2,040	4.93	939	8.54
Physical & Psychosocial	201	1.26	120	2.17	342	0.83	132	1.20
Cognitive & Physical & Psychosocial	177	1.11	108	1.95	740	1.79	340	3.09
Unspecified only	118	0.74	88	1.59	259	0.63	144	1.31

Note. Row percentages are included for the Total row; all other percentages are column percentages.

In Table 4 we examine the proportion of Aboriginal and non-Aboriginal young offenders who were victims of crime during the 10-year period, comparing rates by disability indicator and type/s. Rates of victimisation varied from 49.0 per cent of non-Aboriginal male young offenders through to 79.3 per cent of Aboriginal female offenders. In all groups (by sex and Aboriginality) victimisation rates were higher for people with disability versus those with no known disability, and were lowest for those with physical disability only and highest for those with cognitive, physical and psychosocial disability. In males, a greater proportion of those identified through the disability cohort were victims of crime, compared with those identified through the other disability identifier.

Table 4. Young people with offending contact (N = 73,910), by disability indicators, sex and Aboriginality, 2009–2018: victims of crime

	Females				Males			
	Non-Aboriginal (N = 15,969)		Aboriginal (N = 5,529)		Non-Aboriginal (N = 41,416)		Aboriginal (N = 10,996)	
	n	per cent	n	per cent	n	per cent	n	per cent
Total	10,144	63.52	4,385	79.31	20,278	48.96	6,612	60.13
Disability indicator								
No known disability	7,521	58.82	2,836	74.77	14,599	44.82	3,822	54.27
Disability cohort	922	82.03	551	90.33	2,708	65.95	1,336	73.13
Other disability identifier	1,701	82.65	998	88.63	2,971	62.67	1,454	68.36
Disability type								
Cognitive	806	82.16	499	89.59	3,288	64.60	1,708	70.43
Physical	464	81.26	331	87.80	1,223	63.86	583	71.89
Psychosocial	2,148	83.87	1,212	90.99	3,913	67.66	1,862	74.51
Combinations of disability type								
Cognitive only	244	78.71	144	86.23	1,141	57.86	614	63.17
Physical only	95	72.52	79	79.00	260	52.53	102	61.82
Psychosocial only	1,462	83.50	792	90.93	1,745	65.58	796	73.16
Cognitive & Physical	45	72.58	43	87.76	209	61.83	121	69.54
Cognitive & Psychosocial	362	83.80	211	90.56	1,414	69.31	706	75.19
Physical & Psychosocial	169	84.08	108	90.00	230	67.25	93	70.45
Cognitive & Physical & Psychosocial	155	87.57	101	93.52	524	70.81	267	78.53
Unspecified only	91	77.12	71	80.68	156	60.23	91	63.19

Note. Numbers and percentages relate to young offenders who were recorded as victims of crime during the 10-year period. Corresponding denominators are included in Table 3.

Adult offenders

We now turn our focus to adult offenders. Table 5 shows there were 565,263 adult offenders during the 10-year period. More than one quarter of these individuals were identified as people with disability, either through the disability cohort definition (16.3%) or the other disability identifier (10.8%). In Figure 3 we include rates of disability by offending type (information also presented in Table 5). Overall, psychosocial disability was the most common disability type identified (20.7% of all offenders and 76.4% of those with disability), followed by physical disability (10.6% of all offenders and 38.9% of those with disability), and cognitive disability (5.7% of all offenders and 21.0% of people with disability). Rates of disability were similar for violent and DV-related offenders. Of those with violent offending contact, 37.2 per cent were identified as people with disability, with 30.2 per cent of adult offenders identified as having psychosocial disability. Similarly, of those with DV-related offending contact, 38.5 per cent were identified as people with disability, with 31.6 per cent having psychosocial disability. Less than 10 per cent of violent and DV-related offenders were identified as having a cognitive disability. Rates of disability were higher for property offenders, with 45.3 per cent identified as people with disability, 24.7 per cent from the disability cohort and 20.5 per cent from the other disability identifier. Almost 2 in 5 of these offenders (84% of those with disability) had a psychosocial disability.

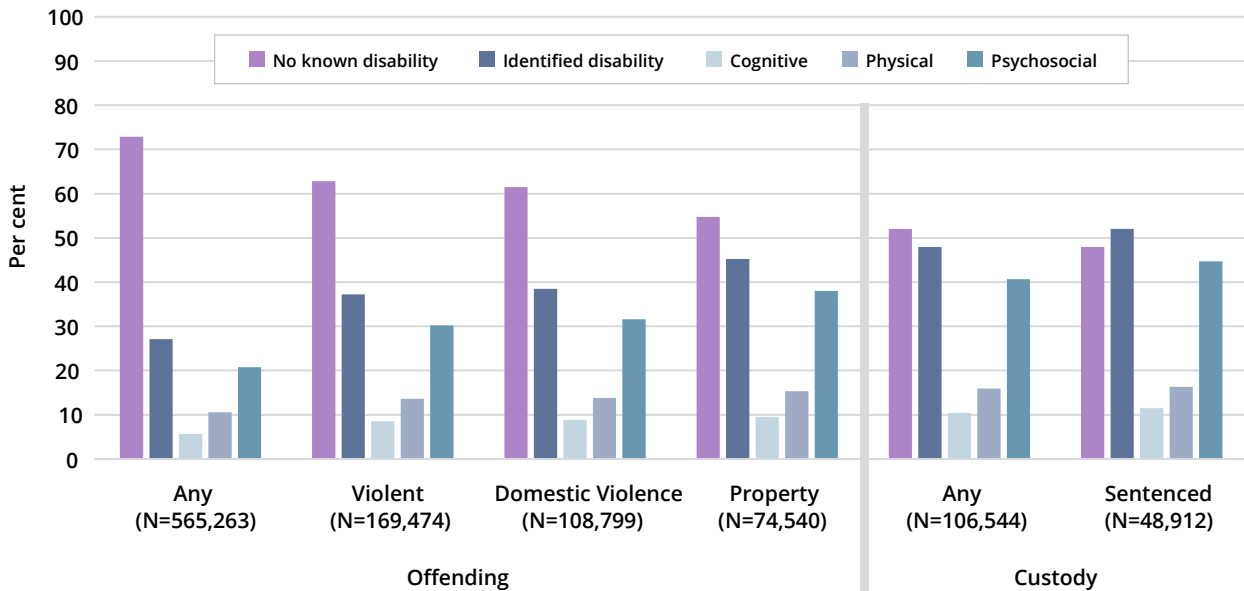
Table 5. Adults with offending contact, by disability indicator, disability type/s, and victim contact, 2009–2018

	Offending contact								Custodial contact			
	Any		Violent		Domestic violence		Property		Any		Sentenced	
	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)	n	per cent (col)
Total	565,263	100.00	169,474	100.00	108,799	100.00	74,540	100.00	106,544	100.00	48,912	100.00
Disability indicator												
No known disability	411,971	72.88	106,416	62.79	66,923	61.51	40,804	54.74	55,478	52.07	23,448	47.94
Disability cohort	92,013	16.28	37,958	22.40	23,998	22.06	18,430	24.72	29,027	27.24	14,069	28.76
Other disability identifier	61,279	10.84	25,100	14.81	17,878	16.43	15,306	20.53	22,039	20.69	11,395	23.30
Disability type												
Cognitive	32,123	5.68	14,469	8.54	9,665	8.88	7,080	9.50	11,122	10.44	5,614	11.48
Physical	59,644	10.55	23,031	13.59	15,039	13.82	11,405	15.30	16,948	15.91	7,999	16.35
Psychosocial	117,163	20.73	51,190	30.21	34,414	31.63	28,354	38.04	43,347	40.68	21,847	44.67
Combinations of disability type												
Cognitive only	7,126	1.26	2,827	1.67	1,835	1.69	1,337	1.79	2,047	1.92	1,042	2.13
Physical only	15,232	2.69	4,624	2.73	2,931	2.69	2,078	2.79	2,902	2.72	1,335	2.73
Psychosocial only	67,065	11.86	29,117	17.18	19,752	18.15	17,010	22.82	25,844	24.26	13,175	26.94
Cognitive & Physical	4,316	0.76	1,480	0.87	954	0.88	681	0.91	902	0.85	384	0.79
Cognitive & Psychosocial	10,002	1.77	5,146	3.04	3,508	3.22	2,698	3.62	4,359	4.09	2,392	4.89
Physical & Psychosocial	29,417	5.20	11,911	7.03	7,786	7.16	6,282	8.43	9,330	8.76	4,484	9.17
Cognitive & Physical & Psychosocial	10,679	1.89	5,016	2.96	3,368	3.10	2,364	3.17	3,814	3.58	1,796	3.67
Unspecified only	9,455	1.67	2,937	1.73	1,742	1.60	1,286	1.73	1,868	1.75	856	1.75
Victim contact	288,729	51.08	105,127	62.03	70,677	64.96	47,395	63.58	68,331	64.13	31,006	63.39

Close to half of adults with custodial contact were identified as people with disability, and more than half of these individuals were identified through the disability cohort definition. Psychosocial disability was again the most identified disability (40.7% of those with custodial contact and 84.9% of people with disability). However, more than 1 in 10 individuals who had custodial contact were identified as having a cognitive disability and more than 1 in 7 had a physical disability. Similar patterns are shown for those with sentenced custodial episodes, however, rates of disability are slightly higher in this group than the custodial group overall (e.g., 52.1% of sentenced individuals were identified as people with disability vs. 47.9% of the custodial population).

The proportions of adult offenders who were recorded as victims of crime during the 10-year period are also included in Table 5. Overall, 51.1 per cent of adult offenders were recorded as a victim of crime, with similar rates for violent, DV and property offenders, as well as those with custodial episodes (ranging from 62.0% to 65.0%). In a table that follows we look more closely at the proportion of adult offenders recorded as victims of crime, by disability type, sex and Aboriginality (see Table 7).

Figure 3. Adult offenders by disability, 2009–2018



In Table 6 we present disability profiles for adult offenders by sex and Aboriginality. Non-Aboriginal females comprised 20.0 per cent of the offending population, Aboriginal females 3.5 per cent, non-Aboriginal males 69.7 per cent and Aboriginal males 6.9 per cent. Rates of identified disability were highest in Aboriginal females (47.2% of the population) and lowest in non-Aboriginal males (23.8% of the population), with the majority of disability identified according to the disability cohort definition. Psychosocial disability was most commonly identified in all groups (from 17.5% of non-Aboriginal male offenders to 39.5% of Aboriginal female offenders). Both female and male Aboriginal adults with offending contact were more likely to be identified as people with disability than their non-Aboriginal counterparts (47.2% vs. 29.8% for females, and 43.3% vs. 23.8% for males). The difference in the rate of cognitive disability in males (12.7% of the Aboriginal offending population vs. 5.4% of the non-Aboriginal offending population) is particularly of note.

Table 6. Adults with offending contact (N = 565,263), by sex and Aboriginality, 2009–2018: disability identifier and disability type/s

	Females				Males			
	Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal	
	n	per cent	n	per cent	n	per cent	n	per cent
Total (row %)	113,006	19.99	19,480	3.45	394,080	69.72	38,697	6.85
Disability indicator								
No known disability	79,329	70.20	10,285	52.80	300,396	76.23	21,961	56.75
Disability cohort	18,362	16.25	4,643	23.83	58,748	14.91	10,260	26.51
Other disability identifier	15,315	13.55	4,552	23.37	34,936	8.87	6,476	16.74
Disability type								
Cognitive	4,562	4.04	1,448	7.43	21,187	5.38	4,926	12.73
Physical	12,822	11.35	3,427	17.59	37,319	9.47	6,076	15.70
Psychosocial	28,060	24.83	7,699	39.52	68,793	17.46	12,611	32.59
Combinations of disability type								
Cognitive only	689	0.61	236	1.21	4,924	1.25	1,277	3.30
Physical only	2,649	2.34	633	3.25	10,514	2.67	1,436	3.71
Psychosocial only	17,204	15.22	4,596	23.59	38,484	9.77	6,781	17.52
Cognitive & Physical	603	0.53	150	0.77	3,040	0.77	523	1.35
Cognitive & Psychosocial	1,286	1.14	459	2.36	6,544	1.66	1,713	4.43
Physical & Psychosocial	7,586	6.71	2,041	10.48	17,086	4.34	2,704	6.99
Cognitive & Physical & Psychosocial	1,984	1.76	603	3.10	6,679	1.69	1,413	3.65
Unspecified only	1,676	1.48	477	2.45	6,413	1.63	889	2.30

Note. Row percentages are included for the Total row; all other percentages are column percentages.

In Table 7 we present the proportion of Aboriginal and non-Aboriginal adult offenders who were victims of crime during the 10-year period. Victimization rates were similar to those for young offenders, ranging from 46.9 per cent of non-Aboriginal male offenders through to 81.4 per cent of Aboriginal female offenders. In all groups (by sex and Aboriginality) rates were higher for those with disability versus those with no known disability, with similar proportions for those identified through the disability cohort and the other disability identifier. For both non-Aboriginal and Aboriginal females, rates of victim contact were lowest for those with physical disability only and those with both physical and cognitive disabilities; rates were highest for those with both cognitive and psychosocial disabilities. Aside from unspecified disability, for both non-Aboriginal and Aboriginal males, rates of victim contact were lowest for those with physical disability only; rates were highest for those with both cognitive and psychosocial disabilities, with or without physical disability.

Table 7. Adults with offending contact (N = 565,263), by disability indicators, sex and Aboriginality, 2009–2018: victims of crime

	Females				Males			
	Non-Aboriginal (N = 113,006)		Aboriginal (N = 19,480)		Non-Aboriginal (N = 394,080)		Aboriginal (N = 38,697)	
	n	per cent	n	per cent	n	per cent	n	per cent
Total	65,203	57.70	15,859	81.41	184,730	46.88	22,937	59.27
Disability indicator								
No known disability	40,966	51.64	7,992	77.71	131,651	43.83	11,832	53.88
Disability cohort	12,770	69.55	3,919	84.41	33,042	56.24	6,790	66.18
Other disability identifier	11,467	74.87	3,948	86.73	20,037	57.35	4,315	66.63
Disability type								
Cognitive	3,363	73.72	1,265	87.36	13,023	61.47	3,470	70.44
Physical	8,957	69.86	2,891	84.36	21,095	56.53	4,062	66.85
Psychosocial	20,749	73.95	6,660	86.50	40,581	58.99	8,593	68.14
Combinations of disability type								
Cognitive only	483	70.10	199	84.32	2,843	57.74	796	62.33
Physical only	1,614	60.93	505	79.78	5,062	48.15	853	59.40
Psychosocial only	12,756	74.15	3,981	86.62	21,964	57.07	4,440	65.48
Cognitive & Physical	364	60.36	120	80.00	1,641	53.98	344	65.77
Cognitive & Psychosocial	1,014	78.85	413	89.98	4,225	64.56	1,288	75.19
Physical & Psychosocial	5,477	72.20	1,733	84.91	10,078	58.98	1,823	67.42
Cognitive & Physical & Psychosocial	1,502	75.71	533	88.39	4,314	64.59	1,042	73.74
Unspecified only	1,027	61.28	383	80.29	2,952	46.03	519	58.38

Note. Numbers and percentages relate to adult offenders who were recorded as victims of crime during the 10-year period. Corresponding denominators are included in Table 6.

DISCUSSION

In this descriptive study we examined the proportion of people with disability who offended over a 10-year period, and the proportion of young and adult offenders in NSW with cognitive, physical and/or psychosocial disabilities. The study is the first of its kind in Australia, looking at a range of offending cohorts and broad disability types, with consideration given to Aboriginality and offenders as victims of crime. It also provides some of the first prevalence estimates of physical disability among people in contact with the criminal justice system; a cohort that has been relatively under researched to date.

We found that although, overall, relatively few people who were identified with disability in this study offended or entered custody during the 10-year study period (16% and 5% respectively), some groups had much higher rates of contact with the criminal justice system. People identified with psychosocial disability had the highest rate of offending of any type (21%), and the highest rates of violent (10%), domestic violence related (6%) and property offending (5%), and imprisonment (8%). People identified with cognitive disability had the second highest rate of offending (16%), with 8 per cent recording at

least one violent offence. While methodological differences make a direct comparison difficult,^{21, 22} our estimates are somewhat similar to those reported by Morgan et al. (2013) and Nixon et al. (2017), who found, respectively, that 32 per cent of people with psychiatric illness in Western Australia had previously been arrested and 19 per cent of people with intellectual disability have been charged with a criminal offence. However, Nixon et al. (2017) report notably higher rates of violent offending for people with cognitive disability than identified in our study (13% vs. 8%).

Among those with disability, rates of offending and custodial contact were much higher for males than females, and for Aboriginal versus non-Aboriginal people (patterns which are also seen in the general population). Offending rates for people with disability who were victims of crime were more than double the rates of the disability cohort overall. Unfortunately, due to the design of this study, it was not possible to include equivalent rates of offending for people without disability (since those who did not have criminal justice system or disability service contact were not included in the Justice Test Case). However, a comparison of offending rates for the disability cohort with the total NSW population are presented in Ringland et al. (2022a), and show that rates of violent and property offending in the disability cohort are around three times the rates in the total population.

While a relatively small proportion of people in the disability cohort offended during the 10-year period examined, our work shows that people with disability comprise a significant proportion of people appearing before the NSW criminal courts and held in custody. Estimates of disability among young offenders ranged from 10 to 24 per cent, depending on the disability indicator used (i.e., according to the disability cohort definition or the broader indicator), with rates highest for those with DV-related offences (19–42%) and those received into custody (18–41%). These estimates for young people should be interpreted with caution as some disability services and supports were only available to those over a certain age (e.g., to be eligible for the disability support pension individuals have to be at least 16 years of age), and early childhood and education data collections were not available for inclusion in the Test Case. Thus, disability indicators for young people are largely based on disability assigned retrospectively (based on records when older). Putting these concerns aside, the most common disability type identified was psychosocial (16%), but cognitive disability was also common (12%), particularly among domestic violence offenders (25%) and those with custodial episodes (22%). Aboriginal young offenders were more likely to be identified as people with disability than non-Aboriginal young offenders, with similar rates for males and females (using the broader indicator, 31% of Aboriginal females and 36% of Aboriginal males vs. 20% of non-Aboriginal females and 21% of non-Aboriginal males). Rates of cognitive disability, and cognitive and psychosocial disability, were higher for males than females; females were more likely to have psychosocial disability only. While not directly comparable, these group differences broadly align with estimates of cognitive impairment and psychological disorders identified in NSW surveys of young people in custody (JHFMHN and Juvenile Justice NSW, 2017).

Estimates of disability among adult offenders were similar to estimates for young offenders, ranging from 16 to 27 per cent, depending on the disability indicator used. Rates of disability were higher for those with a custodial episode (27–48%), and are broadly consistent with findings from adult custodial health surveys which report that 28 per cent of the custodial population experience disability, and one quarter have received the disability support pension (JHFMHN, 2017a). In contrast to the offending pattern observed for young offenders, rates of disability were higher in property offenders (25–45%) than those with violent and DV-related offences. Most commonly, adult offenders had psychosocial disability, followed by physical disability. However, around 1 in 10 adults with custodial episodes had cognitive disability.²³

21 Morgan et al. (2013) identified a cohort of people with psychiatric illness (rather than psychosocial disability), born between 1955–1969, and estimated arrest prevalence in Western Australia in the period 1985–1996; the offender sample was between 16–41 years old. It is possible that the exclusion of both younger and older people from this cohort led to a higher estimate of the prevalence of offending. However, it is also possible that the higher rates of offending among people with psychiatric illness observed in Morgan et al. (2013) are driven by the overall higher prevalence of offending in Australia in the study period examined (see for example, Weatherburn, Freeman, & Holmes, (2014)).

22 Nixon et al. (2017) estimated a prevalence of offending in the period 1994–2013, using a much smaller sample of people in contact with Victorian Government disability services (n=1,310) who were born in years 1976, 1981, 1986, and 1991. Consequently, the sample of offenders was between 22–38 years old. It is possible that the exclusion of both younger and older people from this cohort led to a higher estimate of the prevalence of offending.

23 Unfortunately, due to data limitations, it is not possible to report on the conditions and disorders most frequently contributing to these broad disability categories.

Adult Aboriginal offenders were more likely to be identified as people with disability than non-Aboriginal offenders, with higher rates for females than males (using the broader indicator, 47% of Aboriginal females and 43% of Aboriginal males vs. 30% of non-Aboriginal females and 24% of non-Aboriginal males).²⁴ Similar to young offenders, rates of psychosocial disability were particularly high for adult Aboriginal female offenders (40%), while rates of cognitive disability were higher amongst adult Aboriginal male offenders (13%; 2.4 times higher than the equivalent rate for adult non-Aboriginal males). Notably, nearly two thirds of all adult offenders with cognitive disability had a co-occurring psychosocial disability.

Both young and adult offenders had high rates of contact with the NSW Police Force as victims of crime during the period examined. This was particularly true of people charged with DV-related offences (74% of young offenders and 65% of adult offenders), and those with custodial episodes (72% of young offenders and 64% of adult offenders). Focusing on those with any offending contact, people with disability were more likely to have been victims of crime than people with no known disability, as were females (vs. males) and Aboriginal people (vs. non-Aboriginal people). This mirrors the results from several small preliminary studies examining the victimisation history of offenders with disability, but also builds on this prior research by providing new estimates of victimisation for Aboriginal offenders with disability (a group that could not be considered in these earlier studies due to sampling limitations).²⁵ The finding that between 84–90 per cent of Aboriginal female offenders with disability were also recorded as victims of crime during the 10-year period is alarming and highlights the complex needs and compounding circumstances of this highly vulnerable group. While our study did not consider the type of crimes committed against Aboriginal women with disability, in a study of incarcerated Aboriginal women in Western Australia, Wilson et al. (2017) reported that many had used violence as a strategy to deal with their own high levels of victimisation.

A major limitation of this study is that we did not consider the timing of offending in relation to disability onset or records of victimisation. Indeed, disability may have been identified in response to offending behaviour, and offenders may have been recorded as victims of crime after their offending behaviour. Disability affectedness may also be episodic or somewhat transient depending on the nature and context of each person's specific disability, and as a result, offenders with disability identified in this study may not have been actively affected by disability at the time of offending. Further, we did not examine specific types of incidents experienced by victims of crime or examine specific types of disability, beyond broad categories. While attempts have been made to contextualise results, it is difficult to make direct comparisons between our estimates and those of previous studies due to disparate definitions of disability. A longitudinal study including more detailed disability information from DOMINO, disability-specific education data collections and data concerning people without disability would provide a better understanding of the interplay of disability, victimisation and offending over the life course. Additionally, while this study provides estimates regarding the criminal justice system interaction of a policy relevant group of people with disability (those in contact with a variety of services and supports) it is unclear to what extent these results may translate to people with disability who are not in contact with these services. Notably, the study is unable to account for each person's disability affectedness, or disability severity. It is possible that people with disability who are not in contact with, or identified by, services considered in this study may have a lower average level of disability affectedness. Conversely, the provision of disability-specific services may help mitigate offending behavior amongst people with disability. This study was unable to account for these factors, which may work to over or under estimate the offending contact experienced by people with disability more generally..

This is the first comprehensive study of the interaction of people with disability within the NSW criminal justice system. Until now, this group has been largely overlooked in criminology research, but this paper suggests that people with disability represent a significant proportion of both the offender and custodial

24 While not directly comparable to estimates of disability identified in adult custodial surveys, these results suggest that custodial surveys in NSW may have underestimated rates of disability in adult Aboriginal men. Group estimates of disability between non-Aboriginal males, non-Aboriginal females and Aboriginal females were proportionally very similar between adult offenders in this study and estimates of disability in adult custodial surveys. However, estimates of disability in Aboriginal males in adult custodial surveys were nearly half that identified in this study (24% vs. 43%).

25 See for example, Baldry et al. (2013) and Anstis and Thomas (2022).

populations, and an even larger proportion of those with histories of victimisation. This was particularly so for people with more complex needs, be it through multiple concurrent disability types, a higher prevalence of factors related to disadvantage, or both. The findings of our research point to a clear and immediate need for significant investment in further disability focused research to better understand the context and experience of people with disability who have contact with the criminal justice system and potentially identify policy opportunities for strengthening support and diversion options for this vulnerable group. The availability of disability-specific administrative data to researchers will be critical for this to occur.

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