



## Traumatic-Brain Injury (TBI) and the Criminal Justice System: An Introduction to a Complex Topic

By Jerrod Brown and Jeff Louie

A traumatic brain injury (TBI) occurs when an external force alters brain functioning or results in some other form of brain injury. TBIs can be characterized by deficits in neurological processes and memory along with changes in mental states and consciousness. Some of the most common complaints and consequences associated with TBI include behavioral and emotional changes, memory deficits, attention and concentration problems, migraines, chronic pain issues, sleep-related problems, mood regulation concerns, maladaptive behaviors, reduced ability to solve problems and multitask, and social skill impairments. These deficits and impairments can sometimes result in difficulty functioning in accordance with the standards set forth by the United States criminal justice system.

The following are 15 key points that you should consider when discussing the topic of TBI in the criminal justice system.

**Criminal Justice Statistics.** TBI is significantly over-represented and under-identified in criminal justice and forensic settings. The rate of traumatic brain injury has been estimated at 60% in adult offender populations and 30% in juvenile offenders versus approximately 8.5% in the general population. As such, professionals working within these settings should become familiar with the topic of TBI and its impact on criminal justice-involved populations.

**Correctional Settings.** Incarcerated individuals with a history of TBI may experience enormous challenges within correctional settings. Unfortunately, TBI is often under-addressed in correctional

settings. Correctional staff who knowingly or unknowingly interact with inmates impacted by TBI may misinterpret problematic behaviors as willfully defiant and resistant. As such, all correctional professionals should receive training on the identification of TBI and interventions for this issue within confinement settings.

**Defendant Populations.** Defendants with a history of TBI who are proceeding through the various stages of the judicial process warrant the attention and consideration of justice professionals. In particular, TBI may impair a defendant's competency to stand trial (CST) abilities. As such, a comprehensive CST evaluation should be strongly considered. TBI may also have reliance to the sentencing phase of the trial process.

**Community Re-entry.** Community care providers and re-entry correctional professionals should be aware of the impact of TBI on offenders re-integrating into the community from confinement. The likelihood of poor outcomes is increased by the absence of TBI identification and treatment among criminal justice and forensic populations. In some cases, the released individual with a history of TBI may be required to complete probation or parole. Problematic outcomes may also be enhanced when probation and parole officers lack an appropriate awareness and understanding of TBI among individuals on their caseload.

**Family Conflict.** TBI can have a significant impact on the entire family system. In fact, spouses of persons with TBI frequently report extreme distress following the event. These instances of extreme distress may result in family violence either perpetrated by the person with a TBI or by other family members. As a result, it is imperative for family members to become educated about the complexities of TBI and its impact on the entire family system.

**Domestic Violence.** Domestic violence is a significant cause of TBI in the United States. There is also some evidence to suggest that male perpetrators of intimate partner violence and other forms of criminal aggression may have elevated rates of TBI. TBI should routinely be screened among individuals seeking services from domestic abuse shelters. Moreover, individuals with a history of domestic violence offenses may also benefit from routine screening for possible TBI.

**Victimization.** TBI can lead to impaired decision-making abilities, substance misuse, memory dysfunction, and a reduced capacity to detect unsafe situations. Additionally, TBI can impact various executive functioning skills, including the ability to plan, assess behavior risk, organize, remember, and connect consequences to actions. As a result, these factors and many more may increase the likelihood of victimization among some individuals impacted by TBI.

**Suicide.** Rates of suicide are higher among individuals with a TBI than the general population. Similarly, suicidal ideation is also a major concern for some individuals with a TBI. As such, additional training and awareness in the area of suicide risk screening, assessment, and intervention is crucial for clinicians serving individuals with a history of TBI.

**Memory Deficits.** TBI-associated memory deficits can have a detrimental impact on individuals involved in the criminal justice system. One such impact is a limited capacity to comprehend and remember rules and directions, which may result in infractions and other forms of punishment in both custodial (e.g., jail and prison) and community (e.g., probation and parole) settings. Another area of impact is performance on tasks requiring memory such as interrogations, testimony, or even assessments. Further, these memory deficits may confer a vulnerability to suggestibility and confabulation, which exacerbates the issues described above.

**Misinterpretation of Behaviors.** Incarcerated individuals with a TBI may engage in negative behaviors that appear deliberate to correctional professionals. Further, some of these behaviors may lead to

sanctions and rules violations within confined settings. This may be especially true when the TBI has not been properly identified and treated. As such, it is vital that correctional staff have at least a basic awareness and understanding of TBI in offender populations.

**Importance of Identification.** Considering the high rates of TBI among criminal justice-involved populations, correctional professionals should regularly screen for the presence of TBI among all new admissions. Identification and subsequent treatment of offenders impacted by TBI may reduce the likelihood of later maladaptive behaviors. Hence, accurate and reliable screening of this population is a clinical, forensic, and research priority.

**Juvenile Detention.** Juvenile detention officers should be aware of the possibility of TBI when working with adolescent offenders. The identification of incarcerated juveniles who have experienced a previous head injury may create additional opportunities for treatment and rehabilitation. As such, a greater awareness of TBI in adolescent offenders may serve as a way to help at-risk adolescents avoid future involvement in the criminal justice system.

**Legal Considerations.** TBI can result in a range of legal issues including Tort cases, criminal prosecution, disability claims, negligence issues, guardianship, estate planning, competency and capacity concerns, and wrongful death lawsuits.

**Importance of Early Identification.** Increasing evidence indicates that adolescent males who sustain a TBI early in life may be more likely to engage in offending behaviors during adulthood. Early identification and intervention for adolescents who experience a TBI may prevent future criminal justice involvement and promote prosocial behaviors.

**Risk of Future TBIs.** Increasing evidence suggests that offenders are more likely to experience multiple TBIs during their lives. In some cases, this may contribute to continued involvement in the criminal justice system, especially in the absence of appropriate identification, supports, and services.

## Conclusion

As outlined above, TBI is common among individuals entangled in the criminal justice system. In fact, TBI may contribute to criminal behavior like family and domestic violence. Complicating matters, TBI symptoms such as impulsivity and short- and long-term memory deficits make it difficult for some individuals to participate in the legal process (e.g., police interviews and trials) and comply with community supervision (e.g., probation and parole). Criminal justice professionals can play an integral role in preventing the consequences of TBI by assisting in the identification of individuals who may suffer from TBI. Upon identification, individuals with suspected cases of TBI should be referred for further assessment and treatment. To this end, greater awareness and advanced training of TBI in the criminal justice system is markedly needed.

## Biographies

**Jerrod Brown, M.A., M.S., M.S., M.S.**, is the Treatment Director for Pathways Counseling Center, Inc. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions. Jerrod is also the founder and CEO of the American Institute for the Advancement of Forensic Studies (AIAFS), and the Editor-in-Chief of Forensic Scholars Today (FST) and the Journal of Special Populations (JSP). Jerrod holds graduate certificates in Autism Spectrum Disorder (ASD), Other Health Disabilities (OHD), and Traumatic-Brain Injuries (TBI). Jerrod is certified as a Youth Firesetter Prevention/Intervention Specialist, Thinking for a Change (T4C) Facilitator, Fetal Alcohol Spectrum Disorders (FASD) Trainer, and a Problem Gambling Treatment Provider. Jerrod is currently in the dissertation phase of his doctorate degree program in psychology.

**Jeff Louie, MD**, is an Assistant Professor at the University of Minnesota in the Department of Pediatrics and Division of Emergency Medicine. He is also the Research Director for the Division of Emergency Medicine and Assistant Pediatric Trauma Director for the Masonic Children's Hospital.