

Indiana Criminal Law & Brain Injury Practical Implications

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Brain Injury and Criminal Courts

- Observed patterns in Marion County Municipal Courts
- Frank's story

Brain Injury and Criminal Intent

- The standard for intent in most crimes in Indiana is “knowingly and intentionally”.
- Example, IC 35-42-2-1 (c) (1) defines Battery in the following manner:
 - Knowingly or intentionally,
 - Touching another person,
 - In a rude, insolent or angry manner.

Brain Injury and Criminal Intent

- IC 35-41-3-6, The Insanity defense
 - Creates a defense to criminal intent when:
 - As the result of a mental disease or defect,
 - The defendant does not appreciate the wrongfulness of his/her actions,
 - At the time of the offense.
- Frequently, people with brain injuries can understand the wrongfulness of an act, but lack the ability to stop themselves from acting.

Brain Injury and Criminal Intent

- IC 35-41-3-6, Mental Disease or Defect is defined as
 - A severely abnormal mental condition
 - That grossly or demonstrably impairs a person's mental condition, but
 - Does not include an abnormality manifested only by repeated unlawful or anti-social conduct.
- Example – generally inability to appreciate wrongfulness caused by voluntary intoxication is not a defense under this section of the law.

Brain Injury and Criminal Intent

- What does “Appreciate” imply?
 - If you can understand that it is wrong,
 - You are responsible for not acting.
- The inability to control impulses is a common consequence of brain injury.
- We aren’t suggesting this should or should not be a defense, rather we are reporting a fact.

Brain Injury and Sentencing

- IC 35-38-1-3 – Presentence Hearing for felonies
 - The defendant has a right to present evidence before sentencing,
 - The Judge may consider aggravating and mitigating circumstances in determining the appropriate sentence.

Brain Injury and Sentencing

- IC 35-38-1-7.1 Sets out Aggravating and Mitigating circumstance
 - Section (b) sets out mitigating circumstances, there are two that are worthy of note:
 - (13) “The person has posttraumatic stress disorder, ***traumatic brain injury, or a postconcussive brain injury***” [emphasis added].
 - (7) “The person is likely to respond affirmatively probation or short term imprisonment”.

Brain Injury and Sentencing Implications

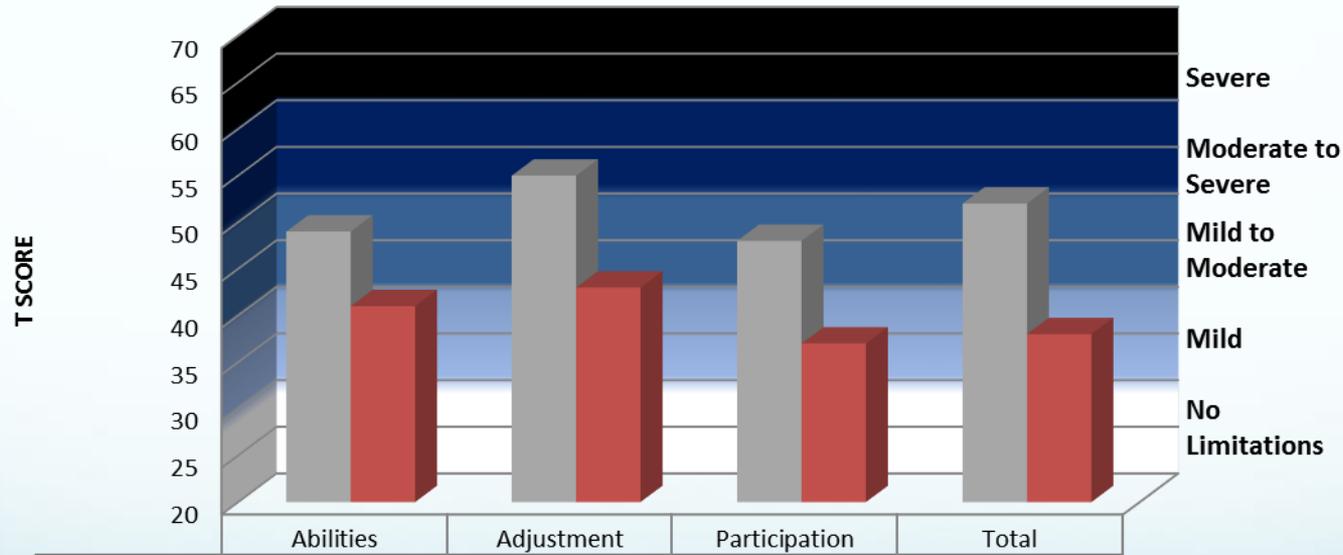
- Judges are explicitly empowered to consider the implications of a brain injury at sentencing.
- It is important to:
 - Understand how a brain injury could be viewed as mitigating,
 - An expert should be able to tell the Judge about the specific injury and how it affects the defendant's judgement and conduct, and
 - How treatment, as a condition of probation, could be effective.

Brain Injury and Sentencing Implications

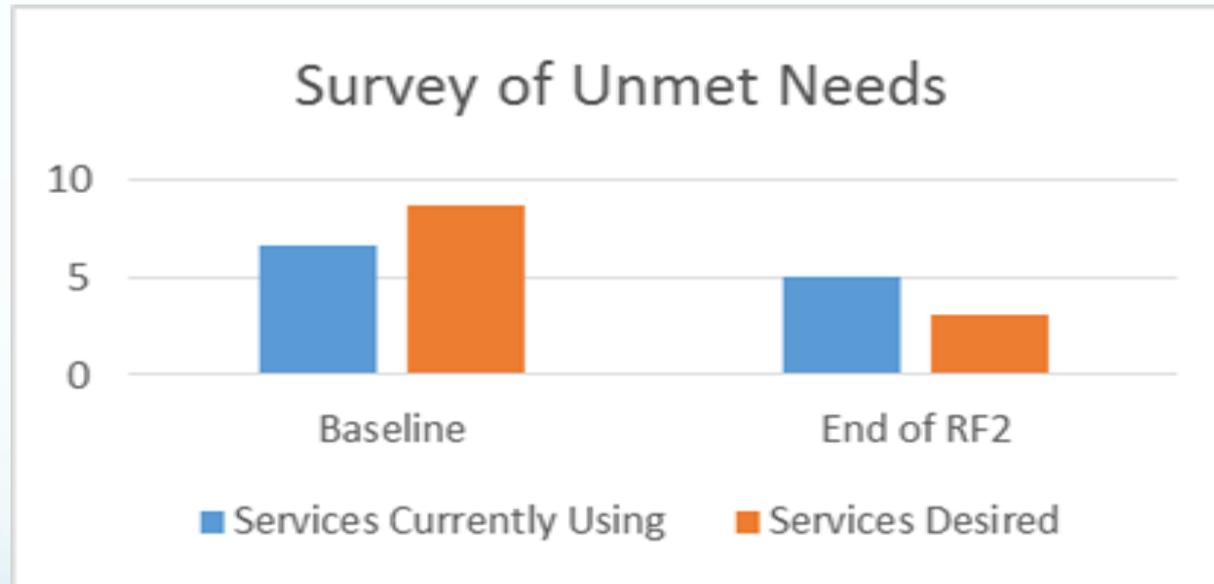
- In other words,
 - The person has a “traumatic brain injury”,
 - The nature of that brain injury, and
 - How the defendant,
 - with a specific course of treatment as a condition of probation,
 - Is “likely to respond affirmatively”.

Brain Injury and Evidence Reducing Disability

Mayo-Portland Adaptability Inventory



Brain Injury and Evidence Need Fewer Services



Brain Injury and Evidence

- Brain injury is frequently
 - Not diagnosed,
 - Misdiagnosed as something else – frequently a mental illness,
 - Co-occurs with mental illness but is not diagnosed, and/or
 - When diagnosed, professionals believe that it cannot be improved.

Brain Injury and Evidence

- The previous slides suggest generally that people with brain injury may respond “affirmatively” to probation.
- Following are two fact patterns taken from two cases in which the Indiana Court of Appeals sustained convictions finding that the defendant did not have a defense to intent.
- Neither defendant claimed brain injury.
- You will see patterns of behavior consistent with brain injury

Brain Injury and Evidence

Scenario 1

- When arrested, the defendant admitted that he had been taking Xanax and smoking spice.
- He was placed in a cell block designated for observation, including people going through withdrawal.
- During observation he displayed odd behavior including
 - Nudity,
 - Drinking from the toilet, and
 - Symptoms sufficient that he was taken to a local hospital.

Brain Injury and Evidence

Scenario 1 Continued

- The defendant was examined at the hospital and returned to the jail.
- After his return, the defendant hit a Jail Deputy.
- The Deputy retreated until backup arrived. In the process of subduing the defendant,
 - He grabbed and squeezed another Deputy's testicles, and
 - Spit in the face of a third Deputy.
- He was charged with, and convicted of Battery.

Brain Injury and Evidence

Scenario 1

- After raising an insanity defense, he was examined by three experts, who testified
 - 1. Defendant was “cognitively clear”. But, since the defendant claimed that he couldn’t recall the fight in the jail, the Doctor couldn’t arrive at an opinion about his capacity to appreciate the wrongfulness of his actions.
 - 2. Defendant was “anxious” but not “psychotic or aggressive”. Drug use affected his ability to appreciate the wrongfulness of his action. At minimum they “**compromised**” his ability to control his anger.

Brain Injury and Evidence Scenario 1

- Expert opinions continued
 - 3. At time of the incident the defendant was "suffering from bipolar disorder with psychotic episodes and that he was not "completely sane"". At the time of the exam defendant no longer had these problems, and that drug withdrawal could temporarily create this problem.

Brain Injury and Evidence

Scenario 1 - Analysis

- If this person was sent to you to determine if he had a brain injury:
 - What do you see that might be consistent with brain injury?
 - As a Psychologist, how would you proceed in examining this person?
 - Understanding that this is scant information, and assuming that the defendant had the mental illness described above, what kinds of complications are added with brain injury?

Brain Injury and Evidence

Scenario 2

- The defendant was attempting to steal a lawnmower from a garage. The homeowner saw him, called police, and he was caught by police trying to get the mower through a gate.
- After Miranda, defendant admitted the he was taking the mower, but told police that he knew the former resident of the house, and denied that the mower was in the garage. Upon further questioning, defendant admitted that he also took other tools from the garage.

Brain Injury and Evidence

Scenario 2

- Defendant was charged with burglary and theft. He raised an insanity defense.
- The Psychologist who assessed defendant found that defendant
 - Understood the nature of the charges and had some idea of the severity of the punishment he could face if convicted,
 - Had limited mental capacity (intellectual disability,
 - Had difficulty communicating as a result, and
 - Had also recently been diagnosed with a Major Depressive Disorder 1, but
 - Was still able to understand the charges and consult with his attorney.

Brain Injury and Evidence

Scenario 2

- The defendant was found guilty.

Brain Injury and Evidence

Scenario 2- Analysis

- If this person was sent to you to determine if he had a brain injury:
 - What do you see that might be consistent with brain injury?
 - As a Psychologist, how would you proceed in examining this person?
 - Understanding that this is scant information, and assuming that the defendant had the mental illness described above, what kinds of complications are added with brain injury?

Conclusion

- The more we learn about brain injury and effective interventions, the more positively we can affect recidivism.
- In the short term, we can have a significant impact by working with Probation Departments to build and measure effective brain injury screening and intervention.