

Justice for Individuals with Cognitive Impairment Involved with the Justice System: Application of the Principles of Therapeutic Jurisprudence

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Applicable American Federal Law

- Two United States Constitutional Amendments are particularly relevant to incarcerated individuals in state correctional facilities.
 - The Eighth Amendment guarantees that, “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
 - The Fourteenth Amendment states: [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- Section 504 of the Rehabilitation Act & Americans with Disabilities Act: Title II
 - The rights to nondiscrimination, reasonable accommodation, least restrictive environment, and the provision of auxiliary aids and services to ensure effective communication.

Goals of the American Criminal Justice System

- Overall Safety of Society
- Tools to Achieve Safety:
 - Deterrence (prevent misbehavior from occurring)
 - Retribution (punishment for misbehavior when it occurs)
 - Rehabilitation (when individual commits a crime and sentenced to state custody, state will provide services and supports to develop skills the individual needs to return to society successfully)
- Current outcomes?
 - Recidivism (return to prison) statistics suggest that rehabilitation has not been successful.
 - 5/6 offenders return to prison within nine years following release.¹

Background

In 1962, President John F. Kennedy challenged the United States to address the treatment of people with mental retardation (hereafter intellectual disability) in this country.

The **President’s Task Force on Law** call to action is still relevant almost sixty years later.

Although the law is preeminently the area of formal social structure, the need of the law to advance in concert with other disciplines is, perhaps paradoxically, even more urgent. Most intellectual disciplines properly proceed at their own pace; but the law, being the final repository of social decisions, must especially respond to the offerings of all others, at whatever pace proffered. It is our responsibility to keep in step. In a democracy, the law has no choice between responsiveness and repression. It is committed to the former; and its problem is always and only the division of means.²

Abstract

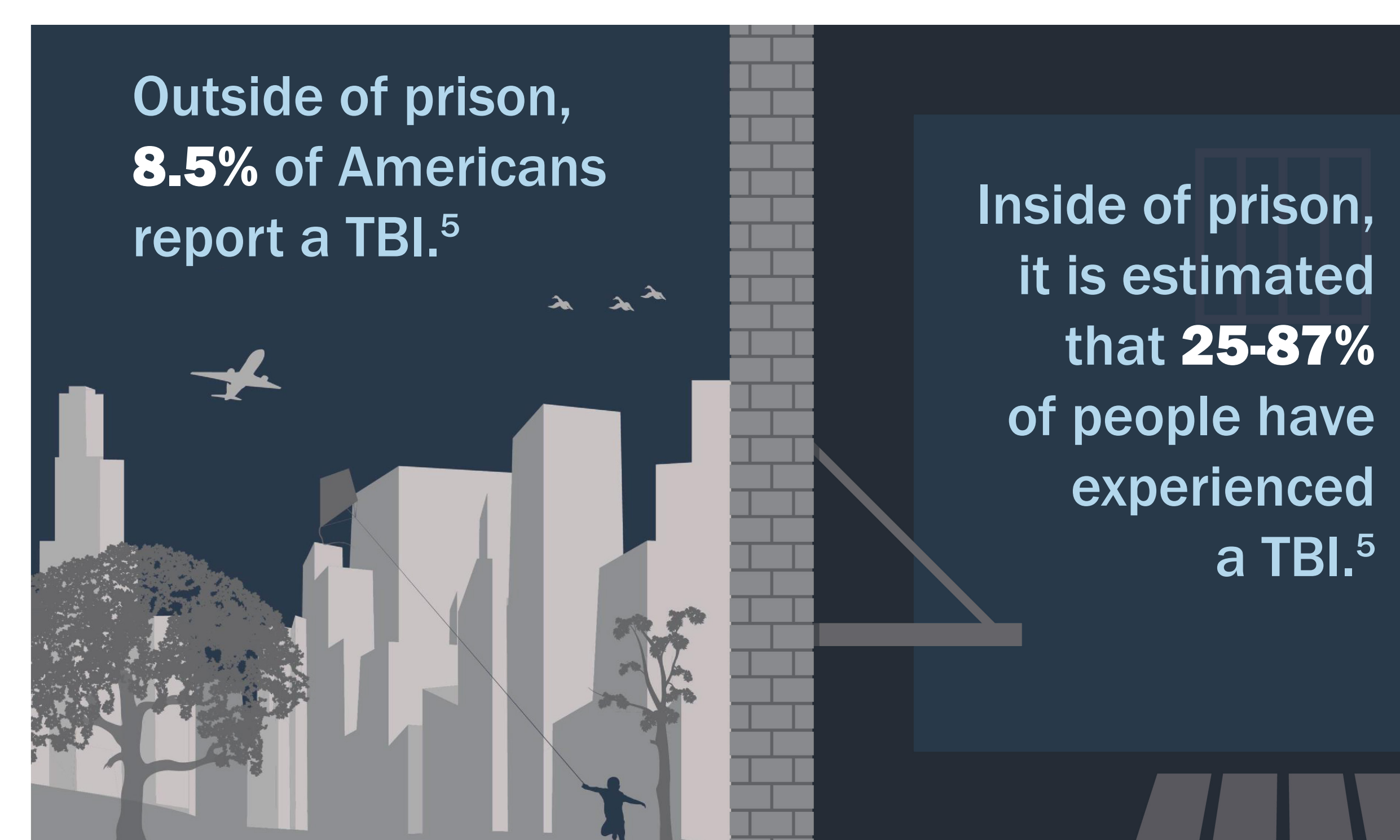
This poster summarizes the justice system response to offenders with CI (defined to include individuals with intellectual disabilities (ID) and/or traumatic brain

injury (TBI)) and proposes an application of Therapeutic Jurisprudence (TJ) to address the disproportionate number of individuals with CI incarcerated in American prisons.

What is Therapeutic Jurisprudence (TJ)?

- Focus on the well-being of those involved in the legal system and ensure that the process is beneficial and remedial rather than punitive.
- The law should act as a “therapeutic agent” and “a social force that can produce therapeutic... consequences.”³
- TJ requires that the voices of individuals involved in the system are heard, validated and are voluntarily given.⁴
- Introduce multidisciplinary scientific information into the legal system (which supports the ethics of care) in making capacity, culpability, accountability, and sentencing determinations.

A Disproportionate Number of Individuals with CI are Incarcerated



Application of TJ: Systems Change Strategies for Individuals with CI

- Prevention
 - Address juvenile justice involvement, special education discipline, adequate k-12 education, and transition services.
- Police, Arrests, and Interviews
 - Educate officers on typical behavior that results in excess force and/or escalates the situation and de-escalation skills relevant for this population.
- Prosecution, Diversion, and Specialized Courts
 - Educate prosecutors.
 - Diversion from the criminal system with linkages to community services.
 - Creation of courts for individuals with CI.
- Defense Counsel and Evidence
 - Educate judges and juries on neuroscience and behavioral sciences related to CI.
- Sentencing
 - Diversion to community services and/or placement with appropriate supports through state agency collaborations including, Developmental Disabilities Administration, Department of Health, Department of Vocational Rehabilitation, etc.
- Incarceration
 - Provide appropriate accommodations in rehabilitation services, protection, and on-going transition planning.
- Release and Parole
 - Develop appropriate work release and wrap-around services to ensure successful re-entry and community living.

Footnotes

1. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2018 May). Special Report: 2018 Update on Prisons Recidivism: A 9-year follow up Period (2005-2014).
2. President’s Panel on Mental Retardation. Report of the Task Force on Law. Bazelon, D.L. and Boggs, E.M. (January 1963). Library of Congress Catalogue Card No. 63-60030. Foreword.
3. Weller, P. Mainstreaming TJ in Australia: Challenges & Opportunities. Int’l J. Ther. Juris (2018).
4. Winick, B. & Wexler, D. Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts. Durham S.C. Carolina Academic Press (2003).
5. [cdc.gov/traumaticbraininjury/pdf/Prisoner_TBI_Prof-a.pdf](https://www.cdc.gov/traumaticbraininjury/pdf/Prisoner_TBI_Prof-a.pdf).
6. [nacdd.org/learnmore/](https://www.nacdd.org/learnmore/) (this includes children and adults)
7. People with Intellectual Disabilities and the Prison System. Weiss, Thomas C. Disabled World 2013-08-02.

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