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Autism, sexual offending, and the criminal justice system

Melanie Clark Mogavero

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Abstract

Purpose – *There has been growing concern among stakeholders about individuals with autism spectrum disorders (ASD) and sex offending as research supports an indirect association. The purpose of this paper is threefold: first, bring more awareness of the sexuality and deviant/criminal sexual behavior among those with ASD to stakeholders in the criminal justice system (CJS); second, demonstrate that much of the deviant or sexual offending behavior exhibited among those with ASD is often a manifestation of their ASD symptoms and not malice; and third, demonstrate the necessity to address specific needs of individuals with ASD who enter the CJS due to criminal sexual behavior.*

Design/methodology/approach – *This paper provides an overview of the ASD symptomology, including the diagnostic changes, a review of the literature on ASD and sexuality, which includes deviant sexual behavior and sexual offending.*

Findings – *The author linked examples of deviant or sexual behavior in the research literature to the ASD symptomology and described how the symptomology explains such behavior.*

Originality/value – *Sexual offending among those with ASD has received little research outside the mental health field. This review is of particular importance to those in the CJS unfamiliar with ASD, as they should handle them differently with regard to formal interviewing, measures of competency, capacity, and sentencing.*

Keywords *Autism, Asperger's syndrome, Autism spectrum disorders, Forensic psychology, Sexual deviance, Sexual offending*

Paper type *Literature review*

Introduction

The association between autism spectrum disorders (ASD) and sexual deviance or sexual offending has long been suggested (Chesterman and Rutter, 1993; Hart-Kerkhoffs *et al.*, 2009; Sevlever *et al.*, 2013; Higgs and Carter, 2015). Such deviant and sexual offending behaviors include inappropriate courtship scripts, exposing one's genitals and/or masturbating in public, touching others in a sexual manner, and downloading child pornography. Most of the research that supported this association used qualitative methods in select settings or clinical accounts (Chesterman and Rutter, 1993; Hart-Kerkhoffs *et al.*, 2009; Sevlever *et al.*, 2013; Griffin-Shelley, 2010; Barry-Walsh and Mullen, 2004). This association does not conclude that a diagnosis of ASD increases the risk of offending, as criminal behavior among individuals with ASD is rare (Scragg and Shah, 1994; Kohn *et al.*, 1998; Woodbury-Smith *et al.*, 2006; Mouridsen, 2012). However, there has been growing concern about the association with sexual abusive behavior (Higgs and Carter, 2015). ASD symptomology likely has a critical role among the minority who commit sexually-related offenses. Lindsay *et al.* (2014) revealed that compared to neurotypicals[1], individuals with ASD had higher percentages of stalking (8.5 vs 2.8 percent) and non-contact sexual offenses (42.6 vs 33.7 percent). Such behavior could lead to an arrest and further involvement in the criminal justice system (CJS).

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Individuals with ASD may find their symptoms exacerbated when they are incarcerated, leading to anxiety and depression (Leon, 2002). A case study by Paterson (2007) of two individuals with ASD in a London prison revealed these individuals exhibited difficulty interacting with other inmates and often chose to remain confined to their cells. The symptoms and characteristics of ASD leave many ill prepared to conform to societal norms, let alone in a correctional institution (Robertson and McGillivray, 2015). They may also become targets for physical harm, ridicule, bullying, or manipulation by other inmates (Mayes, 2003; Paterson, 2007). They may also have difficulty adhering to prison culture (e.g. not "ratting" on other inmates) leading to physical altercations (Paterson, 2007). Those with ASD may also have difficulty following directions or complying with prison regimes leading to disciplinary reports. How CJS professionals manage individuals with ASD after a sexual offense has a strong influence on their further involvement in the CJS and their ability to establish a mental health (MH) defense (North *et al.*, 2007). It may also influence the length of their involvement due to disciplinary reports and/or failure to abide by community supervision conditions. A comprehensive understanding of the ASD can better assist CJS professionals responsible for them.

This paper addresses individuals with ASD who exhibit sexually deviant and criminal sexual behavior with an intended audience of CJS professionals, as they often have initial contact with individuals after a sexual offense. The author described the ASD characteristics, prevalence, and literature regarding sexuality and sexual offending. A literature search was performed using EBSCOhost, Academic Search Premier, Criminal Justice Abstracts, ERIC, and H.W. Wilson Social Sciences databases, using search terms autism or Asperger's, and sexual offending or sexual deviant behavior. The author also reviewed the reference sections of papers to identify additional sources. The author linked examples of deviant sexual behavior in the literature to the ASD symptomology and described how the ASD symptomology explains such behavior.

Characteristics of ASD

The *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision* published by the American Psychiatric Association (APA) (2000)[2], classified autistic disorder (AD) under the umbrella term, pervasive development disorders (PDD) as one of four separate disorders (APA, 2000). Characteristics of AD include: lack of eye contact while speaking, failure to develop appropriate peer relationships, lack of social or emotional reciprocity, preference for solitary activities, delay or total lack of speech development, repetitive use of language, persistent preoccupation with objects, and intense focus on inappropriate items (APA, 2000).

Asperger (1944) described four young males with focal preoccupations and poor interpersonal skills in Austria. Frith (1991) translated Asperger's (1944) paper into English, leading to additional awareness of his work. The APA added Asperger's syndrome (AS) to the PDD classification in the DSM-IV (American Psychiatric Association (APA), 1994). AS and AD share many diagnostic characteristics, however, individuals with AS tend to exhibit adequate grammar and vocabulary, exhibit near average to above average intelligence, and do not exhibit significant delays in cognitive development or age-appropriate self-help skills. Characteristics of AS include: severe social interaction impairments, extreme egocentricity, narrow interests, tendency to engage in monologues on narrow interests, dependent on routines, and limited or inappropriate non-verbal communication (APA, 2000). In 2013 the APA revised the DSM (DSM-5) and reclassified PDD to ASD. The revision removed all PDD disorders, including AS. The symptoms of ASD fall on a continuum, where clinicians provide a diagnosis of ASD with functioning levels ranging from mild to profound (American Psychiatric Association (APA), 2013). Since much of the research reviewed for this paper was published prior to the DSM-5, both AS and AD are synonymous with ASD.

Prevalence of ASD

General population

The Center for Disease Control and Prevention[3] reports a 1 percent prevalence rate in North America, Europe, and Asia. The rate of ASD is increasing, as the 2014 rate was about 30 percent higher than the estimate for 2008 (1 in 88), about 60 percent higher than 2006 (1 in 110) and

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about 120 percent higher than 2002 and 2000 (1 in 150). The reasons for the increase are unknown but could be the result of increased awareness, changes to diagnostic methods, and/or increased assistance in local communities. Haskins and Silva (2006) suggested the increased prevalence resulted from the enhanced clinician training in diagnosing ASD, change in diagnostic criteria, and increased familial and social acceptance.

Forensic MH population

Comprehensive research has not been published on the prevalence of individuals with ASD incarcerated in the USA. Cheely *et al.* (2012) measured the prevalence of offending behavior among a sample of 609 individuals with ASD between the ages of 12 and 18 years in South Carolina. Their results demonstrated that 32 (5 percent) were charged with 103 offenses. Of these 32 individuals, 26 were prosecuted and received non-custodial sentences (e.g. probation, house arrest), and 28 were diverted out of the CJS to the mental health system (MHS) (Cheely *et al.*, 2012).

Research has examined the prevalence of those with ASD in forensic psychiatric facilities, although no published studies used samples from the USA. The prevalence rate of ASD in psychiatric facilities throughout Europe ranges from 2.3 percent (Scragg and Shah, 1994), 2.4 percent (Hare *et al.*, 1999), 9 percent (Lindsay *et al.*, 2014), 13 percent (Anckarsäter *et al.*, 2008), to as much as 15 percent (Siponmaa *et al.*, 2001). Geluk *et al.* (2012) noted that 308 children aged 12 years and younger in the Netherlands who had been arrested had more ASD symptoms than those in the general population. Søndenaa *et al.* (2014) reviewed 3,382 forensic examination reports from the Norwegian Board of Forensic Medicine and revealed 48 (1.4 percent) had an ASD diagnosis and 58 percent of those who committed sexual offenses had an ASD diagnosis. The prevalence of ASD in the forensic population varies, but according to the research, they are overrepresented than in the general population. The rate of those with ASD in forensic settings suggests the possibility that many may be involved in the CJS, and their condition had gone unrecognized.

ASD and sexuality

Social and emotional functioning

Individuals with ASD tend to have delayed social maturity than their neurotypical peers. Peterson *et al.* (2007) compared social maturity levels among 16 neurotypicals and 27 children with ASD aged four to 12 and revealed that those with ASD had lower social maturity levels than their neurotypical peers, even among the four-year-olds, who are just learning peer interactions. Social immaturity may have a negative effect on social and emotional well-being when individuals enter puberty, and begin to learn about sex and relationships. Decreased well-being may result in social rejection and isolation that reduce opportunities to obtain sexual knowledge from peers (Brown-Lavoie *et al.*, 2014). Studies that compared the sexual knowledge among those with ASD and neurotypicals revealed that those with ASD had less sexual knowledge, and received less sexual education from social sources (parents, teachers) and more from non-social sources (television, internet) (Mehzabin and Stokes, 2011; Brown-Lavoie *et al.*, 2014; Ousley and Mesibov, 1991). This can result in inappropriate behavior with regard to courtship and dating since they do not have peers to teach them or to share their experiences with.

Sexual deviance and sexual offending

Researchers have revealed that those with ASD are as likely to display sexual interest or engage in sexual behavior as neurotypicals (Ousley and Mesibov, 1991; Byers *et al.*, 2012; Gilmour *et al.*, 2012; Hellemans *et al.*, 2007, 2010; Stokes and Kaur, 2005). However, they often do not have the same sexual outlets throughout their development as neurotypicals, which may delay social and sexual development and leave them "stuck" in adolescence (Attwood *et al.*, 2014). Those with ASD often gain social skills with age, but if they enter late adolescence and adulthood with immature social and emotional functioning, they may lack the appropriate skills, knowledge, and scripts to initiate sexual relationships.

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A lack of sexual knowledge and appropriate courtship scripts may lead some to engage in deviant sexual behavior (Ray *et al.*, 2004; Stokes and Kaur, 2005). Haskins and Silva (2006) interviewed individuals with AS in Virginia, and described an adult male who would proposition male strangers for sex. In role-plays, he often went from "Hello. How are you?" to "Will you move in with me?" in fewer than three exchanges (p. 379). Murrie *et al.* (2002) examined six individuals with ASD in forensic settings in Australia and described an adult male's preoccupation with intercourse who stated his courtship strategy was "hanging around a woman until sex happened" (p. 62). The above examples of deviant behavior imply social and sexual development delays, and naiveté about forming relationships.

Deviant sexual behaviors have been self-reported by those with ASD (Mehzabin and Stokes, 2011; Griffin-Shelley, 2010; Chesterman and Rutter, 1993) and reported through surveys and interviews with parents (Ballan, 2012; Nichols and Blakeley-Smith, 2010; Stokes and Kaur, 2005; Ruble and Dalrymple, 1993), caregivers (Hellemans *et al.*, 2007, 2010; Van Bourgondien *et al.*, 1997), and teachers (Kalyva, 2010). Some of the more common deviant behaviors reported by parents and caregivers were public masturbation (Mehzabin and Stokes, 2011; Ruble and Dalrymple, 1993; Stokes and Kaur, 2005; Van Bourgondien *et al.*, 1997), and undressing or exposing private parts in public (Hellemans *et al.*, 2007; Stokes and Kaur, 2005; Nichols and Blakeley-Smith, 2010; Ruble and Dalrymple, 1993).

Inappropriate sexual behaviors may reflect common ASD symptoms (e.g. repetitive patterns of behavior, inappropriate use of speech, and fixations on people or objects). Haskins and Silva (2006) described an adult white male who was fixated on adult black males and would compulsively proposition black male strangers for sex. Chesterman and Rutter (1993) described an adult male with AS in London who was fixated on washing machines and would masturbate as he watched them in use. Police later arrested him for burglary as he attempted to break into a neighbor's residence to access their washing machine. Conflict arises when such behavior creates fear and psychological harm to victims and society demands punishment (Debbaudt, 2004). However, the behaviors were characteristics of the perpetrator's symptomology with no malice intent.

Deviant sexual behaviors may be the result of naiveté of courtship, inability to handle rejection, and/or inability to grasp social mores with regard to socially appropriate behaviors. Wing (1981) described individuals with AS in London with sexual desires that led them to touch or kiss strangers. A common sexual behavior described in the research among adolescent and adult males with ASD was touching female strangers on the breasts and genitals (Stokes *et al.*, 2007; Cooper *et al.*, 1993; Kohn *et al.*, 1998). The example Kohn *et al.* (1998) provided was a 14-year-old male with AS who claimed he touched the female in order to "make her his girlfriend" (p. 295). Barry-Walsh and Mullen (2004) described a 16-year-old male with AS who approached a seven-year-old girl and her five-year-old brother, put his arms around them, and said he "wanted to take them to his place to do naughty things" (p. 102). Less than a year later he put his hands around a female stranger's neck after she declined his direct sexual advance. Such examples of deviant sexual behavior may be the result of severe social interaction impairments characteristic of ASD.

Deviant sexual behaviors may cross the line to serious criminal offenses. Sutton *et al.* (2013) revealed among a sample of 37 adolescent males in Pennsylvania adjudicated delinquent for sexual offenses that 60 percent met the criteria for ASD. Hart-Kerkhoffs *et al.* (2009) revealed among a sample of juvenile sex offenders in the Netherlands that those who committed sex offenses had more ASD symptoms than their non-offending peers. A case study of a 14-year-old male with AS in Pennsylvania engaged in many sexual behaviors, including inappropriate sexual contact with his eight-year-old sister, 11-year-old nephew, and nine-year-old friend. His sexual behaviors began with he was six-years of age when he engaged in oral sex with another male in his first-grade class (Griffin-Shelley, 2010). Hellemans *et al.* (2010) described an individual diagnosed with AD and pedophilia who solicited children for sex. Most would agree that such behaviors are serious sexual offenses; however, sex may be a persistent preoccupation among those with ASD.

Child pornography

A lack of sexual outlets with peers may lead individuals to explore the internet for sexual education or to satisfy sexual needs (Attwood *et al.*, 2014). Eustacia Cutler, mother of Temple Grandin, authored a blog post on this topic and described her concerns about the use of computers and pornography.

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Exploration of internet pornography may eventually lead to child pornography. If one is "stuck" in adolescence, they may prefer child pornography. Rather than learning about sex from adults, they prefer adolescents to show them (Cutler, 2013). Although viewing pornography is not deviant or criminal, it crosses moral and legal lines when children view pornography, adults show pornography to children, or the images depicts minors. Problems arise when individuals with ASD are unaware they have committed a crime. This lack of awareness may be due to an inability to recognize facial expressions in the images of the abused children. For example, Woodbury-Smith *et al.* (2005) revealed among a sample of adults with ASD in Cambridge, UK, those who committed offenses had an impaired ability to recognize the expression of fear. The age of victims portrayed in pornographic images determine the legality and severity of the offense. Many may inadvertently view child pornography because they were unable to "correctly guess" the age of those in the images (Mahoney, 2009).

Pornography-related offenses may also be the result of repetitive or obsessive behavior. Murrie *et al.* (2002) described an adult male with AS obsessed with collecting pornography and photographing and filming children. He was later arrested for showing pornography to, then filming his nine-year-old daughter and her friend (Murrie *et al.*, 2002). Allen *et al.* (2008) noted that among their sample of 126 adults with AS in South Wales, UK, one admitted to having downloaded and distributed child pornography. The individual diagnosed with pedophilia in Hellemans *et al.* (2007) had a substantial amount of child pornography on his computer and endured criminal prosecution.

ASD and pornography needs additional empirical research to determine if evidence supports Cutler's concerns. Those who engage in sexually inappropriate behavior and download and/or distribute child pornography are at serious risk of arrest. Since individuals with ASD have a propensity for repetitive and ritualized activities, it is possible that pornography or other sexual behaviors could become one of their narrow interests or activities. Problems arise when these narrow interests lead to deviant or criminal sexual behaviors because of an inability to grasp social mores, or interpret verbal or non-verbal communication. Therefore, both professionals in the CJS and MHS must examine and determine the motivation behind the sexual offenses and distinguish ASD symptomology from sexual perversion (Mouridsen, 2012).

Concerns for the CJS

Individuals with ASD who commit offenses often do so in the context of their ASD symptomology (Browning and Caulfield, 2011). Behaviors exhibited after authorities apprehend them may also be in the context of ASD symptomology. This is a greater concern for those with mild ASD, as they may appear more "normal," intelligent, and independent than individuals with moderate to severe ASD symptoms (Debbaudt, 2004). Research on sex offenders has noted certain traits consistent with characteristics of ASD such as poor peer relations (Ronis and Borduin, 2007; Blaske *et al.*, 1989), lower empathy (Burke, 2001; Marshall *et al.*, 1995), obsessively self-absorbed (Lakey, 1994), and few emotional bonds (Blaske *et al.*, 1989). Individuals exhibiting the ASD symptomology such as a lack of emotional reciprocity, egocentricity, and social impairments may be confused for such anti-social traits, and may influence the manner in which the CJS handles them. One displaying such behaviors may lead authorities, judges, and prosecutors to assume that one is guilty and remorseless (Debbaudt, 2004).

Individuals with ASD may be more susceptible to interrogative pressure during formal interviews known as interrogative suggestibility (Gudjonsson, 1984). If they give into interrogative pressure, they may provide misleading statements. Standard interrogation techniques utilize deception that may confuse those with ASD who tend to be "concrete-thinkers" into providing false confessions (Debbaudt, 2004). North *et al.* (2007) measured interrogative suggestibility among a sample of 26 individuals with ASD and demonstrated that they were more susceptible to compliance and were more eager to please to avoid conflict or confrontation. This is important when opting for a MH defense to determine whether ASD is a mitigating factor, as forensic psychiatrists/psychologists must ascertain the reliability of suspect statements to police.

Individuals with ASD become involved in the CJS without recognizing they have committed an offense (Debbaudt, 2004). All five individuals interviewed by Barry-Walsh and Mullen (2004) were

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surprised by others' negative reactions to their offenses[4] because they believed their actions were appropriate and justified. For example, the young man who grabbed the female's neck after she refused his sexual advance did not understand why he faced criminal charges. This raises legitimate concerns about the social deficits related to ASD that hinder their ability to understand the consequences of their actions.

Mayes (2003) cautioned that a diagnosis of ASD does not exempt someone from prosecution and punishment, but suggested that professionals compare the nature and severity of one's impairment to the legal standards for competency or capacity. Barry-Walsh and Mullen (2004) believed the offenses were the product of AS characteristics and there were cogent arguments for a legal insanity defense, yet the courts determined all were competent to enter pleas. Murrie and colleagues (2002) agreed that if the symptoms of AS impairs individuals' capacity to appreciate the wrongfulness of their behavior, then the insanity defense should apply to them.

Suggestions for the CJS

According to Debbaudt (2004), a gap remains with the skill and training for CJS professionals in dealing with a growing and aging population of individuals diagnosed with ASD. Several states[5] have passed legislation that requires police officers and certain first responders to undergo and autism awareness and education training. However, Dennis Debbaudt[6] stated most training programs emphasize those with ASD as lost/missing persons or victims, with little emphasis on them as offenders. In addition, there is often no standard for the content, length, and/or credentials of the person administering the training (D. Debbaudt, personal communication, March 4, 2016).

The author suggests comprehensive ASD-specific training for all CJS professionals (local/state/federal) standardized at the federal level, so there are consistent mandates and strategies across jurisdictions. For example, the Department of Health (DOH) in the UK passed The Autism Act, 2009, referred to as the autism strategy. In 2015, the DOH published statutory guidelines that accompanied the act with regard to the treatment and care of individuals with ASD. Section 9 of the guidelines, titled, "Working with the Criminal Justice System", states that five agencies (local authorities, police, probation officers, clinical commissioning groups, and first responders) have a statutory duty to work together to address various criminal and anti-social behaviors. The section states the need for the CJS to refer people with ASD for appropriate health and care support to divert them where appropriate. The act asserts that if agency members notice potential signs of ASD, they must refer the individual for an assessment.

A comprehensive and standardized procedure for handing those with ASD, similar to the autism strategy, is necessary in the USA. Although some states have taken steps to improve ASD awareness, it must be more comprehensive with greater emphasis on ASD adolescents and adults as offenders. In addition, the training must also be standardized for content, length (e.g. specified number of hours), and have set minimum qualification standards of those administering the training. Training mandates should be broadened to include others in the CJS, including prosecutors, judges, and correctional staff to better ensure that they handle individuals with ASD properly and justly throughout all sectors of the CJS.

With few exceptions, custodial sentences are not appropriate for those with ASD. Those imposing sentences must understand how the social and communication deficits associated with ASD can make incarceration significantly more intolerable than it would for a neurotypical (Attwood *et al.*, 2014). Incarceration should only be imposed when the results of a psychological evaluation and risk assessment suggest it is the best option. If incarcerated, they should not be placed in the general population due the vulnerabilities from other inmates and staff detailed above. A community-based sentence with treatment would be a more appropriate option (Debbaudt, 2004). Transforming Care (2012)[7], a report published by the UK DOH put forth actions to improve services for people with disabilities, ASD, MH conditions, and/or those who exhibit challenging behaviors. Part 4 of this report emphasized community-based services over in-patient treatment as the best option. The USA should follow similar guidelines with regard to community-based treatment and supervision options. For those with ASD who commit sexual offenses and require supervision and treatment services, community-based sentences should be standard.

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Discussion and conclusion

A goal of this paper was to bring more attention to the sexuality of those with ASD, as some have engaged in criminal sexual behavior. Preventing those with ASD from entering the CJS for sexual offending is of importance as some sexual offense statutes involve strict liability, in which having no prior knowledge of the law nor having prior knowledge of the victim's age are not considered a defense. Such offenses have serious legal ramifications and therefore, it is important to understand the context of the sexual behavior and divert them to the appropriate system based on their specific needs.

Those with ASD may be unaware they have committed an offense and may appear dismissive of their victims, which makes it difficult for professionals in the CJS to distinguish them from an aloof and unapologetic offender. Without comprehensive knowledge of ASD, those in the CJS may not understand that certain behaviors, including the inability or limited ability to express emotional reciprocity, may be due to offenders' ASD symptoms. The extent of one's ASD symptomology should form the basis in assessing competency and capacity (Barry-Walsh and Mullen, 2004). The CJS must handle them differently with regard to formal interviewing, the finding of *mens rea*, and divert them out of the CJS when appropriate.

Overall, there is a lack of information about those with ASD involved in the CJS (Loynes, 2001). Because many of the cases presented in this paper were of individuals in clinical or secure settings, less serious or more common non-contact sexual offenses among those with ASD, including child pornography remains unknown. Sexual deviance and sexual offending among individuals with ASD is a topic of importance for criminal justice professionals, researchers, criminologists, and legislators. As rates of children diagnosed with ASD increase and become adults with ASD, stakeholders need a greater understanding of ASD to properly assist these individuals. Sutton *et al.* (2013) revealed an alarming percentage (60 percent) of those adjudicated delinquent for sexual offenses had ASD, suggesting the need for further evaluation of this connection. There has been little research on whether those with ASD are overrepresented in the sex offender population. Empirical studies of larger and more representative samples of individuals with ASD in unsecured settings and the general population, as well as in the CJS, must be conducted to measure the scope and prevalence of this issue. Taken together, sexuality among those with ASD is a topic requiring more attention from stakeholders within the CJS.

Notes

1. Someone without ASD.
2. Europe, Australia, and other parts of the world typically use The International Classification of Diseases (ICD), published by the World Health Organization (WHO). The diagnostic criteria for autism and Asperger's between the DSM and ICD are consistent.
3. The CDC, established in 1946, is a US federal agency managed by the Department of Health and Human Services (HHS).
4. Two were arson; two were assaults, and one was a sexual offense.
5. New Jersey, Indiana, Illinois, California, Massachusetts.
6. Dennis Debbaudt is a world-renowned author and ASD educator for law enforcement and emergency responders.
7. Transforming Care is a report regarding abuse and neglect and other unethical practices at Winterbourne View Hospital.

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