

## SUMMARY

Kaal, H., & De Jong, B. (2017). Registratie van LVB-problematiek in het justitiële domein; Onderzoek naar de haalbaarheid van en mogelijkheden voor het schatten van de prevalentie van LVB binnen het justitiële domein op basis van bestaande registraties (Recording MID in the judicial domain; Research on the feasibility of estimating the prevalence of MID in the judicial domain given current records).

### Problem Definition

The past few years have seen a growing interest in the position of people with a Mild Intellectual Disability (MID) in the judicial domain in the Netherlands (child protective services; the criminal justice and juvenile justice systems; and victim protection, support and assistance). The few studies available on this topic and experiences reported by professionals in the field indicate that people with an MID (IQ 50-85) are overrepresented in the Dutch criminal justice system. However, little is known about either how disproportionate their numbers are or whether, and to what extent the various judicial institutions vary with regard to MID prevalence. The Dutch government's *Wetenschappelijk Onderzoek- en Documentatie Centrum* (WODC) therefore commissioned Leiden University of Applied Sciences to conduct a feasibility study aimed at establishing the prevalence of Mild Intellectual Disability (MID) in the judicial domain based on current records. This study was carried out based on a two-part research question:

- (1) *To what extent is research into the prevalence of MID in the judicial domain possible given current records?*
- (2) *What changes would be needed to facilitate a reliable and valid estimate of the prevalence of MID in the judicial domain in future, based on recorded data?*

### Research Design

To find answers to these research questions, we took a staggered approach in which we drew information from one phase to inform the next. We started our study by identifying which information on MID is potentially relevant, i.e. which indications could help researchers arrive at a reliable estimate of MID prevalence. To this end, we studied the available literature and conducted 17 interviews. Next, we selected the 13 bodies or departments in the judicial domain we wanted to include in our study and established which files could be accessed there. Using a scorecard, we then scored 536 individual files to obtain a rough sketch of the (type of) information the 13 organizations keep on file regarding MID. We conducted 37 telephone interviews with representatives of the bodies to verify the reliability of the information. We presented the results of these first four steps to 3 MID experts and 10 representatives of various bodies in the judicial domain at a special meeting. The attendants were asked to reflect on the results of the preliminary study and to consider what additional steps would be needed to ensure a more reliable study of MID prevalence. Lastly, we used a questionnaire (N=17) to explore the feasibility of the changes recommended for each individual organization.

### Estimating MID prevalence using current records

The results showed that most judicial institutions' files contained very little information on the cognitive abilities of clients. Generally speaking, little is known about clients' intelligence in child protective

services, in victim protection, support and assistance, and in the links earlier in the criminal justice and juvenile justice chain. These institutions rarely test their clients' mental capacities, relying instead on third-party information. It is therefore probable that an MID or low IQ is frequently overlooked. The resulting lack of data on MIDs and IQs makes it impossible to obtain a reliable estimate of the prevalence of MID in the justice system from the files currently kept by bodies in the judicial domain.

At present, only a small number of bodies consistently record their clients' cognitive performance. These are the forensic psychiatry centers (FPCs), the Dutch Institute of Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie*; NIFP) and, to a lesser extent, the Dutch Juvenile Delinquency Institutions (*Justitiële Jeugdinstellingen*; JJIs). However, even at these organizations it is no simple matter to obtain a reliable estimate of the prevalence of MIDs. Even if they aim to test their entire population, this proves impossible in practice — partly because not every subject is testable. To make matters worse, there are always clients who refuse to submit to an intelligence test, which can skew the results. Faulty recordkeeping is another potential pitfall. If the data are not recorded consistently, it is impossible to make a reliable estimate of the prevalence of MID. Hence, even the organizations that record the most information about their clients considered it irresponsible to give an MID prevalence estimate without any additional research into the reliability of their data.

We also looked at whether other recorded data might indirectly facilitate estimation of MID prevalence, such as clients' education level or types of support they may have received. This effort mainly showed that there are no variables that, in isolation, constitute sufficient indication of an MID. More fundamental research is needed to establish whether it is possible to detect an MID based on a combination of variables. However, based on the 500+ files studied, we can conclude that this will likely not be a viable approach in practice. The literature suggested that clients' educational path and work history might be sufficient basis for an educated guess and additional testing for an MID. In the files studied, however, the client's educational path and work history were sometimes omitted. When these data were present, they were possibly self-reported, and they appeared to offer little distinctive information. Many people in these institutional populations have school histories fraught with problems and working lives punctuated by periods of unemployment and stints of unskilled, manual labor. In short, even other markers that — when combined — could point to an MID, are often unknown and not consistently recorded, which considerably reduces their usability for detecting an MID.

This study also highlights possible ways of using clients' adaptability as a reliable indication for estimating the prevalence of MID in the judicial domain. As was the case for the other characteristics, however, almost none of the bodies included in the study systematically test for limited adaptability indicators. When there is sufficient information about an individual client, it tends to be scattered through the file. It would take a professional to determine a client's ability to adapt based on such a file. Even in NIFP and PFC files, which do contain ample information about clients' adaptive behavior, this information is seldom explicitly labeled as such or consistently recorded. The resulting overall picture contributes to the professional's assessment of the client, but even these institutions find it hard to isolate a client's adaptive skills in a score.

Based on these findings, the researchers have concluded that the first research question must be answered as follows: it is not possible to reliably estimate the prevalence of MID in the judicial domain using current records. Whether by choice or by default, none of the organizations included in the study

currently fulfill the two conditions necessary for making a reliable estimate of the prevalence of MID, i.e. consistently testing the entire population for MID and consistently recording the available data.

#### Possibilities for future prevalence estimation

Once the answer to the first research question was known, we tried to find an answer to the second question, i.e. which MID characteristics would have to be identified and recorded in the future in order to uniformly, reliably and validly establish the prevalence of MID in the judicial domain? We also explored the costs and benefits of taking these steps. Tackling the second research question required us to ask a more fundamental question first, however: how desirable is it to record clients' MIDs? While our research has shown that every organization in the judicial domain considers it expedient to be aware of MIDs at case level, there is less agreement about the wisdom of keeping records of MIDs at the institutional level. On the one hand, such records would help organizations grasp the size and impact of the problem and hence enable them to allocate more resources to it. On the other hand, it was felt that the same records could also lead to stigmatization of clients with an MID.

Our overview of current practices shows that most organizations have a long way to go before they can reliably establish the prevalence of MIDs. There is a growing focus on early recognition of MIDs and some institutions in the judicial chain are conducting pilot projects using SCIL (*SCreener voor Intelligentie en Licht verstandelijke beperking*), a screening tool developed specifically to measure intelligence and detect MID. However, making a reliable estimate of MID prevalence requires systematic, valid, and preferably comparable testing methods, as well as consistent recording of data. At present, not many organizations recognize and record MID consistently. Even if information on the existence of an MID is available, it is not always recorded. Conversely, when a (suspected) MID has been recorded, it is often unclear whether it was detected in a reliable manner.

Given the wide disparities between the various organizations, there is no simple answer to the question of what needs to change to make reliable estimation of MID prevalence possible in the future. Besides, this research question sidesteps the underlying, more fundamental question of whether recording MID characteristics is desirable. As our study revealed, the various bodies in the judicial domain differ sharply as to their concern about such records and the need they feel to keep them. Nearly all of the institutions agree that it is useful to know at case level whether a client has an MID, because this can help optimize their approach. The only exception is the Dutch Damages Fund for Violent Crimes (*Schadefonds Geweldsmisdrijven*), which primarily collects data related to personal injury. The institutions differ widely in terms of their ability and willingness to gather and consistently record information on their clients' level of functioning. Some aim to record every client's IQ score while others prefer (more or less systematic) screenings. However, not all organizations consider it their duty to establish whether a client has an MID. Some are doubtful whether known or suspected MIDs should be recorded at all. The reasons they give for this are the risk of stigmatization and the complexity of identifying an MID.

Several institutions indicated that they saw immediate room for improvement. For example, youth protection bodies said the Dutch Child Protective Services (*Raad voor de Kinderbescherming*) would be able to carry out MID screenings. If this were done systematically and recorded consistently, it might give a sufficient indication of MID prevalence within the youth protection domain. If this knowledge were consistently shared, residential and non-residential youth care institutions (known in Dutch as *Gecertificeerde Instellingen* or GIs) could use it and request further diagnostic tests when necessary. Child Protection Services could record the data and file it along with other case characteristics. The GIs would need to devise ways to more consistently record it.

In the juvenile justice system, information pertaining to MIDs is recorded in the Youth Criminal Law National Toolkit (*Landelijk Instrumentarium Jeugdstrafrechtken; LIJ*). There too, a more complete picture would emerge if Child Protective Services systematically applied a SCIL screening to anyone entering the system. HALT (a Dutch institution that does short-term interventions aimed at preventing, combatting and administering punishment for juvenile misdemeanors) also considers it feasible to screen for MIDs, but questions the wisdom of screening when there is nothing extra they can offer teenagers with an MID. At the Juvenile Delinquency Institutions (JJIs), improved reliability could be achieved mainly by more consistently recording the results of diagnostics carried out within, or shared with, the JJIs. In addition, the data would have to be stored in such a way that it could be accessed at aggregate level. The JJIs do not consider the latter a priority, however.

In the adult criminal justice system, views on identifying and recording MIDs are mixed. The Dutch police and Public Prosecutor's Office are actively looking for ways to increase police officers' and interrogators' awareness of the problem, but they currently do not see how they could reliably and consistently identify MIDs to the extent that it would result in a reliable estimate of MID prevalence. In rehabilitation, screening appears feasible in individual cases. However, systematic detection and recording is hampered by the current trend away from standard protocols in favor of greater discretionary power for rehabilitation officers. Every MID identified will be recorded in the new diagnostic toolkit, but without systematic screening it will remain unclear how many MIDs are missed. The Forensic Psychiatry and Psychology Institutes (NIFPs) and the forensic psychiatric treatment centers (PFCs) identify MIDs systematically enough to allow reliable prevalence estimates. Possible improvements are more reliable data recording and enabling access to aggregated data. However, the NIFP does not consider the latter a priority.

Institutions for the protection, support and assistance of victims seem least likely to arrive at a more reliable estimate of MID prevalence anytime soon. Although the minimum EU requirements show that identification of MIDs is important in that domain too, the institutions there do not expect to be able to identify MIDs consistently enough to generate reliable prevalence estimates in the foreseeable future. The institutions are more interested in identifying the type of support their clients need; the underlying cause for this need is considered less important.

In general, it is clear that any changes will require extra funding to educate the people who need to administer tests and extra time to administer the screening tool and modify the data recording method. According to the bodies in the judicial domain, it is impossible to say whether the extra investment is worthwhile because the costs and benefits are not comparable.

#### *Additional comments*

Insufficient detection of an MID early in the justice chain can lead to inappropriate questioning, years of overburdening the client, and assignment to the wrong type of institution. These factors harm rather than help people with an MID. Increased focus on identifying MIDs, particularly early in the chain, is advisable. Despite our conclusion that the current recordkeeping systems do not allow us to study the prevalence of MIDs in the judicial domain, we do see increased awareness of MIDs in various bodies in the sector. Although every organization included in the study appeared willing to pay specific attention to this target group, it will require a change in culture to institute better recording practices. Employees will need to feel a greater sense of urgency to record an MID. The question is how far institutions are willing to go to acquire more knowledge about identifying MIDs. Although the amount and type of data

needed depends to a great extent on the institution's tasks and duties, cooperation within the chain can be improved by agreeing on the definitions to be used and by sharing knowledge. This does raise questions about what is permissible under privacy laws. As our study has shown, prevalence research based on existing files is next to impossible. This leaves two alternatives: (1) conducting studies using a subpopulation to test this for MID, or (2) questioning professionals about their estimation of the prevalence of MID. In our study, we touch upon a third option: it might be better for some institutions to focus on identifying the need for assistance and support for people with an MID.