

## Assessing the type of offence and criminal responsibility in borderline and mild intellectual disabilities: Is there any difference?

### Sınır ve Hafif Zeka Geriliklerinde Suç Türlerinin ve Cezai Sorumluluklarının

#### Değerlendirilmesi: Herhangi Bir Fark Var Mıdır?

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#### Özet

**Amaç:** Bu çalışmada sınır zeka düzeyi ve hafif zeka geriliği olan bireylerdeki suç türlerini ve cezai sorumluluklarını karşılaştırmak amaçlanmıştır.

**Yöntem:** Ocak-Aralık 2010 tarihleri arasındaki adli başvurularda geriye dönük olarak 39 sınır zeka ve 43 hafif zeka geriliği olan bireyler saptandı. Bunların suç türleri ve cezai sorumlulukları Ruh Sağlığı ve Hastalıkları Hastanesinde tespit edildi.

**Bulgular:** Yaralama suçu hafif zeka geriliği olan bireylerde sınır zekalı bireylerden daha yüksek düzeyde idi. Diğer suç tipleri açısından her iki grup arasında farklılık yoktu. Her iki grupta en sık suçlar yaralama ve hırsızlık idi. Sınır zeka düzeyi olan bireylerde cezai sorumluluklar; % 82 tam ve %18 azalmış, hafif zeka geriliğinde % 40 tam, % 30 azalmış, % 30 yok idi.

**Sonuç:** Yaralama suçu hafif zeka geriliği olanlarda sınır zeka düzeyi olanlara göre anlamlı olarak yüksektir. Keza cezai sorumlulukları hafif zeka geriliği olanlarda sınır zeka düzeyi olanlara göre istatistiksel olarak anlamlı farklıdır. Adli pratikte sınır zeka düzeyi ve hafif zeka geriliği tanılarının suç türlerinin saptanması ve cezai sorumlulukların belirlenmesinde önemlilik arz etmektedir.

**Anahtar Kelimeler:** Entelektüel bozukluk, zeka geriliği, suç, cezai sorumluluk.

#### Abstract

**Objective:** In the present study we aimed to compare the type of offences and the level of criminal responsibilities in individuals with borderline intellectual functioning and mild intellectual disabilities.

**Method:** Thirty nine individuals with borderline and forty three individuals with mild disabilities were detected a retrospective manner between January-December 2010 on forensic application. The type of the offences and the levels of criminal responsibilities of the individuals with borderline and mild intellectual disabilities were detected in the Mental Hospital.

**Results:** There was more injury offence in the mild intellectual disability as compared to the borderline disabilities. There were no significant differences with respect to the other types of offences between the two groups. The most common offences were injury and theft in the both groups. Criminal responsibility rates were; 82 % full and 18 % diminished responsibility in borderline, and 40 % full, 30 % diminished and 30 % none responsibility in mild intellectual disability.

**Conclusion:** The injury offence was significantly higher in individuals with mild ID than borderline intellectual functioning. The levels of criminal responsibilities were also significantly different between the individuals with mild and borderline intellectual disabilities. The diagnosis of borderline and mild intellectual disabilities are important for a type of offence and the levels of criminal responsibilities in forensic practise.

**Keywords:** Intellectual disability, mental retardation, offence, criminal responsibility.

#### Introduction

Intellectual disability (ID) is defined as a subnormal intellectual functioning, characterized by an intelligence quotient (IQ) lower than 70, and commensurate deficits in adaptive functioning (1). The prevalence of ID is estimated to be approximately 1 percent of the population (2). Levels of ID are specified with mild, moderate, severe and profound. Borderline intellectual functioning (BIF) can be noted and described as a V code in the DSM IV-

TR. BIF can be used when the focus of clinical attention is associated with an IQ in the 71-84 range (1). Persons with an IQ range between 50-70 is called as Mild ID that is the most common form of ID, representing 85 % of the total ID's (2).

Criminal responsibility is defined by the existence of two components: criminal act and criminal intent or intent to cause harm. In order to prove the criminal responsibility of an



offender in a criminal case the prosecution has to show that both components exist (3). The present standard for the defense of mental illness is based on a person is not responsible for criminal conduct if at the time of the act he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong (3,4). Our criminal law recognises of criminal responsibility is divided into three types; full criminal responsibility, diminished criminal responsibility and criminal irresponsibility.

The relation between ID and criminal offending are controversial and the prevalence of ID in the criminal populations to be as high as 4–10 % (5-7). Studies have also examined the risk of individuals with ID for committing particular offences. However, there has been much debate amongst researchers and clinicians on the misinterpretation of research findings and official statistics (8).

The relations between ID and criminal issues were evaluated to most aspects in the previous studies. In the present study we aimed to compare the type of offences and criminal responsibilities in persons with borderline and mild intellectual disabilities.

## Material and Method

The material of the present study was register based, retrospective and obtained by Mental Hospital during an one-year period ( 01 January 2010-31 December 2010). Individuals were referred by courts if the offender shows with possibly lower level of criminal responsibility, the courts may decide that a forensic psychiatric examination is required. The assessment of criminal responsibility and each forensic psychiatric examination report of defendants who had primary diagnosed borderline (n=39) and mild ID (n=43) were included in the study. Using all the examinations (clinical evaluation, psychological tests, constant observations, repeated interview) as a basis, three psychiatrist assessed the level of criminal responsibility and borderline or mild intellectual disabilities diagnosis. Diagnoses were made according to Diagnostic and Statistical Manual of Mental

Disorder (DSM)-IV-TR criteria. The examining by three psychiatry specialists wrote the reports about the criminal responsibility and then sent his/her own statement to the courts. The courts made the final decision on criminal responsibility. Our criminal law recognises three categories of criminal responsibility: full, diminished and none. Offenders with full responsibility are convicted. In cases of diminished criminal responsibility the punishment may be decreased at the court's discretion. Offenders with none responsibility can be given a restricted order to a forensic inpatient hospital as an alternative to prison, until they will be recovering.

Definitions of these offences: Injury was physical hurt and not to death of the victim. Thefts were burglary or shoplifting. Sexual offences were rape or molestation. Threat were only the act orally and not physical damage. Defamations were the act of making untrue statements about another which damages his/her reputation. Homicides were murder or manslaughter. Others were firesetting or property damages. Public offences were associated with the public that unlicensed possession of weapons, cutting down trees in publics, squat in publics, undertake to crime of others.

Statistical procedure; SPSS (10.0 version) for Windows computing program was used for the statistical analyses of data. Continuous variables are presented as mean (standard deviation [SD]). Mann Whitney U test was used to compare numerical variables. We performed chi-square tests to compare categorical variables. All of these differences were considered significant when  $p < 0.05$ .

## Results

Of the 39 offenders with BIF, 4 were female and 35 were male, the mean ages  $31 \pm 12$  and 43 offenders with mild ID, 7 were female and 36 were male, the mean ages  $33 \pm 11$ . There were no significant difference with respect to age and gender between the two groups ( $p > 0.05$ ) (Table 1).

The types of offence rates in individuals with BIF were injury (28 %), theft (25 %), public offences (15 %), sexual offences (13 %), threat/defamation/ slander (8 %), homicide ( %8) and



other (3 %). The types of offence rates in MID were injury (51 %), theft (21 %), sexual offences (9 %), threat / defamation / slander (9 %), public offences (7 %) and others (3 %). The most common offences were injury and theft in the both groups. There was more injury offence rates in the MID as compared to the BIF group ( $p=0.03$ ). There were no significant differences with respect to the other types of offence rates between the two groups ( $p>0.05$ ) (Table 1).

The levels of criminal responsibilities rates were significantly different between the two groups ( $p=0.001$ ). Offenders with BIF group had 82 % full and 18 % diminished criminal responsibilities. On the other hand offenders in the Mild ID group had 40 % full, 30 % diminished and 30 % none criminal responsibilities (Table 2).

## Discussion

In the present study, there was more injury offence in the MID group compared to the BIF group. The other types of offences were similar between the two groups and the most common offences were injury and theft in both of the groups. The levels of criminal responsibilities were significantly different between the two groups.

To the best of knowledge, present study is the only study comparing the types of offences and criminal responsibilities between individuals with BIF and Mild ID. In a previous studies, significant differences of criminal types had been reported between mild, moderate and severe ID (9). But the previous studies found controversial results between individual with and without ID (10-13). Some studies have shown that the types of offences were similar between individuals with and without ID (13-15). While others have shown that sexual and arson offences (16,17), or violence offences (18,19) were more common in individuals with ID as compared to non ID group. Therefore, this area needs further investigation. In the present study, there was more injury offence in the MID group and we speculated that reason of higher rate of injury offences in mild ID was secondary to the basic and less complex nature of the injury action.

In agreement with the previous studies, thefts were the second most frequent crime with the similar frequency in individuals with BIF and the Mild ID in this study (5). Thefts were common offences in individuals with BIF and Mild ID, this may be explained by the fact that individuals with ID may tend to come from lower socioeconomic backgrounds and far less likely to gain employment than individuals without ID (20).

Arson offence, which has been frequently reported to occur in individuals with ID, was not found in the present study (21,22). This may indicate that huge differences may occur in the distribution of offences according to some regions.

In the present study, homicide was found in 8 % in patients with BIF and in none of the patients in MID groups and there was no statistically significant difference between the groups. Homicide rates have been reported to be high in patients with ID, ranging between 12.5-30 % of the offences (5,21). Although Eronen et al. found that homicide rates were not increased in individuals with ID (22). This area needs further investigation.

In the present study, criminal responsibilities were significantly different between the two groups. Criminal responsibility rates were; 82 % full and 18 % diminished responsibility in individuals with BIF; and 40 % full, 30 % diminished and 30 % no responsibility in individuals with MID. These findings indicate that differential diagnosis of BIF and Mild ID is an important factor in determination of levels of criminal responsibility. Since all the patients with BIF didn't have full criminal responsibility, the diagnosis of BIF is also important in forensic practise. Moreover, these patients have statistically significant less rate of diminished or no responsibilities as compared with MID. A previous study showed that offenders with ID (mostly Mild ID) had reduced criminal responsibility in 59 % of the cases and no responsibility in 41 % of the cases (5). On the other hand Petrella indicated that 90 % of Mild ID cases had full criminal responsibility (22). These different criminal responsibility rates have been reported in individuals with ID in previous studies (5,23). All of those different rates are normal results, because determination of criminal responsibility in



individuals with ID are based on the some assesments. Offenders with ID have some vulnerabilities are under socialization, limited skills, poor internal controls, impulsiveness, maladaptive social learning, poor circumstances, lower ability to reason consequence of action and deficits in cognitive, communication, memory, problem solving abilities (8, 24). All of these vulnerabilities in offenders with BIF and MID can be variable and different levels of criminal responsibilities.

In the present study, there was no significant difference with respect to age and gender between the two groups. Youth and male gender lead people with ID to increased contact with the criminal justice system (6,15). Lindsay et al. reported that female offenders showed similar characteristics to their male counterparts (25).

Limitations; this was a retrospective study and we had not evaluated of some background informations, such as; previous offendings. In a forensic psychiatric evaluation, clinicians have some different opinions about the levels of criminal responsibility in a given cases because of lacking objective criterias. Moreover, the small number of subjects limited statistical analyses and conclusions.

Conclusions: There was more physical injury offence in individuals with Mild ID than BIF. The levels of criminal responsibilities were significantly different between the individuals with BIF and MID.

## References

1. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, 4th ed. Washington, DC: American Psychiatric Press; 2004.
2. King BH, Kodapp RM, Bykens EM. Mental Retardation. In Kaplan&Sadock's Comprehensive Textbook of Psychiatry. Sadock BJ, Sadock VA. (editors) 7st ed. Lippincott Williams&Wilkins 2000. p. 2587-2613.
3. Wettstein BM, Mulvey EP, Rogers R. A prospective comparison of four insanity defense standards. Am J Psychiatry 1991; 148 :21-7.
4. Katz N, Zemishlany Z. Criminal responsibility in Asperger's syndrome. Isr J Psychiatry Relat Sci 2006; 43: 166-73.
5. Männynsalo L, Putkonen H, Lindberg N, Kotilainen I. Forensic psychiatric perspective on criminality associated with intellectual disability: a nationwide register-based study. J Intellect Disabil Res 2009; 53: 279-88.
6. Holland AJ. Criminal behaviour and developmental disability: An epidemiological perspective. In Offenders with developmental disabilities developmental disabilities. Lindsay WR, Taylor JL, Sturmey P. (editors) Chichester, UK: Wiley 2004. p. 23-34.
7. Lindsay WR. People with intellectual disability who offend or are involved with the criminal justice system. Curr Opin Psychiatry 2011; 24: 377-81.
8. Jones J. Persons with intellectual disabilities in the criminal justice system: review of issues. Int J Offender Ther Comp Criminol 2007; 51: 723-33.
9. Shang QJ, Hu ZQ, Cai WX, Yu XD, Gu Y, Jiang MJ. The criminological characteristics of mental retardation. Fa Yi Xue Za Zhi 2006; 22: 58-60.
10. Hogue T, Steptoe L, Taylor JL, Lindsay WR, Mooney P, Pinkney L, Johnston S, Smith AH, O'Brien G. A comparison of offenders with intellectual disability across three levels of security. Criminal Behaviour and Mental Health 2006; 16: 13-28.
11. Riches VC, Parmenter TR, Wiese M, Stancliffe RJ. Intellectual disability and mental illness in the NSW criminal justice system. International Journal of Law and Psychiatry 2006; 29: 386-96.
12. Lindsay WR. Integration of recent reviews on offenders with intellectual disabilities. Journal of Applied Research in Intellectual Disabilities 2002; 15: 111-19.
13. Murphy G, Mason J. People with intellectual disabilities who are at risk of offending. In Psychiatric and Behavioural Disorders in Intellectual and Developmental Disabilities. Bouras N, Holt G. (editors) 2nd ed. Cambridge University Press, Cambridge. 2007. p. 173-201.
14. Hodgins S, Mednick SA, Brennan PA, Schulsinger F, Engberg M. Mental disorder and crime: Evidence from a Danish cohort. Archives of General Psychiatry 1996; 53: 489-96.
15. Holland AJ, Clare ICH, Mukhopadhyay T. Prevalence of 'criminal offending' by men and women with intellectual disability and the characteristics of 'offenders': Implications for



research and service development. Journal of Intellectual Disability Research 2002; 46(8): 6-20.

16. Barron P, Hassiotis A, Banes J. Offenders with intellectual disability: a prospective comparative study. J Intellect Disabil Res 2004; 48: 69-76.

17. Lindsay WR. Research and literature on sex offenders with intellectual and developmental disabilities. Journal of Intellectual Disability Research 2002; 46(8): 74-85.

18. Hughes K, Bellis MA, Jones L, Wood S, Bates G, Eckley L, McCoy E, Mikton C, Shakespeare T, Officer A. Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies. Lancet 2012; 28: 1621-9.

19. Hodgins S. Mental disorder, intellectual deficiency, and crime. Evidence from a birth cohort. Archives of General Psychiatry 1992; 49: 476-82.

20. Murphy CC, Yeargin-Allsopp M, Decouflé P, Drews CD. The administrative prevalence of mental retardation in 10-year-old children in

metropolitan Atlanta, 1985 through 1987. Am J Public Health 1995; 85: 319-23.

21. Inada T, Minagawa F, Iwashita S, Tokui T. Mentally disordered criminal offenders: five years' data from the Tokyo district public prosecutor's office. International Journal of Law and Psychiatry 1995; 18: 221-30.

22. Eronen M, Hakola P, Tiihonen J. Mental disorders and homicidal behavior in Finland. Arch Gen Psychiatry 1996; 53: 497-501.

23. Petrella RC. Defendants with mental retardation in the forensic services system. In The Criminal Justice System and mental retardation. Conley RW, Luckasson R, Bouthilet GN. (editors) Baltimore, MD: Paul Brookes 1992. p.79-96.

24. Johnston S. Forensic issues in learning disability. Crim Behav Ment Health 2004; 14(1): 53-5.

25. Lindsay WR, Smith AH, Quinn K, Anderson A, Smith A, Allan R, Low J. Women with intellectual disability who have offended: characteristics and outcome. J Intellect Disabil Res 2004; 48: 580-90.

**Table 1:** Comparison of age, gender and types of offences between the two groups.

Parameters	BIF n(39)	MID n(43)	p
Age	31±12	33±11	p=0.5
Gender (F/M)	4/35 10/90	7/36 16/84	p=0.4
Offences			
Physical injury	11 (28)	22 (51)	p=0.03
Thefts	10 (25)	9 (21)	p=0.6
Sexual Offences	5 (13)	4 (9)	p=0.6
Public Justices	6 (15)	3 (7)	p=0.2
Threat/Defamation/Slander	3 (8)	4 (9)	p=0.8
Homicides	3 (8)	0 (0)	p=0.1
Others	1 (3)	1 (3)	p=0.9

BIF; borderline intellectual functioning, MID; mild intellectual disability, F/M; female/male.

**Table 2:** The levels of criminal responsibilities in individuals with BIF and MID.

Criminal Responsibility	BIF n(39)	MID n(43)	p
Full	32 (82)	17 (40)	p=0.001
Diminished	7 (18)	13 (30)	
None	0 (0)	13 (30)	

BIF; borderline intellectual functioning, MID; mild intellectual disability.

