

IQ Thresholds and Influence of the Assessor's Professional Discipline on Fitness to Stand Trial Assessment Findings and Court Outcomes in New Zealand

**Dr Joseph Sakdalan and Sabine Visser
Forensicare/Te Whatu Ora (Mason Clinic) NZ**

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Aims of Study



- The study compared IQ thresholds for fitness between psychiatrists and psychologists and court outcomes.
- It also assessed the level of agreement between the two disciplines and identified whether the courts tend to agree more with psychiatrists' or psychologists' opinions on FST.

Hypotheses of the study

- Psychiatrists tend to have a lower IQ threshold for unfit to stand trial compared to psychologists;
- Both disciplines are generally in agreement about their opinions about the defendant's fitness to stand trial (FST);
- The courts' FST outcomes can be considered independent of the discipline of the assessor.

Background

Fitness to Stand Trial
in New Zealand



Pritchard Standard

The English common law defined by *R v Pritchard* (1836)

The Pritchard case identified three main elements that constituted fitness to stand trial;

- (1) whether the defendant is mute of malice or not;
- (2) whether the defendant can plead to the indictment or not; and
- (3) whether the defendant is of sufficient intellect to comprehend the course of proceedings on the trial as to make a proper defence to know that he has the right to challenge the juror to whom he may object and to comprehend the details of the evidence (*R v Pritchard*, 1836).

New Zealand

- The English common law defined by *R v Pritchard (1836)* was applied to the construction of the NZ legislation which construed the Section 108 of the Criminal Justice Act 1985
- This stated that a person is under disability if, because of the extent to which that person is mentally disordered, that person is unable:
 - (a) to plead; or
 - (b) to understand the nature or purpose of the proceedings; or
 - (c) to communicate adequately with counsel for the purposes of conducting a defence' (p.8).

Fitness to Stand Trial Legislation

- This Act was replaced by two major pieces of legislation, the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP) Act 2003), and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR) Act 2003), in October 2003 and was enacted in September 2004.
- These legislations were created to address issues around fitness to stand trial and to address the legislative gap created by the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH (CAT) Act 1992) which specifically excluded defendants with intellectual disability (Visser, 2011).

CP(MIP) Act 2003 New Zealand

- Section 4(1) of the CP(MIP) Act 2003 defines unfitness to stand trial as:
 - ‘a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and
 - includes a defendant who, due to mental impairment, is unable –
 - to plead
 - to adequately understand the nature or purpose or possible consequences of the proceedings;
 - to communicate adequately with counsel for the purposes of conducting a defence’ (Ministry of Justice, 2004, p.6).



Australia

- The legal test for fitness to stand trial in most Australian jurisdictions broadly reflects the Pritchard criteria. The minimum standard for fitness was expanded by *R v Presser* in 1958.
- The Presser standards prescribe the minimum standards required as set out below
 - to understand the nature of the charge;
 - to enter a plea or exercise the rights to challenge jurors;
 - to understand the nature of the trial;
 - to follow the course of the trial;
 - to understand the substantial effect of evidence and
 - to give instructions to a lawyer
- Currently, the combination of the Pritchard and the Presser standards has been the legal test used in five of the six Australian states.



Presser Criteria in New Zealand

- The Presser criteria are not considered mandatory criteria to be assessed by health assessors in NZ and are regarded as illuminating defendants' fitness as opposed to statutory requirements (Brookbanks & MacKay, 2010; Visser, 2011).
- The Presser criteria, as outlined in *P v Police* (2006), are:
 - understanding what it is that he has been charged with ;
 - pleading to the charge and exercising his rights of challenge;
 - understanding that the proceedings before the Supreme Court would be an inquiry as to whether or not he did what he was charged with;
 - following in general terms, the course of the proceedings before the Court;
 - understanding the substantial effect of any evidence given against him;
 - making a defence to, or answering, the charge;
 - deciding what defence he would rely on;
 - giving instructions to his legal representative (if any); and
 - making his version of the facts known to the Court and to his legal representative' (*P v New Zealand Police*, p. 10).

Method

- This study included defendants with a current or previous IQ score of 75 and below.
- This selection criterion was used to exclude defendants with only a mental illness without any significant impairment in cognitive ability.
- The data was sourced from Section 38 CP(MIP) Act 2003 court reports in the Auckland Regional Forensic Psychiatric Services (Te Whatu Ora) archives in Auckland, NZ, between 2005 and 2015.
- This study only included FST assessments, where the defendants had an ID diagnosis and were assessed by either a psychiatrist, a psychologist, or both.
- A sample of 146 defendants was used to evaluate relationships between IQ thresholds, the discipline of the assessor, and court outcomes.

Method

Sampling Procedure

- Interrater reliability analysis between psychologists and psychiatrists included 63 defendants with a psychiatric and a psychological FST report available.
- The mean IQ for this sample was 60 ($SD = 8.6$, $Min = 40$, $Max = 75$).
- Most defendants had a previous ID diagnosis ($n = 46$, 73.0%). A moderate proportion of defendants had previous mental health diagnoses ($n = 19$, 30.2%), with 15 (23.8%) defendants having a dual diagnosis of ID and mental illness.

Measures and Covariates

- Discipline of the assessor (psychologist or psychiatrist)
- Assessor's opinion on the defendant's fitness to stand trial (fit or unfit)
- Court outcome on the defendant's fitness to stand trial (fit or unfit)
- IQ scores

Method (Continued)

Data Diagnosis

- The data was entered in SPSS for each defendant and was examined to ensure that the data was correctly entered.
- The data was remedied if there was an incongruence between the data collection sheet and the information on SPSS

Data Analysis

- Data were analysed on R Version 3.5.3.
- To examine the IQ thresholds in which defendants were found to be fit to stand trial, IQ scores were entered into three univariate logistic regressions to predict psychological and psychiatric FST opinions and court outcomes.
- Monte Carlo confidence intervals were created, which represent IQ thresholds. Two likelihood ratio tests were applied to test the hypothesis that discipline adds more information to the model than the FST criteria alone.
- For analyses of the relationship between IQ scores, the assessor's discipline, and the FST assessor's opinion, logistic regression was conducted to identify if discipline is related to the assessor's recommendation to the court. An interaction effect between the IQ score and the assessor's discipline was added to the model.
- Interrater reliability was assessed using Cohens Kappa. All p values in this article were subject to the Holms multiple comparison method. Holm's method adjusts the p -value for the increased probability of incorrectly rejecting the null hypothesis when a study includes more than one hypothesis test.

Method (Continued)

Ethics

- This research was out-of-scope and did not require a full ethics application, as determined by the Health and Disability Ethics Committee, New Zealand, considering this is an audit-related activity instead of an intervention study.
- Waitemata District Health Board (Awhina Knowledge Centre) granted access to the court files for the previous research.
- The initial data collection did not involve contact with defendants as this was an archival study.
- It is unlikely that the results of this study would have caused harm to the disadvantaged subgroups as this research is used to improve the quality of FST evaluations and further understand FST court decisions.
- Personally identifiable information regarding defendants was removed from the datasets.

Results

- This study supports previous research findings that psychologists were more likely to find 95% of defendants unfit if their IQ scores were in the mild to moderate range (95% were unfit at an IQ of 57 or below).
- The courts' threshold were within the same range with psychologists' IQ thresholds such that 95% of ID defendants with an IQ of 53 or below were found unfit to stand trial in court.
- Psychiatrists were found to have an extremely high threshold for unfitness, such that they tend to find ID defendants unfit if they are in the severe ID range (IQ score of approximately 40 and below).
- The mean IQ scores for a fitness threshold were comparable between psychologists ($M = 67$) and the courts ($M = 66$).

Results

- These study findings indicated that when defendants were fit to stand trial, their IQ scores generally fell within the mild ID range (IQ in the mid-60s). The courts and the psychologists have similar IQ thresholds for finding fit and unfit to stand trial.
- IQ scores in the lower 50s appeared to be incompatible with a defendant being found fit to stand trial.
- 50% of defendants with IQ scores in the mild ID to borderline range of intellectual functioning, i.e., IQ scores from 69 to 72, were found unfit to stand trial.
- The findings of these studies suggested that psychiatrists and psychologists generally agreed on the fitness to stand trial, regardless of the defendant's IQ score. However, in cases of disagreement, the IQ threshold for psychiatrists and psychologists might have influenced their decision on fitness.

Results

- Psychologists' FST assessments generally included more information on cognitive assessment findings such as the IQ score and other cognitive abilities (e.g., information processing speed, verbal comprehension, working memory, etc.) in their reports than psychiatrists', which could reflect the notion that the interpretations from a cognitive assessment may inform psychologists' reasoning behind a defendant's fitness more so than psychiatrists'.
- It can be noted that the interaction between the assessor's discipline and the IQ scores when predicting the assessor's FST opinion was found not significant.
- The assessor's discipline did not appear to unduly influence the court's decision on fitness to stand trial.

Limitations

- This study was a non-probability study with no inferences about any population of defendants or assessments.
- No inferences can be made regarding mentally disordered defendants.
- The authors acknowledge that this study did not consider other possible confounding factors, such as the assessor's years of experience and expertise and other sociodemographic characteristics (e.g., age, gender, etc.) and only considered their disciplines.
- The authors did not control for other conditions (e.g., acquired brain injury, foetal alcohol spectrum disorder, etc.) that contributed to the cognitive impairment, which might account for the low IQ scores.
- This study included defendants from Māori (38.4%), Pacific Islander (18.5%), and Asian (3.4%) heritage. Limitations of the use of 'Western' standard intelligence tests with these populations should be considered.
- Other considerations, such as time-related factors, were not included in the scope of this research.
- Furthermore, Cohens Kappa assumes that the two independent assessors are independent; however, the second assessor would likely have the opportunity to read the first assessor's FST report; hence, the two assessors cannot be considered entirely independent.

NZ Case

L v Police (2012)

- The defendant's Full-Scale IQ is 51.
- Diagnosed with moderate ID.
- He pleaded guilty to several charges and was convicted and sentenced to imprisonment. He had previous convictions for which he received an imprisonment sentence.
- The lawyer did not raise concerns about the defendant's fitness to stand trial, assumed he was fit, and accepted his guilty pleas.
- He was found unfit to stand trial for most recent minor offences.
- **Outcome of Appeal:** All previous convictions, including minor and serious offences, were quashed when the Court of Appeal ruled that he was never fit to stand trial.



NZ Case

C v Police (2018)

- The defendant had a Full-Scale IQ of 52 and was diagnosed with mild to moderate ID.
- He pleaded guilty to the charges and was subsequently convicted and sentenced.
- **Outcome of Appeal:** The judge considered a miscarriage of justice was likely to have occurred regardless of whether the defendant pled guilty to the charges or was found guilty.



NZ Case

T v Police (2012)

- The defendant's Full-scale IQ was 59 and fell in the mild to moderate ID range of Intellectual functioning.
- Two psychiatrists declared him fit to stand trial. They did not have his intellectual assessment to base their decision. A psychologist assessed the defendant and found him unfit. Nonetheless, he was convicted and sentenced to eighteen months imprisonment.
- In 2021, the defendant appeared again before the court. He was re-assessed by a psychiatrist and a psychologist, and both opined that he was unfit to stand trial. The court agreed and found him unfit despite his Full-scale IQ now being assessed as mild ID (Full-Scale IQ of 65).
- Outcome of Appeal: The 2012 conviction was appealed in 2022. A psychiatrist from 2012 and a psychologist gave evidence. The psychiatrist changed his view based on the assessments in 2021 and agreed that the defendant was unfit to stand trial in 2012. He was found unfit and his conviction in 2012 was quashed.



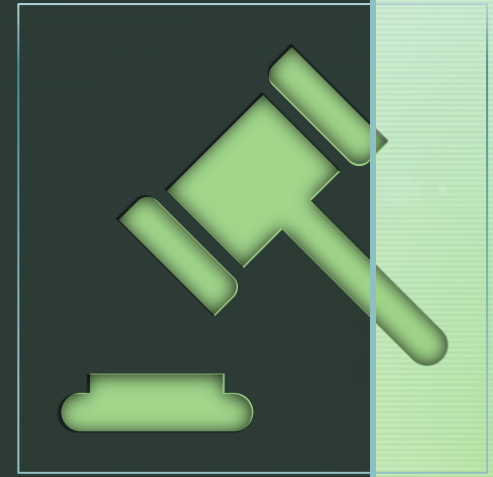
Implications and Future Directions

- The NZ court case judgements revealed that ID defendants in the mild to moderate ID range (IQ in the 50s) should be treated cautiously and that proper and comprehensive FST assessments should be carried out even in low-level court matters.
- Issues facing this subgroup of defendants are often complex, and it can be argued that there is a substantial risk of a potential miscarriage of justice, which could potentially outweigh the defendant's right to a fair trial.
- The defendant's IQ should not be the primary determinant of the defendant's fitness to stand trial. Conducting a neuropsychological assessment, assessing functional abilities, and using the Presser criteria can provide a more accurate picture of the defendant's functioning and a more comprehensive evaluation of FST.



Implications and Future Directions

- Given psychologists' skills and clinical expertise in conducting such assessments, they can provide valuable input and opinions to the court regarding a defendant's fitness to stand trial.
- Given only moderate agreement between psychiatrists and psychologists, more research is needed to improve the objectivity and validity of assessments and reports. This ongoing study is crucial to ensure that defendants' fitness opinions are primarily based on their ability to participate meaningfully in court, as opposed to assessor characteristics.



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Contact Email Address:

Joseph.sakdalan@forensicare.vic.gov.au

Sabine.visser@waitematadhb.govt.nz