

Herstelbemiddeling voor jeugdigen in Nederland

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*Een evaluatieonderzoek
naar zes pilotprojecten*

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Abstract

Victim-offender mediation for juveniles in the Netherlands

Evaluation of six pilot projects

At the end of the nineties several projects for juvenile restorative justice were started up in the Netherlands. The Verwey-Jonker Institute has evaluated these six pilot projects. The objective of the study was to gather sufficient material to make a well-founded decision as to whether restorative justice in (juvenile) criminal cases should be implemented nationwide. To this end, the methods for applying restorative justice were mapped out, together with the outcomes that can be attributed to restorative conferences. The pilot projects were followed for one year in order to determine the effectiveness of restorative justice in the Netherlands. Considering the number of restorative conferences that were conducted, we have to be somewhat cautious when interpreting the outcomes of the study.

The projects for restorative justice

Most projects work with the 'Real Justice' method. One exception is the project for restorative justice in the province of Zeeland where they developed their own method, known as 'the Zeeuwse method'. There are many commonalities in the working methods of the projects. However, it is clear that the mediators are, to a certain extent, pioneers who develop their own method of working through the different aspects of the restorative justice process. For example, who is present during the conference, whether a recovery plan is drawn up for the case, and if a follow-up conference is to take place. These differences have either no or only very little influence on the outcomes of the conference as perceived by the participants.

Referrals and inflow of cases

The organizations that refer the juveniles to the projects for restorative justice are mainly the police or the Council for Child Protection. Most cases were discussed in the Judicial Case Conferences before they were referred to the pilot projects. Each referral is evaluated based on the Real Justice criteria. This means that both the offender and the victim participate on a voluntary basis, the offender must have confessed to the crime, have taken responsibility for his actions and must have a cooperative attitude towards making good any damage. The needs of the victims always come first and foremost in the process. Moreover, there should be no risk of revictimization during the restorative justice process. In all the pilot projects, the guideline is followed that a restorative conference has no place in the criminal law settlement. A report of the restorative conference is usually added to the criminal file of the offender and the public prosecutor in the criminal court settlement may use it.

The offenders and victims involved

In principle, restorative justice is possible for all criminal offences. The criminal offences that lead to conferences usually involve physical molestation. In addition, vandalism and public order violations, threats and theft with and without violence may also lead to mediation. In most cases, first offenders, juveniles who have had no previous contact with the police, are involved. The offenders are usually juveniles between fourteen and seventeen years of age, born in the Netherlands. The proportion of female offenders is significantly lower than male offenders. Two in five cases involve an offence in which more than one offender was involved. Victim and offender are often acquaintances. They know each other from school, the neighborhood or town, or they are friends. The age of the victims varies from ten to 91. However, the majority are between twelve and eighteen years of age. Three quarters of the cases involve victims who are boys under eighteen with Dutch nationality.

The most important reasons for offenders to participate in the restorative conference are feelings of regret and the opportunity to explain to the victim why they committed their offence. The reasons for the victims to participate tend to be more altruistic, they want to prevent a repetition of the offence. Besides the offender and the victim, the parents of both parties are usually present during the conferences. The main reason for their participation is to support their children.

The outcomes of the restorative conferences

One in three cases leads to a direct confrontation between the victim, the offender and their social networks. In two out of three cases, no conference takes place. In fifty percent of cases, the offender refuses to participate and in twenty-five percent of cases the victim refuses. In one out of eight of the cases that did not lead to a conference, an alternative method of conciliation is found, which usually means that the offender writes a letter of apology or sends a bouquet of flowers to the victim.

The cases that did not result in a conference often involve offenders with a minority ethnic background. The reason for this might be that offenders from ethnic backgrounds are less familiar with the phenomenon of restorative justice. Another difference is that first offenders are a little more likely to participate. The type of offence does not determine whether a case leads to a restorative conference or not. Criminal offences that were committed in a group more often lead to a conference than offences that were committed by one offender. One possible explanation for this might be that if the offence was committed in a group then the chance that one or more offenders will participate is higher.

In the cases that resulted in a conference, the participants concluded that a dialog between offender and victim evolved. It was the experience of victims and offenders that they could tell their own side of the story in the conference and that they could actively cooperate in finding a solution and in arriving at agreements. The participants regarded the confrontation as positive. The conversation took place in a relaxed and calm atmosphere and the participants were respectful towards each

other. The offenders found it difficult to hear what the consequences of the offence had been for the victim. Both offenders and victims conclude that something was restored. However, in the opinion of the victims, a little more than in the opinion of the offenders, only part of the damage had been made good. Both parties say that an important outcome of the conference is that the relationship has been restored such that they can continue in a normal fashion. However, it is clear that not everything can be solved in one conference. The trust and the bilateral relationship have to be rebuilt slowly. Moreover, half the victims say that the conference helped them to cope better with their distress, although some victims are still struggling with the mental consequences of the offence.

The mediators believe that almost all the juvenile offenders gained more insight into their behavior and the consequences of this behavior. However, the victims are a little more skeptical. Some victims doubt whether the offender has actually learned anything or gained any insight. The offenders themselves believe that a learning process has started and their intention is not to engage in this kind of behavior in the future.

Another objective of the study was to compare the degree of recidivism between the offenders in the pilot projects and a control group. Because police records were inadequate (which were not meant to be used for research purposes) it was impossible to accumulate unambiguous information about the characteristics, dimensions and degree of recidivism of the random sample. Therefore, we were forced to omit this part of the study for technical reasons. In a secondary study, our advice is not to use the police records system, but the juridical records. Finally, a sufficient amount of time must have elapsed, i.e. at least two years, between the restorative conference and the recidivism study.

All participants think that restorative conferences are a worthwhile addition to juvenile criminal law. Most of the participants (mediator, victim, offender and their social network) are reasonably to very satisfied about the different aspects of restorative justice and they have experienced good outcomes as a result of the conference. The parties are less satisfied in only a few cases.

The agreements and compliance

Important facets of the restorative conference are the agreements that are made at the end of the conversation, which are meant to alleviate any distress. Agreements were made in two out of three cases. In one out of three cases, these agreements were set out in a restorative policy. Compliance with these agreements is left mostly to the participants themselves. Only occasionally is it specified who is responsible for complying with the agreements. The consequences for the offender for not complying with the agreements are not specified.

The long term: the effect of the conference on the victim

The offender and victim were contacted three months later to see how they were doing and if the agreements had been met. In fewer than half the cases the mediator had contacted the victim and offender. Their reports show that both victim and

offender are still positive about the restorative conference. The offender's social network reports a behavioral change in their son or daughter. This behavioral change usually obviates recidivism. The victims are less fearful than before, and they are satisfied that there has been no reoccurrence of the offence, and the mediators are still satisfied about the process of restorative justice.

Critical comments and recommendations

We can conclude that each of the six experiments performed the restorative justice process in a thoughtful and precise manner. However, a few critical comments about the practice of restorative justice can be made:

- The conference itself is sufficiently well protocolled; but there is much obscurity about the position of restorative justice in relation to the criminal law response.
- The responsibility for complying with the agreements made during the conference is now exclusively in the hands of the participants themselves. It is important to ascertain whether the agreements were complied with in order to get a clearer view of the position of the victim.
- Alternative methods of restorative justice should be applied more often.
- There must be more exchange between the different projects about the use of procedures and methods.