Summary

A study commissioned by the Dutch Scientific Research and Documentation Centre (WODC) and the Dutch Ministry of Justice was conducted on the approach used to punish very serious crimes committed by juveniles. The aim of the study was twofold:

1 To provide insight into the way in which judges react to very serious crimes committed by juveniles.
2 To determine whether significant differences exist between the courts in the punishment of these sorts of crimes.

The results of the study are important for the promotion of a consistent national approach to very serious crimes committed by juveniles.

This study is a follow up to a previous study carried out by Van der Laan et al in 2005 in response to the Griffith motion (TK 29800 VI, 2004) of 16 December 2004. In this motion the *Tweede Kamer (*the Dutch Lower House) requests that the government conduct research into the specific nature and scope of the forms of serious criminal behaviour committed by juveniles from 14 to 16 years old, whether individually or in groups, and to examine the sentences passed by judges.

This study comprised two parts: a case-file study and in-depth qualitative interviews. The case-file study involved the examination of 447 criminal files relating to juveniles sentenced for a first very serious crime offence in 2006, and covering five arrondissements (areas of judicial jurisdiction) and one commune (a sub-division of an arrondissement). Information was gathered on the criminal sentences passed, which civil law interventions may have occurred as well as or in response to the very serious crime committed, what the demands of the *Openbaar Ministerie* (Public Prosecution Service) entailed, and what advice was given by the *Raad van Kinderbescherming* (Child Protection Council) and in Pro Justitia reports. Based on the information available in the case-files, background characteristics of juveniles were also outlined. In the second part of the study supplementary in-depth interviews were conducted with 13 juvenile court judges and 8 juvenile officers from the Ministry of Justice. The interviewees were asked for their visions on the best method to punish very serious crimes.

There are several limitations to this study. The case-file study was carried out in a selection of arrondissements. Although the selection was made based on the distribution of degree of urbanization and geographical location, the distribution across all communes and the distribution of average sentence for principal penalties, some degree of caution must be applied when generalizing the results for the whole of the Netherlands. This qualitative study was conducted with a limited number of juvenile court judges and Justice Officers. It was aimed at generating supplementary information.

From the case-file study it appears that 64% of the juveniles summoned for a first offence were sentenced by a juvenile court judge sitting alone. The juvenile court judges passed sentence by means of juvenile detention in 69% of cases, community service in 72% of cases and placement to a juvenile institution in 7% of cases, independently or in combination with another punishment or measure. For 32% of juveniles a single sanction was passed.

The most frequently passed single sanction was unconditional community service (20%). For 68% of juveniles a combination of principal penalties and/or measures (conditional and-or unconditional) was chosen. The most frequently applied combinations were conditional juvenile detention combined with an unconditional community service penalty (22%) and an unconditional and conditional juvenile detention combined with an unconditional community service penalty (19%). There is considerable variation in the combinations of punishments and measures laid down. There is also a wide spread in the severity of juvenile detention. On average, the juveniles included in the case-file study were sentenced to 82 days detention, conditional or unconditional.

The juvenile court judges applied special conditions to their judgments for 57% of those juveniles examined. Such conditions can be applied in the case of a complete or partial conditional sanction. Three quarters of juveniles with a complete or partial conditional sanction were also given *special conditions*. For a third of these juveniles the only special condition applied was a *Maatregel Hulp en Steun* (Help and Support Order, i.e. supervision by juvenile probation) without any additional specifications. In the other cases additional specifications were applied. In some instances, behaviour-influencing special conditions with specified care arrangements are stipulated, for example, treatment at a juvenile mental health care institution or *individuele trajectbegeleiding* (individual supervision program) by juvenile probation.

Based on both the case-file study and the interviews it appears that the approach taken to punish serious crime is mainly case-specific. Specific characteristics of the juveniles and his or her situation (e.g. reoffending, earlier punishments and social work) and characteristics of the crime (e.g. the seriousness and the circumstances in which it was committed) are weighed up per case to determine the sentence and the means by which the sentence is carried out. This leads to considerable variation in the approaches taken to punish serious crime. The pedagogical character of juvenile criminal law is the starting point for the deliberations of juvenile court judges and Justice Officers. Advice from the *Raad voor de Kinderbescherming* (Child Protection Council) and Pro Justitia reports plays a crucial role in this. Finally, it appears suspending the provisional sentence plays an important role in the approach taken. In the case of suspended sentences, neither the juvenile court judges nor juvenile officers from the Ministry of Justice consider it to be pedagogically responsible to pass a sentence of juvenile detention.

As well as, or in connection with, the criminal law punishment, 17% of the juveniles examined were subject to civil law measures. In 12% of the case-files studied no information could be found in the crime files concerning any possible civil law proceedings.

From the case-file study it appears that separate case-files are kept by the civil law and criminal law circuits. This does not mean, however, that there is no interaction or cooperation between the two circuits. From the interviews with juvenile court judges it would appear that they definitely do take pending civil law proceedings into account. This can result in the criminal law sentence being lightened. Justice Officers also consider civil proceedings when formulating their own terms. It was indicated that serious crimes always result in criminal sentencing and that a civil law intervention is not enough.

The extent to which the civil law and criminal law circuits are integrated depends on the organization of the Public Prosecutor's Service and court clerks. This varies for each arrondissement. In some arrondissements the civil law and criminal law circuits work together in a juvenile unit and/or the juvenile court judge oversees civil as well as criminal hearings. In other arrondissements they are kept strictly separate.

Past civil law interventions against a particular juvenile play – in and for as much as juvenile court judges possess knowledge of them – a role in determining the modality of the sentence. From both the case-file study and the interviews it appears that when past civil law interventions haven't worked, criminal law proceedings are likely to be instigated sooner. Furthermore, from the interviews it appears that when a civil law measure is passed in the period between the committal of an offence and the criminal hearing, for example, court custody in secure juvenile care, a lighter criminal sentence is given.

There appear to be minimal differences between the reactions of the courts involved in the study on very serious crimes. In broad terms there is general agreement and the judgments are congruous with the guidelines for criminal proceedings. The differences that do exist are mainly nuances that arise from differentiated interpretations of individual juvenile court judges and juvenile officers.

In conclusion, the reaction of juvenile court judges to very serious crimes is very diverse, suggesting a case-specific approach in which specific characteristics of a juvenile and his/her situation and the offence are considered per case. Within the different types of very serious crimes, various degrees of seriousness can be established. Cases seldom undergo adult criminal law proceedings. In the majority of cases different sanctions are combined. (Re)education is the main principle when laying down a sanction. The civil law and criminal law circuits generally operate independently from each other. The harmonization of criminal sanctions and civil law interventions depends on the extent of cooperation between both circuits within the Public Prosecutor´s Service and the court´s clerks. Separate case-files are kept. As far as civil law measures and special conditions are concerned, juvenile court judges allow themselves to be led by advice from the *Raad voor de Kinderbescherming* (Child Protection Council), juvenile probation and/or Pro Justitia reports.