

Strong influence

Evaluation of the GBM Behaviour Modification Measure. Summary

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Evaluation of changes to juvenile criminal law

The Behaviour Modification (Young People) Act (*Wet gedragsbeïnvloeding jeugdigen*) entered into effect on 1 February 2008. A number of changes were made to the youth justice system in this context (*Staatsblad* 2007, 575). The purpose of these changes was to increase the possibilities for modifying the behaviour of young persons, among other things by means of the Behaviour Modification Measure (*Gedrags Beïnvloedende Maatregel* - GBM). The changes to the law are intended to ensure that the courts have more and better instruments available to them to influence the behaviour of young persons and their situation in society in a positive way.

This document reports on an investigation into the implementation of the abovementioned criminal law innovations. This is a means of implementing the wishes of the legislators to have these innovations evaluated, three years after they entered into force.

Research subject and inquiry

The GBM is the most significant part of the changes to the law and this inquiry also mainly focuses on this. The research subject is: To what extent are the possibilities and changes intended by the change in the law actually applied in practice? The foregoing is developed further in the following research questions:

1. What is the content of the changes to the law and based on which it is presumed that implementation of the GBM will result in improved possibilities for influencing the behaviour of young people who have committed one or more crimes?
2. To what extent did the judiciary make use of punishments, measures and special conditions taken from youth criminal law prior to the implementation of the new law?

3. To what extent was use made of the existing possibilities for combining punishments and measures in the youth justice system prior to the implementation of the new law?
4. To what extent was use made of applying and combining the 'former' possibilities for applying punishments and measures prior to the implementation of the new law? How are these implemented in practice?
5. How often is use made of the new possibilities (including combinations of sanctions) which the law has created since the change? How are these implemented in practice?
6. Which sanctions from the 'former' juvenile criminal law do the new possibilities (including combinations of sanctions) replace, and in what numbers?
7. How is the implementation of the change in the law progressing (in particular in relation to the GBM) and does the change in the law meet the legislators' expectations?

Varied data were collected between January 2006 and May 2011 to answer these questions. Various written sources (such as Parliamentary Records, policy memoranda and behavioural science literature) were consulted for the 'plan evaluation' (see research question 1). To gain an insight into the progress of the implementation of the GBM, interviews were conducted in the administrative districts of Almelo, Utrecht and Zwolle with representatives from the youth punishment chain (such as juvenile courts and youth probation service employees). These interviews were held during 2009 and 2010. Ten experts were involved in the interviews each year (question 7). Quantitative data was collected from the Justice Documentation Research and Policy Database (OBJD) of the WODC Research and Documentation Centre and case file research was carried out in the abovementioned districts (questions 2-6) to analyse potential changes and shifts in the arsenal of youth punishments as a consequence of the changes to the law.

Results and conclusions

Introduction

It is too early to be able to say anything about the effects (in terms of recidivism) of the GBM and other new extensions of juvenile criminal law. The changes in the law have been in effect for too little time for this. It is however possible, three years after the law came into effect, to draw up a balance sheet on the implementation (application) of the proposed changes. This is based on the results of three research projects that are briefly discussed below.

Part I: Substantiation and expectations for the change in the law

Plan evaluation from a pedagogical perspective

A plan evaluation was carried out to gain a picture of the theoretical evidence for the changes to the law and the effects one could expect from these changes (in terms of reduced reoffending among young people). This analysis was carried out from a pedagogical perspective: attention was paid to the framework that has been created in order to achieve the pedagogical objectives of (re-)education and modifying behaviour.

Underlying ideas

An investigation was carried out into the motives and ideas underlying the change in the law and what legitimised the proposed changes. The need to introduce changes to juvenile criminal law was inspired by three pedagogical concerns. In the first place it was felt that the arsenal of punishments was insufficiently differentiated (between mild and severe measures) for effective intervention in the behaviour of young people. Second, the law included restrictions that hindered offering 'custom work'. Third, there were obstacles that stood in the way of prompt pedagogical intervention. The legislators clearly described the problems. The legislators moreover gave clear reasons why the practices at the time were no longer satisfactory and why improvement was needed from a pedagogical perspective. What was missing in this reasoning was numbers-based evidence for the need for a change in the law.

The proposed changes were based on the assumption that this would create improved possibilities for behaviour modification. This would expand the effectiveness of the range of youth sanctions, which would ultimately translate into a reduction in reoffending. Although this seems plausible, the soundness of this reasoning was not substantiated. Although the legislators invoked general principles of effective approaches and strategies, the explanations and references have a general, abstract and sometimes implicit character. The reasoning could have been more precise and more convincing on this point if the legislators had involved the implications of the (pedagogical) knowledge of 'what works for whom' more explicitly in the proposed law.

Theoretical and empirical basis

An attempt was then made to reconstruct the 'programme theory' which is at the basis of the new law. A programme theory describes and substantiates the effect that a new intervention or policy measure could have in practice. The theory explains which factors or mechanisms are crucial to the changes that need to be brought about. It is concluded that the Behaviour Modification (Young People) Act (GBM) is not substantiated by a programme theory. Therefore the expectation that the changes to the law would offer improved possibilities for modifying young people's behaviour has not been realised in practice.

The final stage in the plan evaluation should consist of an analysis of the empirical substantiation for the changes in the law. But it is not possible to make any statement on this because of the lack of a programme theory.

Expectations of results from the change in the law

The legislators had positive expectations regarding the changes in the law. Improving the (legal) preconditions would make it easier to achieve behaviour modification,

'custom work' and more rapid criminal law interventions. The reasoning was that this would ultimately have a positive effect on reoffending by young people.

Conclusion of the plan evaluation

It remains difficult to state expectations regarding the effects that the proposed innovations are likely to have. The foundations of the changes to the law are too uncertain and too fragmented for this, the approach has been insufficiently developed and the actual content has been left too much to judicial practice. When they introduced the GBM, the legislators assumed that eventually effective interventions will be implemented. One cannot say with certainty that the new law will ultimately result in reduced reoffending. The conclusion is that there were various reasons for implementing the changes to the law, but that at the end of the day these have not been sufficiently translated into a coherent, solid and practical plan.

Part II: View of the implementation of the behaviour modification measure

Interviews with justice chain partners

Chain partners were interviewed in three districts to gain an impression of the implementation of the GBM at local level. The interviews, which were conducted in the first three months of 2009 and 2010, reflect the views and observations of those involved with regard to (the implementation of) the GBM. The following conclusions cannot automatically be applied to the districts in question as a whole, or to the rest of the country.

Experience and knowledge

The number of GBMs that were imposed in the second implementation year in two of the three districts has increased. However, the total lags behind what was initially expected. A GBM is used if a compulsory framework for providing assistance is valued necessary. Not much can be said about the results of the measure; at the time of the research, no one had gone through the entire GBM trajectory. In one district GBM's had not been imposed at all.

A great deal of work has been done on knowledge transfer in the district in question. The respondents believe that their knowledge of GBMs has improved. Partly as a result, the uncertainties that initially existed about the target group for GBMs have been resolved. Knowledge improvement has ensured that the misconception (which still existed when the measure was introduced) that only judicially recognised behavioural interventions can be deployed, has apparently been eliminated.

Decision-making and implementation

Considerations as regards imposing the GBM in the districts in question particularly concern the offending behaviour of young people (repeat offenders, hard-core juveniles, serious crimes) and their assistance history (extensive or unsuccessful trajectories). Client-related factors (such as mental impairment, complex problems and criminal behaviour are not sufficiently serious) and provision-related factors (lack of suitable treatment in the region, waiting lists) are reasons stated for not imposing a GBM.

Action points as regards implementing GBMs have also been raised. It has been determined that districts deal differently with so-called failed GBMs. It turns out that

youth detention is not imposed immediately as a substitute everywhere and at all times on young people who do not comply with what is agreed in the context of the GBM. During the research period 19 GBMs were imposed in two of the districts that were researched. None of these trajectories had been completed at the time of the research.

Issues

Most of the problems that arose during the first year that the GBM was available do not or hardly have any relevance any more according to the majority of the respondents. The problem of the excessively long duration of the GBM consultation trajectory appears to have been largely resolved in most of the districts concerned. Moreover, lack of knowledge and experience of (behavioural) experts in the judicial chain is no longer an issue according to respondents. Respondents also find that the cooperation between the partners in the chain has generally improved.

The initial problem of the limited available range of behavioural interventions still exists according to a number of chain partners. For this reason, interventions sometimes have to be sought outside the respondent's own legal district. Some respondents still experience problems with the differences in criminal law and other actions referred to above in the event that the GBM fails to work, and the resulting lack of clarity as regards the policy to be implemented. Finally, a number of chain partners object to the fact that young people remain at liberty until the appeal hearing and that processing comes to a halt (which is very undesirable) in cases that are referred as 'negative outcome' and where an appeal is lodged against converting the GBM into youth detention.

Improvements, changes and expectations

Respondents saw various improvements in the implementation practice compared to the start-up period of the GBM. There is better cooperation with chain partners, knowledge about and experience of applying the GBM have increased, and there are more recognised behavioural interventions available. Respondents thought it difficult to tell whether the arrival of the GBM has provided a shift in the range of sanctions. Some were more inclined to speak of enrichment (an additional sanction) rather than a shift (instead of another sanction). According to others, it appears that the GBM has, mainly, taken the place of the (suspended) PIJ (committal to a young offenders institution) which, if this trend continues, could signify a shift.

The majority of interviewees found that the practice does not correspond to the original expectations of the GBM. They believe that the GBM is mainly applied to a more serious target group, while initially it was, they believe, intended for a less serious target group. Moreover the number of measures actually imposed lags behind what was expected. Some respondents expect a further reduction, in connection with a possible decrease in the number of hard-core juvenile offenders.

Conclusion from interviews

It must be concluded that the implementation of the GBM has been difficult. Although it appears that there has been progress over the course of time, this could not prevent the number of GBMs that was imposed from lagging behind expectations in this regard.

This conclusion is based on research in three districts. Research that was conducted simultaneously by third parties into the implementation of the GBM shows that other parts of the country have also been or are being partly confronted with the same problems. The GBM appears to have been applied on a modest scale there as well.

Part III: Developments in the imposition of youth sanctions

Database details and file material

To make a record of the sanctions policy of the courts, a period prior to the change in the law (pre-measurement 2004-2006) was compared with a period when the new possible sanctions had been put into practice (post-measurement 2009). The reported results are mainly based on data from the Justice Documentation Research and Policy Database (OBJD). Case file research was also done in three districts to discover how assistance was imposed in concrete terms in the context of the GBM.

Behaviour Modification Measure (GBM)

The GBM was imposed 68 times in 2009, which corresponds to 0.5 per cent of all sanctions. Out of these 68 times, the GBM was imposed 68 times in combination with other sanctions. The majority of the combinations (87.3%) involved a combination with the youth detention sanction (whether or not in combination with other sanctions).

Implementation of Behaviour Modification Measure

A GBM was imposed 19 times in 2009 in the three districts that were selected for in-depth research (28% of all GBMs that were imposed). Case file research was also conducted in these instances to discover how the GBM was applied in practice. The GBM was combined with youth detention in approximately three-quarters of these cases. This measure was mainly imposed on young people who committed offences that fall under the category of serious crime.

The GBM was implemented in very different ways. In 13 instances the measure included a referral to the Hard Core ITB and 18 cases included a requirement that the assistance imposed had to consist of a form of behavioural treatment. Moreover, in the majority of these cases the assistance had to consist of following three or more treatment or other programmes. This variation may have arisen from striving to impose assistance that fits the needs of individual juveniles and their circumstances as far as possible. The case file research provided little information about the course of the implementation of the measure.

The use of 'new' (combined) sanctions

The entry into effect of the change in the law introduced a number of sanction possibilities. The question is whether the courts also make use of these new possibilities (including sanction combinations). All the sanction combinations that appeared more than ten times in 2009 were in fact also possible during the period 2004-2006. It cannot however be concluded from this that no use was made of the

possibility to impose new sanction combinations. It is namely also possible that this was the case, but that this only involved relatively unique combinations in 2009 (namely those occurring fewer than 10 times), which are not analysed in this research.

Conclusion on the basis of database and case file data

In the first place the GBM is applied nationally, although on a limited scale. The GBM only constituted less than 0.5 per cent of the sanctions imposed in 2009. Second, the analysis of sanction combinations which occur at least 10 times does not show any increase in new sanction combinations. This does not mean that no new sanction combinations were imposed. This means that when use was made of new sanction combinations, these must have been relatively unique combinations. Finally, the case file analysis displays an exceptional variety as regards the content of 'special conditions' (in 2009 compared to 2004-2006) and GBMs (in 2009).

Conclusion

The original purpose of the change in the law was to give juvenile courts more and better instruments to positively influence the behaviour and social situation of juvenile delinquents. The legislators appear to have succeeded in this from a qualitative viewpoint, at least to a limited degree: it turns out that in practice only modest use is made of the GBM. Whether these new instruments are also better (read: more effective) instruments for behaviour modification is a question that can be answered by new research (after a few years). It must be concluded that the initial expectations have not been realised from a quantitative standpoint.