

SUMMARY

Introduction

The custodial measure 'institutional placement order' (Plaatsing in een Inrichting voor Jeugdigen; PIJ measure) will be administered by the court if for a crime a precautionary detention is warranted, if the general safety of individuals or materials requires such a measure, and if the measure is in the best interest of the future development of the youth involved. Upon considering the administration of the PIJ measure, it is important to take into account whether or not the measure will be necessary for a proper treatment or beneficial to the upbringing of the youth, and whether there is a high risk of recidivism in criminal behaviour. The court is required to obtain advice from at least two forensic experts (psychiatrist and psychologist) who have made a pre-trial forensic mental health evaluation ('pro Justitia' evaluation) of the youth. The resulting report needs to lend support to the decision of the court and will be a starting or reference point for treatment.

The quality of the pro justitia report has been criticized: sometimes for the long time it may take before it is on hand and sometimes for the questionable applicability of the report's conclusion (Ministerie van Justitie, 2006; RSJ, 2006; PvdA, 2006; Volf, 2006). In many cases it remains unclear whether sufficient alternatives for a PIJ measure recommendation have been considered by the expert and sometimes inappropriate treatments are advised (Duits, 2006). Duits et al (2005) showed that in a considerable number of cases the assessment of risk of recidivism was based on clinical judgement rather than on a validated instrument and was presented without sufficient corroboration in the report

Furthermore, from 2001 till 2005 the number of PIJ recommendations and convictions seems to be fluctuating. It is unclear why: Is this necessary or warranted? Is it caused by a shift in vision held by the judiciary or motivated by other factors? The three formal or legal grounds for the PIJ measure leave ample room for differences in interpretation and it could be that PIJ measures are more frequently administered because alternative measures are lacking or overseen, such as a custodial measure for adults (TBS) or juvenile detention for untreatable cases. Research in the arrondissement of The Hague revealed a relative diminished concordance between the recommended measure and the eventual conviction when the recommendation was a *conditional* PIJ measure (Ten Berge & Duits, 2008). In addition, it is unknown how frequently a conditional PIJ measure is transformed into an unconditional PIJ measure and little is known about how well interventions are carried out in case of a conditional PIJ measure.

It is therefore that this research is aimed on the role of the pro justitia report in the recommendation, sentencing and execution of the unconditional and conditional PIJ-measure. A clear view is needed regarding the quality and usefulness of the pro Justitia report as well as the quality of the advice or recommendation therein. This study aims to do so.

Methods

The present research comprises several substudies:

It aims to take an inventory of statistics for the Netherlands regarding the number of PIJ measures administered to get a better view of local differences. These statistics are obtained from the WODC.

- We studied records (n = 700) to investigate the quality of the pro Justitia reports and to investigate the grounds for a PIJ recommendation or a prolongation of the PIJ measure at hand. The study involves 300 reports with a conditional PIJ recommendation, 300 reports with an unconditional PIJ recommendation and a control group of 100 with no PIJ recommendation. The grounds for a PIJ recommendation is investigated with a procedure called 'concept mapping'. The quality of reports is assessed with the STAR (Standardised Assessment of Report; instrument that is developed on the basis of concept mapping of the concept of usability of reports for users), recommendations are compared with convictions to investigate their concordance based on records of the bureau of IJZ (Individual Youth Affairs, Department of Justice).
- Qualitative interviews regarding the quality and usefulness of pro Justitia reports are undertaken with thirteen judges in juvenile courts and six therapist in juvenile forensic treatment settings. Structured interviews are conducted and the participant is interviewed on two reports that have been send beforehand. Also interviews are held with three trainers of the education program for forensic experts for pro Justitia reports, to investigate which grounds are deemed necessary for a PIJ recommendation.
- 'Concept mapping' trajectories for the proper grounds or criteria for both unconditional and conditional PIJ recommendations were undertaken with judges of juvenile courts and psychologists and psychiatrist who write pro Justitia reports. This method was chosen to reveal factors that are deemed essential by these professionals to both type of recommendations
- We investigated records (n=135) at various rehabilitation departments of Bureau "Jeugdzorg" (Youth Care) to get a grip on the realization of special conditions in case of a conditional PIJ measure. An inventory was made of the special conditions, and it was investigated whether or not these special conditions had eventually been met.
- Finally, we investigated records (n=130) at the department IJZ, to reveal the realization of special conditions for the treatment of juveniles in juvenile justice institutions (JJI's) in the case of an unconditional PIJ measure. We investigated the concordance between the recommended treatment in the report and the actual treatment delivered according to the records.

Results

The PIJ-measure, Dutch statistics and comparisons between regions (research question 1)

The results reveal a recent decrease in the number of PIJ measures recommendations and in the number of PIJ measures administered by the court. Furthermore, definite differences in the frequency of recommended and administered PIJ measures are evident between various regions in the Netherlands. The proportion of recommended PIJ measures varies between 13 and 53%; the proportion of administered PIJ measures varies between 16 and 45%. There are also substantial

differences between different regions in the number of juvenile offenders investigated for a pro Justitia report. Finally, the relative frequency of recommendations for a conditional and unconditional PIJ measure differs substantially between various regions.

Quality of reports (research question 2)

The quality of pro Justitia reports is deemed merely adequate according to the assessments with the STAR instrument. With the STAR the rightfulness of the diagnostic assessment of the juvenile nor the accuracy of the advice is assessed. The use of the instrument is to evaluate the completeness, transparency, consistency and accountability of the findings in the report.

Only small differences were found in quality (according to the STAR) between reports with and without PIJ recommendation and the quality of the reports appear to have no influence on whether or not the court decides in line with the recommendation of a PIJ measure in the report. Differences between recommendation and sentence are rather based on different viewpoints on what might be achieved with treatment.

The juvenile judges who evaluated subjectively two reports, valued these reports positively; they were less inclined to merit the reports as timely and they were not always convinced of the expertise of pro Justitia evaluators (authors of the reports) and their indications for custodial treatment.

Therapist from the juvenile forensic clinics were satisfied with the usefulness of the two reports they evaluated. They deem the reports as a valuable starting point for treatment. Some were negative about the motivation for a specific treatment setting and sometimes a good recidivism risk taxation was lacking altogether.

Indicating factors for a PIJ-measure (research question 2 en 3)

In the education for forensic experts for pro Justitia reports attention for PIJ measures is growing over the years. Currently, there is substantially more time spent on training experts on when to recommend a PIJ measure. However, the subject matter of specific indicators for a PIJ measure is not addressed.

The concept mapping revealed that the experts consider the *unconditional* PIJ measure as an ultimate measure (when there are no alternatives available to alter behavior or counter danger to goods or persons) and to diminish a high chance of (violent) recidivism. The *conditional* PIJ measure is mainly considered in cases where still viable treatment options are present, functioning in the community needs to be preserved or the juvenile may benefit from a positive social network or peer group

In reports from the years 2005 to 2007 on average 5 criteria were mentioned to recommend an unconditional PIJ recommendation; the average criteria for an conditional PIJ was 3.8 and for a non-PIJ advise 2.2. In almost 11% of the cases with an unconditional PIJ recommendation and in 17% of the conditional PIJ recommendations no or merely a single criterion was mentioned. The latter was also the case in 46% of the cases resulting in a no-PIJ recommendation.

Many indicating criteria of the concept mapping were retrieved in the reports. In the unconditional PIJ-recommendations more often lack of options and difficulties were mentioned; in the conditional PIJ-recommendations we found more frequently positively formulated indicating criteria.

Judges of juvenile courts deem as most important indicators for PIJ measures the diminishing of violent recidivism, the obligatory character of the measure, the availability of treatment options (or lack thereof) and dysfunctioning due to psychopathology. For *unconditional* PIJ measures the emphasis is on the obligatory nature and reducing the chance of (violent) recidivism and the link between psychopathology and the crime that was committed. The principle of 'ultimum remedium' is deemed much more important with unconditional than with conditional PIJ-recommendations. For *conditional* PIJ measures the availability of potentially successful treatment options are more important, followed by a supportive network and the possibility of parental assistance with the treatment.

There is substantial agreement between experts and judges regarding criteria for the unconditional PIJ measure, but judges are less focused on treatment possibilities and more on the relations between crime and psychopathology. Substantial agreement is also found with conditional PIJ measures, but here judges are more focused on reducing recidivism and the relation between crime and psychopathology, to the expense of treatment options.

Comparing recommendation and verdict (question 4)

Courts follow in 72% of the investigated cases the pro Justitia recommendations. The concordance between recommendation and sentence is lower in conditional PIJ recommendation in comparison to the unconditional cases (56% and 92% respectively). The special conditions mentioned in the conditional PIJ recommendations were usually followed in the decision of the court. Recommended extension of unconditional PIJ measures were almost always followed by the courts.

There are substantial differences between different regions in the number of juvenile offenders investigated for a pro Justitia report (factor five). The relative frequency of recommendations for a conditional and unconditional PIJ measure differs substantially between various regions; this varies between 13 and 53%. In six regions the unconditional PIJ measure is more often recommended than sentenced, but in some regions it is more often sentenced than advised.

Recommendation and execution of special conditions by juvenile probation (research question 5)

In almost all conditional PIJ recommendations some form of treatment was advised in the pro Justitia reports, contingent upon the goals of the measure. In many cases the description of the recommended treatment or guidance offered by probation lack clarity and in less than half of the reports no mention was made of guidance by juvenile probation officers.

In the probation records it was sometimes unknown whether the youth was convicted to a conditional PIJ measure and what the status was of the probation trajectory. In some cases the special conditions were not put into effect by the probation officer as had been recommended or decided by the judge. It was unclear whether this was done in accordance with the office of the public prosecutor

Recommendation and execution of unconditioned PIJ measure in forensic clinics (question 6)

Comparing treatment recommendations from pro justitia reports and treatment plans in the forensic clinics proved to be quite difficult. This was partly due to the lack of explicit treatment recommendations, and due to the fact that in many cases the treatment plan did not refer to the report. Nevertheless, the reports does seem to form the basis for most of the initial treatment plans, which is in accordance with what was mentioned by the therapists in the interviews. In the majority of cases the treatment plan was at least partially in accordance with the proposed treatment in the PIJ recommendation of the pro Justitia report.

Conclusions

The results regarding research question 1 and 4 reveal that there are considerable differences between regions in the Netherlands how the judiciary is dealing with juveniles in the period 2005-2007. First of all, chances to be subjected to a pro justitia mental health assessment differ substantially among the various regions (factor five). These assessments are not in every region predominantly limited to the most complex cases. Secondly, there are regional differences in PIJ measure recommendations and sentences; this varies respectively between 13 and 53% and 16 and 45%. Thirdly, there are regional differences in the relation between recommendations and sentences; in some regions the courts decide to administer a PIJ measure in excess to the number of recommended PIJ measures.

These differences between regions could imply judicial inequality. Possibly, it is based on variations in views and expectations of experts and judges. In addition, differences may be due to variations between regions in the availability of clinical forensic services. Finally, differences could be due to an uneven distribution of severe crimes over the country. More research is needed to bring more clarity to these issues.

The results regarding research question 2 show that the quality of the pro Justitia reports is sufficient according to the STAR assessment. Judges were generally satisfied with the quality of the two reports that were reviewed with them, but evaluated some points negatively.

The STAR revealed that the basis, criteria and motivation for treatment recommendations can be improved, as well as the feasibility and treatment goals of recommended treatments. This would be in accordance with the needs of judges as expressed in the interviews and subjective assessment of the two reports, of offering various alternatives and a more extensive motivation for the recommend treatment setting. Not surprisingly, judges state that they value reports of poor quality less, and will then sooner make a different decision than was recommended.

It is difficult to compare the subjective assessment of the two reports of the juvenile judges and the evaluation of all the reports with the STAR instrument, the STAR is objectively based on the ideal report of judges and other users.

To improve the state of affairs some policy decisions have to be made. More efforts have to be put in education and training of forensic experts and feedback should be offered to these experts on the quality of their reports. They need to gain more knowledge regarding treatment options and

security offered in various treatment settings. Also better knowledge is needed regarding forensic treatment results that have been attained with the cases the experts reported on, this would be beneficial to experts and the quality of their assessments (Duits, 2006).

The investigation of question 2 and 3 reveals the main criteria employed by experts and judges for conditional and unconditional PIJ measures. Some differences also become apparent. This has clear practical implications, which are welcome as the legal ground for the measure offer little guidance.

Opening communication between judges and experts on the main criteria for a PIJ measure will improve concordance between recommendations and convictions. The present report can be a first step in providing a list of criteria with might be extended with the relative weights of these criteria which can be based on the concept mapping of judges and experts.

Utilization of such a list can help in: (1) providing a more solid transparent basis for the recommendation in the pro Justitia report, (2) a better basis for the decision of judges in choosing either an unconditional or conditional measure with better motivation of sentences, 3) improving standardization between judges and between experts and (4) providing therapists with better insight in the motives for the recommended treatment and its main targets. In this way mutual understanding among all involved can be improved and further research into possible differences in views between experts and judges and among various regions is made possible. It should be noted however that differences in opinion between experts and judges are valid, given their different responsibilities, positions and professional background

The results regarding research question 4 reveal a considerable concordance between recommendations and sentences when unconditional PIJ measures are considered but a lower concordance in conditional PIJ measures. This is in accordance with previous findings of research in the region The Hague (Ten Berge & Duits, 2008). In part it seems clear that the court comes to a different decision than was recommended in the pro Justitia report. In some cases little background was offered for the recommendation or the recommendation was simply unfeasible as circumstances of the defendant had changed since the report was made (e.g., changes in family background of treatment status), or the indicted crime did not justify the recommended PIJ measure. Other discrepancies may arise from a difference in recidivism risk estimations or a difference in the expectations regarding treatment responsiveness of the juvenile. The results of this study are in line with this contention in that judges feel that diminishment of recidivism is crucial and that they put a greater emphasis on the association between psychopathology and index crime and the structure that will be offered by the PIJ measure to the juvenile. Members of both professions need to clarify their distinct viewpoints towards each other, and need to inform each other through a better substantiation of their recommendation or judicial decision. The development of a list of (weighted) indicative factors for a PIJ measure might yield a suitable instrument and bring progress in this area

Research question 5 revealed that the conditional PIJ measure needs better supportive information and execution of the measure, especially the conditions attached to the measure, needs to be better supervised. Registration of the conditions can be improved as well as monitoring of their putting into effect. These factors are crucial for proper implementation of the conditional PIJ measure.

The results regarding research question 6 revealed the need to improve the description of treatment targets and goals in the pro Justitia reports. Reports would benefit from a more exact description of treatment goals, and more attention could be given to potential possibilities and hampering factors for the recommended treatment.

That would provide the information base for a useful recommendation regarding treatment and security issues and is also important when a decision has to be made regarding prolongations of the PIJ measures. The pro Justitia report is nothing less than the venture or starting point of the PIJ measure and thus the first step in a trajectory of treatment leading to rehabilitation. A list of PIJ indicators can come in handy here as well. When during treatment it becomes evident that the diagnoses needs to be adjusted or the treatment plan, goals and security measures require adaptation, a new plan can be conceived with reference to the original report.

Improvement in description of treatment goals requires further education of the expert and organizing monitoring of the quality of that particular aspect in their reports by the Netherlands Institute of Forensic Psychiatry and Psychology. An important precondition is feedback to the experts regarding the judicial decision contingent upon their report, feedback regarding the outcome of their recommended treatment and eventually, feedback regarding possible recidivism of the juvenile involved.

