

## SUMMARY

### Background

Since a couple of years there has been more governmental focus on approaching child abuse and domestic violence. In this perspective criminal law can also be used to immediately stop the abuse and used for prevention of recidivism through interventions. Though it is not known how often and in which way criminal law is used in cases of child abuse and neglect. It is also unknown what happens in the process of prosecution and trial of a suspect of child abuse and neglect. This research focuses on the way in which criminal law is used in cases that involve child abuse and neglect. The two aims of this research are:

1. *Gain insight in which way and how often criminal law is used in cases that involve child abuse and neglect.*
2. *Gain insight in how often article 304 Sr<sup>1</sup> (the possibility to raise the maximum punishment with 1/3<sup>rd</sup>) is used in cases that involve child abuse and neglect.*

### Research

To reach these two aims, notifications of child abuse and neglect between January first 2007 and the 30<sup>th</sup> of June 2008 are collected from the national police database in which all notifications are collected. The notifications are collected by using a query with different terms like 'child & abuse', 'child & neglect', 'child & sexual abuse' and 'children & witness of domestic violence'. A distinction is made between 'child abuse and neglect' and 'children as a witness of domestic violence' in reporting the findings.

In total the researchers found 526 notifications of child abuse and neglect and 170 notifications of children as witness of domestic violence (Figure 1 and 2 on page 8). These notifications were found in a sample of 11 of in total 25 police districts in the Netherlands. Based on the sample the total number of notifications each year was estimated.

#### *Child Abuse and Neglect*

Each year there are approximately 817 notification of child abuse and neglect. 51 percent involves physical abuse, 33 percent involves sexual abuse and the remaining 16 percent involves emotional deprivaton or neglect. The children that are sexually abused were significant younger (9 years) than the children that are physically abused or neglected (11 years). In 53 percent of the notifications the father was the suspect.

Not all of the notifications are send to the prosecution office. In search of what happens with the notifications, we found that 73 percent is send to the prosecution office. The police decides not to send in all notifications (27%) because in some notifications there is a lack of evidence.

39 percent of the notifications that are send to the prosecution office are not prosecuted for various reasons<sup>2</sup>. The remaining 61 percent is prosecuted of which 16 percent of the suspects were cleared of all charges and 84 percent was convicted.

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<sup>1</sup> Sr is an abbreviation of 'Wetboek van Strafrecht', which is the Dutch Penal Code.

<sup>2</sup> In the Netherlands a prosecutor (Officier van Justitie) is not obliged to prosecute. The prosecutor can decide not to prosecute a suspect, because of lack of evidence or because the prosecutor believes other ways are better to deal with this suspect than prosecution.

The second aim of this research is to gain insight in how often article 304 Sr, which can raise the maximum punishment in cases of child abuse and neglect with 1/3<sup>rd</sup>, is used. Article 304 Sr is not used systematically by the prosecutor. It is used in 42 percent of the accusations in which it was possible to use it. In the remaining 58 percent of the accusations it was not used.

Some prosecutors believe article 304 Sr is just symbolic legislation, the most prosecutors think it is a sign in the legislation that we as a society do not tolerate abuse of one's own child and that it should be punished more severely than 'normal' assault. Prosecutors also state that, even though they do not use this article in the accusation, they do take into account that the victim was one's own child in determining the punishment. The judges also use the fact that the offender has abused one's own child as an aggravating circumstance in their judgment.

#### *Children as a witness of domestic violence*

Approximately 277 notifications of domestic violence in the Netherlands are found in 2008, in which children witnessed the violence. We expect this number to be higher in 2010, because of the more attention that has been paid to domestic violence. In total 26 percent of the notifications that are sent to the prosecution office are not prosecuted for various reasons<sup>2</sup>. The remaining 74 percent of the suspects were prosecuted, 20 percent of the suspects was cleared of all charges and 80 percent was convicted.

The second aim of this research is to gain insight in how often article 304 Sr, which can raise the maximum punishment with 1/3<sup>rd</sup>, is used in cases in which children are witnesses of domestic violence. All the interviewed prosecutors state that it is not possible to use article 304 Sr solely because children are witnesses of domestic violence. It is only possible to use this article based on the relationship between the two involved partners. The prosecutors do state that when children are witnesses of domestic violence, they take this fact into account by determining the punishment.

#### **Reflection**

Based on the findings of this research and the process of collection of the data, these are our final remarks.

##### *1. One third of all notifications of child abuse leads to a conviction*

Based on the total notifications of child abuse between January first 2007 and June the 30<sup>th</sup> 2008, almost one third (31 percent) lead to a conviction by a judge.

##### *2. Prosecutors pay attention to the fact that the abuse is against one's own child, but article 304 Sr is not always used in the accusation.*

Article 304 Sr can aggravate the punishment with one third, but it is not systematically used by the prosecution office when possible. There is no clear answer to why article 304 Sr is not used systematically. According to the interviewed prosecutors, the prosecution office as well as the judges, recognize the fact that the crime had been committed against one's own child and they use this fact as an aggravation of punishment. It doesn't matter whether or not article 304 Sr is used in the accusation. The research data supports this finding. When the prosecution office uses article 304 Sr in the accusation, the judge uses it in his conviction. When motivating the conviction, the judges (almost) always recognize the fact that the crime has been committed against one's own child and use this as an aggravation of the punishment.

Article 304 Sr cannot be used in cases where children are a witness of domestic violence. If the presence of children at domestic violence should have an aggravating effect on the punishment, the

government should change the penal code. The question can be raised whether changing the penal code is an added value to the field. It is already possible to raise the punishment with one third, based on the relationship between the two partners

3. *A better system of registration of notifications of child abuse and neglect is needed.*

During this research it became clear that it was very difficult to collect the notifications from the police registration system and to follow each case in the registration system used for the prosecution.

4. *Further research into the usage of criminal law by professionals is needed.*

This research found per year 817 notifications of child abuse and 277 notifications of domestic violence, in which children were witnesses of this violence. Both figures are expected to be a minimum. We expect the figures to be higher in 2010, because of the more attention that has been given to investigating and prosecuting cases that involve child abuse and because of more collaboration between relief work and the judicial system. In the Netherlands different organizations<sup>3</sup> are involved in making a just consideration about using criminal law in a case of child abuse. This research does not gain insight in whether or not a just consideration is made in a case of child abuse and neglect by the different organizations of using criminal law.

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<sup>3</sup> Police, the Prosecution office and two youth care organizations.