

Summary

Background and research questions

39 The 'Act strengthening the position of the victim' came into effect in its entirety on 1 January 2011. One component of this act is the requirement for the parents with legal custody or guardian to be present at the trial of a case against their under-age child or ward suspected of an offence. The requirement for the parents to be present in court has since been formulated in Article 496a of the Code of Criminal Procedure. If the parents who have custody of the under-age suspect do not appear at the trial or - if a legal guardian has been appointed - if the guardian does not appear, then the judge must defer the trial and issue a warrant to secure the presence of the parent(s) or guardian. The judge does not have to defer the trial or issue a warrant to secure their presence if it is clear that the presence of the parents or guardian would not help bring the case against the suspect to a successful conclusion. Furthermore, the act stipulates that the requirement for the parents or guardian (hereinafter referred to simply as 'the parents') to appear no longer applies once the young person is no longer a minor.

40 In 2010 the research company Regioplan carried out an assignment for the Ministry of Security and Justice's Research and Documentation Centre on the request of the Youth and Crime Prevention Department. This assignment involved an ex ante evaluation to identify both the intentional and unintentional consequences of introducing a requirement for the presence of the parents in the juvenile court. To summarise, this study gave a picture of the state of affairs before the introduction of the attendance requirement, the policy theory (whether supported by empirical evidence or not), the consequences for its implementation in practice and the options for carrying out an evaluation at a later date. One of the recommendations made in the report was to carry out a procedural evaluation of the legislation governing the attendance requirement. That recommendation was implemented and this report contains the result of that evaluation.

41 The principal questions answered in this report are:

1. How is the attendance requirement implemented in practice?
2. What is the effect in practice of the parents' obligatory presence in the criminal proceedings against their under-age child?
3. How does the observed effect of the attendance requirement compare with the presumed effect described in the ex ante evaluation of the parents' obligatory presence?
4. What are the actual costs of the introduction and implementation of the attendance requirement?
5. What can be learnt from the findings in the evaluation of the pilot project in Utrecht aimed at increasing the involvement of parents on a voluntary basis?

Research method

42 The results of this study are based on the following sources:

1. A national court registry for the 19 district courts and 2 courts of appeal, recording *inter alia* the presence of parents;
2. Observations during the trials of 65 juvenile cases in 14 sessions;
3. Interviews with criminal justice chain partners (35 interviews);
4. Interviews with individuals involved (21 interviews with parents, 19 interviews with suspects, 8 interviews with parents and suspects together and 4 interviews with lawyers);
5. Interview with the researcher studying the pilot in Utrecht, 'Strengthening the involvement of parents';
6. Nationwide figures taken from the Public Prosecution Service's proceedings systems;
7. A limited survey of the literature;
8. Discussion of the key results in two national meetings with the Public Prosecution Service and the Child Care and Protection Board.

43 The interviews and observations took place in the areas covered by one regional and five district courts. A preliminary study was carried out in the district of Breda to test the research approach and fine-tune the instruments where necessary. The other districts covered were Groningen, Utrecht, Rotterdam and Maastricht. The regional jurisdiction area was that of the court of appeal in The Hague. The information was gathered in the period April through to November 2011.

44 The methods used in this study are primarily qualitative in nature, in particular when looking at the impact of the attendance requirement. The study's qualitative approach means it is not possible to talk of the policy theory being tested in a statistical or quantitative sense. We will therefore talk in terms of a *consideration* of the policy theory and the relationships it postulates.

The trial in context

Before we present the results of this study, it is important to note that the criminal trial - which is where the attendance requirement applies - is only one of the points when parents become involved in the criminal proceedings against their child. Parents are informed if their child is detained at a police station for interrogation as a suspect. There are also a number of other possible situations where it is customary for the parents to be invited to attend. Firstly, they will be invited to attend if their child is brought before the examining magistrate because of an application for remand in custody. Secondly, parents are generally invited to attend if their child is brought before the court sitting in chambers for detention in custody. Thirdly, the Juvenile Probation Service officer supervising the child will generally have contact with the parents if temporary release from preventive custody is granted subject to special conditions. This supervision by the Juvenile Probation Service may also be carried out on a voluntary basis. In principle, the Child Care and Protection Board carries out a child welfare investigation for every juvenile suspected of a criminal

offence to establish the situation the child is in. The parents are invited for a talk as part of this investigation. Finally, some lawyers also invite the parents to accompany the suspect when he or she comes to talk to the lawyer about the case at the law firm. Consequently most parents will already have had several contacts with one of the criminal justice partners or the lawyer before attending the trial at the court.

The way in which the legislation is implemented

45 Parents with custody of the child are informed of the requirement to appear by means of a summons from the Public Prosecution Service in the form of a letter in Dutch. This letter is sent in all juvenile criminal cases, including cases such as minor offences and for young people who have reached the age of majority where the attendance requirement does not apply. In the latter cases a sentence is included informing parents they are not under an obligation to appear. The letter also gives reasons explaining why it is important for parents to attend.

46 Many parents are also notified of the attendance requirement by one of the other criminal justice chain partners or their child's lawyer. Both the Child Care and Protection Board and the Juvenile Probation Service mention the attendance requirement in the standard talks they have with parents (in the context of the child welfare investigation and the supervision of the minor respectively). Some lawyers also discuss the attendance requirement when they talk to the parent(s) of their client. It also sometimes happens that the judge refers to the attendance requirement at an earlier stage in the criminal proceedings (e.g. when the child is brought before the examining magistrate or when the court sitting in chambers makes a decision on detention in custody). However these moments of 'information provision' are not sufficient to reach all parents who have custody of the child. In the first instance this is because the information is aimed mainly at the parent living at home with the child. The attendance requirement has spurred some regional divisions within the Child Care and Protection Board to make more frequent efforts to involve parents in the child welfare investigation who do not live with the juvenile (e.g. after a divorce) but still have legal custody. In the second instance this is because not all parents attend the standard talks with the Child Care and Protection Board and Juvenile Probation Service and not all lawyers invite parents along.

47 A consequence of the attendance requirement is that the judge should in principle defer the case if the parents are not present. However, Article 496a, paragraph 3 of the Code of Criminal Procedure gives the judge the option of continuing with the case even if the parents are not present. In this respect the attendance requirement is not being implemented in the spirit of the law, as the above-mentioned third paragraph is being applied more widely than the legislator intended. As a rule, the case is not deferred if only one of the parents does not attend the trial. If neither of the parents who have legal custody appears, the case usually is deferred. The primary reason for continuing with the case despite the absence of parents is that deferring the case is considered undesirable for the suspect, who would then have to wait even longer for the sentence. The interests of the child are considered to outweigh the potential positive impact that the second parent's presence at the trial might have if the case were to be deferred. The second reason for continuing with the case despite the absence of parents is that frequently deferring cases due to the

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absence of one or both parents is considered to be an unworkable option. The district courts of Rotterdam and Maastricht did initially adhere strictly to the attendance requirement. When it turned out not to be possible to schedule all the deferred cases for a new trial in time, the courts started to defer fewer cases. Over 250 cases were deferred in 2011 because one or both parents were absent, which is about 2% of the juvenile cases in 2011. The assumption in the ex ante evaluation was that 20% of juvenile cases would be deferred.

48 The number of deferrals because of parents' absence comes to approximately 2% of the number of juvenile cases heard in 2011. Records from the national court registry show neither of the parents to be present in 14% of the scheduled trials for juvenile cases involving under-age suspects. As judges generally defer cases if both parents are absent, it might be expected that about 14% of cases would be deferred too. However, there is a big difference between this percentage and the 2% of cases that are actually deferred. There are two explanations for this difference. Firstly some of the cases scheduled for a trial are deferred for reasons other than the absence of the parents, such as the non-appearance of the suspect or a missing report. Secondly, sometimes there is a guardian present or another family member with responsibility for the child's care and/or upbringing, whether or not with legal custody, even if neither of the parents is present at the trial.

49 If a case is deferred, the judge will only issue a warrant to secure the presence of the parents if he thinks that the parents will not turn up otherwise. The professionals who were interviewed in this study considered such a warrant to be a last resort, based on the idea that enforcing the parents' presence would not be conducive to the parents taking a positive attitude in the trial. Based on the analysis, it is estimated that around 100 warrants to secure the presence of the parents were issued in 2011. It is not known how many of these warrants to secure their presence were actually executed. This means that such a warrant was issued in just under 40% of the cases deferred because of the absence of one or both parents, i.e. less than 1% of all juvenile cases heard. The assumption in the ex ante evaluation was that warrants would be issued to secure the presence of parents in 10% of the juvenile cases heard.

50 The Ministry of Security and Justice did not provide the criminal justice chain partners with any financial compensation for executing the attendance requirement. The members of the 'attendance requirement' national working group say this has affected how the attendance requirement was implemented and is being executed. As an example, this was the reason for the Public Prosecution Service's decision to send the summons letter by standard post instead of serving it. Another example is that the negative effect of deferring a case because of the absence of the parents (the minor has to wait longer for the sentence) could have been reduced if the Judiciary had received money to hold more sessions. It would therefore then have been possible to reschedule deferred cases for an earlier session.

Policy theory concerning the attendance requirement according to the 2010 ex ante evaluation tenable to a limited extent only

51 In brief, the assumed effect of the attendance requirement is as follows. The Public Prosecution Service's obligation to summons parents and inform them that they are required to appear is supposed to mean that it is no longer possible for parents not to be aware of the offence or the trial. As a result, parents are expected to be more likely to attend the trial. Their presence is supposed to reduce the likelihood of a repeat offence because:

1. by attending the proceedings, they are given the opportunity to fulfil their parental responsibility and take appropriate measures in the upbringing of their child;
2. they support their child by being present. The child may therefore become more attached to his or her parents and will not want to disappoint them again by behaving antisocially;
3. their presence allows them to be a source of information for the judge, who is therefore better able to assess the minor's situation. This allows a better match between the sanction and the minor's situation and character, which will make the sanction more effective in reducing the likelihood of a repeat offence.

52 Policy theory also makes the assumption that having the parents attend would increase the victim's understanding as during the trial the parents would condemn their child's behaviour and the victim would therefore be better able to deal with the incident.

53 This last assumption was not tested in the current study. The study also did not consider whether there was a connection between the attendance requirement and repeat offending. This is very difficult to examine as any effect of the parent's requirement to be present cannot be isolated from other effects. In addition, it would take some years before such an effect could be observed.

54 The conclusion of the ex ante evaluation (Regioplan 2010) was that the policy theory was generally only tenable to a limited extent. There are little more than global indications to be found in the empirical literature for the mechanisms that are assumed to be operating. The ex ante evaluation shows that professionals working in this area consider the policy theory to have some plausibility. Professionals agree (to some extent) with the idea of the mechanisms that support the child, enable more effective sanctions and make ignorance of the trial impossible, but they are less confident about the assumed mechanisms operating to encourage parenting duties and to ensure more understanding among victims.

The benefits of the attendance requirement

More parents attending trials because they have been informed of the proceedings and because of the threat of sanctions

55 This study shows that parents are more likely to be present since the introduction of the attendance requirement than before and that it is plausible that this is due to the attendance requirement itself. Records from the national court registry at the end of October 2011 show that at

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least one of the parents was present at the trial³ in 86% of scheduled juvenile cases, and both parents were present in 44% of cases. There is no baseline measurement for this study comparable to the national court registry and so no firm statements can be made concerning the increase in parents' attendance. Based on research in the Netherlands⁴ (2006-2011) it is estimated that the presence of at least one parent has risen by 5 percentage points and the presence of both parents by 25 percentage points since the introduction of the attendance requirement. Incidentally, this Dutch research shows that the non-appearance of the parents was already becoming less of a problem in the years leading up to the attendance requirement.

56 The relationship between the attendance requirement and actual attendance by the parents is not entirely in line with what was assumed. The policy theory assumes that parents did not appear at the trial because they were not aware of the offence and the trial. However, it turns out that a lack of awareness of the offence is not really a factor at all. Most parents knew about the offence before the attendance requirement. Even so, parents who do not live at the same address as the suspect or do not live together are more likely to be aware of the trial since the introduction of the attendance requirement. Furthermore, the threat of the case being deferred and a warrant being issued to secure the presence of the parents can sometimes act as a final prod persuading them to attend the trial after all. This applies particularly to parents who are not sure about the benefit of their presence at the trial and/or who have to make extensive arrangements - for example, at work or for the children remaining behind - in order to be able to attend.

57 Not all parents attend the trial despite the attendance requirement. This is mainly due to the fact that not all parents have custody and/or not all parents play a role in the care and upbringing of the child. In a substantial proportion of the cases involving under-age suspects having both parents present at the trial is not possible (e.g. because one is abroad or has died), not required (if one does not have custody) or not desirable (if relations between the two parents or between the parent and the child are severely impaired). The father in particular is frequently no longer 'in the picture' in the child's life. It may also be the case that adults other than those with custody fulfil the primary caring and parenting role, for instance a grandmother or step-father. These 'stakeholders' are generally admitted to the trial but they do not receive a summons and are not always given a part to play in the trial.

58 In addition, some parents do not turn up because they do not read the letter summoning them and/or cannot understand it. This applies particularly for parents whose mother tongue is not Dutch. Also, not all parents receive information about the trial or the attendance requirement supplementing the letter with the summons from the Public Prosecution Service. Furthermore, not all parents are convinced of the benefit of attending the trial after reading the letter with the summons and/or receiving the information. A possible factor explaining this is that parents hear that there are few consequences if only one parent fails to appear. The flexible way in which the judge

³ Including the cases that were not dealt with substantively, for example because the suspect and/or parents failed to turn up or because a report was still missing.

⁴ By Professor Weijers and his research group at the University of Utrecht; see Hepping & Weijers, 2011.

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deals with the attendance requirement may therefore undermine the intention of that requirement in the long run.

It is not reasonable to assume that compulsory attendance will lead to more effective parenting

59 Some parents attending the trial obtain more information about their child's behaviour. This can help them form an objective impression of their child. The presence of the parents also makes it possible for judges to hold the parents to account and to encourage them to take (joint) responsibility for the upbringing. This is considered to be particularly important when parents have different ideas about how to bring up children.

60 It is not known whether this actually results in a more effective upbringing by the parents and consequently better behaviour by the young person. The professionals interviewed do not think this is plausible. They say that the possible role played by the hearing itself should not be overestimated. It is overly optimistic (in their opinion) to assume that in situations where parents lack parenting skills or options, more information about the offence or merely being addressed briefly by the judge will lead to an improvement in the parents' parenting skills or options.

Compulsory attendance can help give the child support but may also have a counterproductive effect on the child's participation in the trial

61 Three kinds of support for the young person were considered in this study: support in participating in the trial; support in accepting the sanction; and support in the execution of the sanction.

62 Most young people see the presence of their parent(s) as a source of support. Young people feel safer when their parents are there and the presence of their parents helps them feel less nervous. It is plausible that this will help them participate more effectively in the trial. They also find support in the answers the parents give to the judge's questions in the course of the trial. On the other hand, there is a relatively small group where the presence of (one of the two) parents results in the young person participating *less* because they wish to hide information from their parents or are ashamed to be confronted with their actions in front of their parents. A further category of young people is likely to participate in the trial with less attention as they are distracted by the presence of a parent with whom they have a severely impaired relationship. Here, too, it is relevant that the attendance requirement applies to the parents who have formal custody of their child, although they may not necessarily be the adults who support the young person in question.

63 It is not clear that having the second parent present at the trial *because of* the attendance requirement has any benefit for this kind of support. Most young people say they also feel they have support when one parent is present. Moreover, the parents who attend because of the requirement - and would not do so on a voluntary basis - are sometimes those who have poorer relationships with their children. These children would sometimes actually prefer it if that parent did not accompany them.

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64 The second form of support is support from the parents in helping the young person to accept the sanction. It is unclear whether parents understand enough about the trial and the punishment to help their child properly by explaining and accepting it. Dissatisfaction about discourteous treatment by the judge is rare. This will therefore seldom be a reason for parents not to accept the punishment and not to support their child in accepting it. The study has produced no indications that the attendance requirement contributes to this form of support.

65 The third form of support is support in the execution of the sanction. The presence of the parent(s) at the trial could potentially make the execution of the punishment more effective if the parents are encouraged by the judge during the trial (which is rare) and/or persuaded by the Juvenile Probation Service officer immediately after the trial to help their child in the execution. This happens regularly if the Juvenile Probation Service officer is present at the trial. The second parent (who may only appear *because of* the requirement) can have added value if the prosecutor and the judge are considering imposing far-reaching special conditions on the sanction. The professionals who were interviewed say that it is crucial for the effectiveness of these measures or conditions for both parents to declare in the courtroom - including to their child - that they are prepared to cooperate in the execution of the conditions.

Parents who are required to attend as a source of information for the judge

66 The professionals who were interviewed agree that in most cases the information that the parents provide during the trial does not add anything to the report drawn up by the Child Care and Protection Board. The judge can use the information obtained from the parents as a check of the Board's report. This 'information' refers not just to the parents' answers to the questions put by the judge but also to the information about the family and relationships within the family obtained from seeing the parents in the flesh and from their non-verbal communication.

67 The attendance requirement means that it is more often possible to hear the views of both parents, observe their attitudes and see the relationships within the family with your own eyes. This is particularly relevant in cases where the parents are divorced but are still both involved in bringing up the child. In addition, some of the professionals who were interviewed consider it to be important for both parents to be present if an intervention is recommended in which the involvement of the parents is essential – for example 'Multisystem Therapy' or 'Intensive Process Supervision for the Hard Core'. The prosecutor and judge can then check whether the parents really will cooperate and therefore whether the sanction is potentially effective. Consequently the attendance requirement really does help obtain an appropriate sanction in these few cases.

68 In a limited number of the cases that were observed, it was possible to conclude from the observations in interviews that the parents had turned up (in part) *as a result of* the letter with the summons and the requirement. These parents did *not* necessarily have a more passive attitude, and they provided positive information about their child. Thus this study does not find any indication for a link between the *requirement* to appear and a more negative or passive participation.

Information for parents and training for judges and prosecutors can bolster participation by parents

69 Some studies performed *before* the introduction of the attendance requirement describe how the judge involved the parents in the trial. A comparison was made with the observations in this study. Based on this comparison, we conclude that no major changes have taken place in how the judge uses parents as a source of information when compared with the situation before the introduction of the attendance requirement. Parents also do not seem to be fulfilling their role any differently. Consequently, the attendance requirement has had no effect in those cases where parents were accompanying their child to the trial on a voluntary basis anyway.

70 Recent studies by Weijers and our own study both show that there is room for improvement in how the judge involves the parents during the trial and communicates with them.

71 In 2010 a pilot was carried out in the Utrecht district that was aimed at increasing parents' participation in their child's trial. In the first instance this was done by providing parents with information about the trial, the procedures involved and the role of the parents in the trial. Secondly, judges, public prosecutors, and public prosecutors' clerks received training in how to involve parents effectively in the trial. The results of the pilot are mainly positive. Two conclusions can be drawn on the basis of the results of the Utrecht pilot and the attendance requirement.

72 Firstly it can be established that well-thought-out, appropriate information for parents and the requirement to attend can both play a role in parents' decision to attend the trial. The requirement can then act as a threatened penalty (in the talk to provide information) for parents who are still not sure - following the information - whether they should go to the trial or not. The Child Care and Protection Board and the Juvenile Probation Service could learn from the pilot in Utrecht as regards the content of the information provided and the approach taken. This is because currently there are no guidelines on what information should be provided, nor do all parents receive information.

The second conclusion that may be drawn is that providing parents with information and training for judges and public prosecutors could help improve parents' understanding of what happens during a trial and what is expected of them. That would increase the likelihood of active participation in the trial. Also, it would increase the potential for the presence of the parents to have a positive impact on support for the child during the trial, the child's understanding and acceptance of the sanction, and the execution of the sanction. However, it remains the case that not all parents (with custody) can play a meaningful role in helping the young person in question. It is not always possible or desirable for them to be present.

The costs and side effects of the attendance requirement

73 The costs of implementing the attendance requirement as enforced in 2011 are estimated to be €0.6 million. Most of the costs are attributable to the Judiciary (more than €300,000) and the Public Prosecution Service (around €150,000). A smaller proportion of the costs is attributable to the police (about €75,000), the Child Care and Protection Board (about €30,000) and the Juvenile Probation Service (also about €30,000). These are only the additional structural costs due to the

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attendance requirement. The evidence on which these figures are based is to be found in Chapter 4 (Dutch only).

74 Three key undesirable side effects were foreseen in the ex ante evaluation.

75 Firstly, it was expected that the process would take longer as cases were deferred due to parent(s) not turning up. It is not possible to determine precisely what the delays were in the limited number of cases that were deferred due to the parents not turning up (around 265 cases), but the average delay is estimated to be around three months. It is clear that judges are anticipating the undesirable effects of deferring cases and acting accordingly by deferring a small proportion only of the cases.

76 Secondly, it was expected that impaired relationships within the family would lead to complications in the courtroom if both parents were to attend. Conflicts do occasionally seem to arise in the courtroom due to parents appearing who would not have turned up without the attendance requirement. This is a result both of the impaired relationship between the two parents and the impaired relationship between the parent(s) and the child. However, the degree to which these conflicts are damaging for the child (his/her participation and understanding) and obstruct the handling of the case being tried varies. Indeed, the professionals differ in their opinion as to whether such conflicts should be avoided by not summoning the parents or cancelling their attendance.

77 Thirdly, issuing a warrant to secure the presence of the parents was expected to have a counterproductive effect on their contribution in the trial. This study shows that - just as in deferring cases - the judge anticipates the counterproductive effects of issuing a warrant to secure the parents' presence and acts accordingly by not issuing such a warrant in all cases that are deferred. A few experiences with warrants to secure parents' presence as described by professionals in the interviews do indeed seem to suggest a counterproductive effect.

Conclusions

78 Most parents were already attending their child's trial even when there was no requirement to do so. The attendance requirement has led to two parents being at the trial more often instead of one. The benefits of the presence of the second parent are limited. The presence of both parents can play a role in providing support for the minor, in particular in situations where the parents are divorced but both still play a part in the upbringing. The judge can also use information from *both* parents when deciding upon the sanction. The (compulsory) presence of the parents can however also be counterproductive for the minor's participation in the trial if the relationship between the two parents or between the parents and the child is severely impaired.

79 In some respects the attendance requirement is not being implemented as the legislator intended. The main differences are that the judge is less likely to defer a case because of one parent not turning up and that the judge is less likely to issue a warrant to secure the presence of the parent(s) than might be expected on the basis of the legislation. There are two reasons for this.

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Firstly professionals expect undesirable side effects from deferring a case - and consequently delaying it - and from securing the enforced presence of the parents. In many cases, the potential positive effect of the second parent attending the trial is considered to be less than the potential negative effect of delaying the case and possibly issuing a warrant to secure their presence. The judge is thus anticipating the disadvantages to the attendance requirement that were expected beforehand. As a result the foreseen undesirable side effects are less extensive than anticipated in the ex ante evaluation. Secondly, strict enforcement of the requirement is not considered to be a workable option as there are not enough juvenile sessions to enable the deferred cases to be dealt with quickly.