

CRIMES IN THEIR INFANCY

(Misdrijven in kinderschoenen)

Summary



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In 2017, the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) recommended that the minimum age of criminal responsibility be increased from 12 to 14 years (Council for the Administration of Criminal Justice, 2017). In the Dutch House of Representatives, the Minister for Legal Protection indicated that the minimum age for criminal responsibility will not be increased, but that the Minister, if necessary, is prepared to further invest in the approach for 12 and 13-year-olds outside the criminal justice system. The assumption in this regard was that cases for 12 and 13-year-old juvenile suspects are already being dealt with outside the criminal justice system in most instances.

This study was carried out at the behest of the Ministry of Justice and Security in order to gain greater insight into the approach for this target group. The Ministry's requirement was translated into the following study questions: *What were the available judicial¹ and nonjudicial approaches for 12 and 13-year-old juvenile suspects in 2017 and 2018, and how often was each approach used? Why was a certain approach selected? What did the different approaches entail in actual practice? How effective were the various approaches in preventing recidivism in the opinion of the involved organisations?*

Study Activities

Various study activities were carried out. In addition to a review of the literature to identify the various approaches and assess them in terms of effectiveness, 2,059 cases registered in the National Law Enforcement Database (BVH)/ Improved Case-Based Investigation Registration System (BOSZ) were analysed. These cases were supplied by the National Police Force and comprise crimes committed by 12 and 13-year-olds in 2017 and 2018. In addition, an online survey was disseminated to collect the opinions of professionals working for the Police, Public Prosecution Service (OM), Child Care and Protection Board (RvdK), Youth

Protection, Youth Care, Veilig Thuis [Safely Home], municipal district teams, HALT [The Alternative] and youth lawyers. The survey was distributed by representatives of these organisations and was completed by 546 respondents. Finally, group and other meetings were held with employees from organisations involved in the study. In these meetings, discussions were held with a total of 36 professionals. Furthermore, an additional six professionals were interviewed individually in order to more specifically interpret the data and to collect information about mediation and restorative mediation in criminal cases.

Main Study Findings

The settlement chain for 12 and 13-year-old juvenile suspects is fairly 'classical': cases are relatively often referred to HALT [The Alternative] and/or dismissed. New approaches, such as mediation or restorative mediation in criminal cases are still infrequently used. In addition, the literature review shows that only a few approaches are proven to be effective and that a couple of approaches are promising. This is in contrast to the opinion of survey respondents who believe that more approaches are promising or effective. Further progress therefore remains to be made in this area, including concerning knowledge about relatively new, nonjudicial approaches.

'Parental involvement' is a factor that is cited as an active component in the literature, as well as by respondents. However, it remains somewhat unclear as to how this involvement should take form within the various approaches.

Detailed Study Findings

Approaches and effectiveness in the literature

There is a broad range of approaches for 12 and 13-year-old juvenile suspects. However, the literature offers little insight into the effectiveness of these approaches, in part because few impact assessment studies have been carried out in the Netherlands. As a result there is a lack of clarity about the recidivism-reducing effect among the majority of the approaches and the objective of the punishment, which is 'to reduce/prevent reoccurrence', falls into question. The literature review shows that various forms of family interventions can be considered effective and that three approaches are promising: the reprimand, mediation/restorative mediation and community service.

The active components that primarily come to the forefront in the literature are primarily focused on the participation of parents in an approach.

Approaches - frequency of application

In 2017 and 2018, the cases of 12 and 13-year-old juvenile suspects were primarily sent to HALT (41 percent) by the police, as well as the Public Prosecution Service (OM). In addition, one in six cases (17 percent) was dismissed and one in ten cases (10 percent) was given a reprimand. This supports the assumption put forth by the Minister for Legal Protection that the majority, in any case over two thirds of all cases, are settled outside the criminal justice system. Within the criminal justice system, over 11 percent of the cases are settled on the basis of a court session at the public prosecutor's office or through a summons (also over 11 percent).

There are no major differences in the approach used when specifically considering cases involving a notification of concern. These cases are also often referred to HALT or to the Public Prosecution Service, which then often opts for a judicial approach. If a notification of concern is issued, the police more frequently deals with the case itself, although in most cases the option is to refer these cases to the Public Prosecution Service or to HALT. In cases involving a notification of concern, the Public Prosecution Service continues to frequently forward the case to HALT, but the court sessions at the public prosecutor's office subsequently play a more prominent role at the expense of dismissals.

Zooming in more closely on the nature of the crimes, it becomes evident that property crimes and vandalism are generally sent to HALT. Violent crimes and less frequently occurring crimes (for example sexual crimes and drug-related crimes) are generally referred to the Public Prosecution Service. Youths who have committed more than one offense are also more often referred to the Public Prosecution Service. In such instances, the Public Prosecution Service tends to more often opt for a court session for recidivists, but also relatively often for a referral to HALT. From the survey, which includes questions about the approach used for the target group in 2019, it appears that police respondents are making fewer referrals to the Public Prosecution Service than in 2017/2018 and more often issue reprimands. In comparison to the analysis of 2017/2018, no major differences were detected in the approaches used by the Public Prosecution Service.

A regularly recurring comment made by respondents is that it must be possible to offer custom work for this target group. Hereby it is important that the role of the parents, a problematic family situation, if any, and other already initiated processes are incorporated into the approach. From a number of cases presented to professionals it appears that the more severe cases elicit a stronger desire for more custom work among respondents.

Assessment of effectiveness by professionals

Professionals were asked to assess the perceived effectiveness of the approaches used for 12 and 13-year-old juvenile suspects in the context of recidivism. In other words, this concerns a professional assessment of effectiveness and not a (quasi) experimental study of the effectiveness of these approaches.

91 percent of respondents from the police, Public Prosecution Service and other authorities consider a nonjudicial approach effective, while 81 percent typifies a judicial approach as effective. Professionals perceive a HALT intervention as the most effective approach, although actual research does not bear out that this approach is indeed effective. In addition to a HALT referral, police officers consider a notification of concern to Veilig Thuis [Safely Home], separate from any approach linked to this, effective. After a HALT intervention, a summons or a court session at the public prosecutor's office that results in supervision by the youth rehabilitation service are considered the most effective Public Prosecution Service approaches by the Public Prosecution Service and other authorities, although no basis for the effectiveness of these approaches was found in the literature. A fine (penalty order issued by the police) is considered ineffective by all professionals.

A similar picture emerged from the group meetings: there is a preference for nonjudicial and civil-law-based approaches for 12 and 13-year-old juvenile suspects. In addition, multiple professionals in the care sector indicate that provision of assistance at times stays voluntary too long; in these instances they prefer the supervision by the youth rehabilitation service measure.

The active components of the approaches referred to in the literature are by and large repeated by the professionals. Many active components that partially overlap are mentioned, especially for the reprimand, the HALT intervention and the restorative mediation/mediation: confront the youth with the consequences of his/her behaviour and involve parents. Respondents also mentioned active components that are not found in the literature. Key in this respect are components focused on parents/the family system, the social environment and on preventing delays in providing support (for example providing assistance and supervision by the youth rehabilitation service).

Alternative Approaches

Several suggestions were made for alternative approaches, both judicial and nonjudicial. Among a small number of professionals there is a desire to hold parents criminally responsible. In addition, there were some suggestions for more nonjudicial and civil-law-based approaches and the possibility of greater civil

involvement in a judicial approach. Several examples that were mentioned are the Scottish Children's Hearing and the early detection approach.

Points for Attention

During the study, points for attention emerged that may reduce the effectiveness of the chain process and subsequently could affect the effectiveness of the approaches. These points for attention are primarily focused on time (the elapsed time of juvenile court cases is too long), on expertise (to improve the performance of the approaches, the police force and the Public Prosecution Service, in particular, require more pedagogical knowledge) and on improving chain cooperation. The study points out the need for enhancing the youth specialism within the police force and the pedagogical knowledge of the Public Prosecution Service. For example, it is important that there is sufficient knowledge about mild mental impairments. Furthermore, according to the respondents it is also important that there is sufficient knowledge about the digital world as experienced by juveniles. It is therefore important to invest in expertise in digital offences, so that the right approaches can be used. In addition, the study shows that there is more knowledge about the effectiveness of approaches; increasing the knowledge about the effectiveness of approaches and sharing this knowledge within the juvenile chain makes it possible to more effectively apply the approaches.

Analysis

The perception of professionals of the effectiveness of approaches for 12 and 13-year-old juvenile suspects partially differs from the results produced by effectiveness studies. This is not a problem as such, because research shows that the 12 and 13-year-old juvenile suspects constitute a very specific subgroup. Yet, it is also important that professionals are aware of those approaches that are proven to be effective. Although an approach is available for the majority of cases, for example in the form of a HALT intervention, the national reprimand pilot started in 2020 and the as yet fairly limited use of approaches such as restorative mediation or mediation in criminal cases, a number of respondents expressed a need for more nonjudicial approaches for this specific target group. After all, for this young subgroup it is difficult to foresee the consequences of their own behaviour. However, in that case it is important that the approaches are tested for their effectiveness.

Endnote

1. The 'nonjudicial approaches' concept refers to approaches that do not result in judicial records.



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