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6 Effective Sentences for Children Who Commit Serious Offences

What Does the Evidence Tell Us?

Jessica J. Asscher and Hanneke E. Creemers

6.1 Introduction

Although the group of youth who commit serious offences is relatively small, severe violent offences committed by young people often cause great unrest in society, especially when the victim is also a minor. This unrest focusses the (political) attention on the importance of a sense of retribution for the victim and society, with consequences for sentencing that may be at odds with goals directed at the reintegration of young offenders into society. Recently, in The Netherlands, public outcry in response to serious offences committed by youth resulted in a petition signed by more than 90,000 people asking to increase the length of youth sentences (NOS 2019). In response to this, the Research and Documentation Centre ('WODC') of the Dutch Ministry of Justice commissioned a scientific study to an independent team of researchers, aiming to determine the effects of sentences for youth who commit serious offences, including a comparison of the sentences in The Netherlands with five European countries (Asscher *et al.* 2020). This chapter summarizes the findings of this study and adds a qualitative component in which three youth who committed serious offences have been followed up to determine whether imposed sentences have been carried out as intended and to assess predictors and indicators of successful reintegration.

In this chapter, we describe three endeavours to gain insight in the evidence for the effectiveness of sentences imposed for youth, between 12–23 years of age, who have committed serious offences. First, we present a systematic literature review that we conducted to estimate the effects of sentence characteristics (custodial versus non-custodial sentences; detention length) on recidivism with somewhat larger sample sizes, by aggregating existing data. Second, we describe the results of our endeavour to gather data to examine the effectiveness of imposed sentences, in particular in relation to recidivism, in Germany, Sweden, England/Wales, Ireland, Belgium, and The Netherlands. Finally, we describe the results of a longitudinal follow-up of three youth who committed a serious offence, which was conducted to gain more information on whether imposed sentences were carried out as intended and to assess predictors and indicators of successful

reintegration. Overall, this chapter will provide a contemporary overview of what is known about sentences for this specific target group of youth who commit serious offences.

6.2 Theoretical Background

6.2.1 Evidence for Effectiveness of Sanctions for Youth Who Commit Serious Offences

Societal unrest in reaction to serious offences committed by youth often results in headlines focusing on every single detail of the case, generally accompanied by a call for lengthy custodial sentences. A remaining question is, however, what the effects of long custodial sentences are. Many scholars pointed to potential harmful effects of deprivation of liberty, which may have unintended side effects compared to alternative sanctions that promote positive and meaningful relationships with others (Nagin *et al.* 2009). From a developmental perspective, lengthy imprisonment is considered risky given the possibly iatrogenic effects of placement in a facility with deviant peers (see, e.g., Bales and Piquero 2012; Cullen *et al.* 2011). Moreover, the longer a custodial sentence lasts, the harder rehabilitation may become, as the ties with society will have become looser, and job chances are not likely to increase either with a lengthy imprisonment on a curriculum vitae (Baert and Verhofstadt 2013; Shannon 2013). Also, returning to society after detention may be difficult as generalizing what has been learned during detention to the situation back ‘home’ may be complicated, also a consequence of stigmatization.

Previous research examining the effectiveness of custodial sentences for youth offenders in decreasing the likelihood of recidivism yields a mixed picture. Dupuy (2019), for example, stated that detention in youth convicted of a violent crime was associated with violent recidivism. Aizer and Doyle (2015) concluded on the basis of a large-scale longitudinal American study that detention of minors increased the risk that they would be detained again as adults. Parhar *et al.* (2008) found higher recidivism rates after residential treatment in a meta-analysis. Likewise, Nagin *et al.* (2009) concluded that detention has negative effects on the prevention of recidivism. In contrast, Caudill and Trulson (2016) found that deprivation of liberty resulted in a lower recidivism rate in youth found guilty of homicide. Based on an international literature review, Van Ham and Ferwerda (2018) concluded that custodial sanctions do not generally lead to lower recidivism rates, but in the group of young offenders convicted of serious crimes there are indications that detention is associated with a decrease in delinquent behaviour. That said, it is argued that detention alone is not an effective solution, given the seriousness of the problems youth offenders have (Lambie and Randell 2013). In sum, although there are several opinions on the effectiveness of custodial

sentences for young offenders, it is not clear yet whether and how custodial sentences are related with decreased recidivism and successful reintegration in general. Specifically, for youth who commit serious offences, even less is known, as research into the relationship between sentences and effects focusing on this subgroup of young offenders are very scarce. This is possibly due to the low annual numbers which make it more difficult to obtain sufficient statistical power to carry out meaningful analyses.

6.2.2 Factors Affecting the Effectiveness of Sanctions for Youth Who Commit Serious Offences

As argued by Lambie and Randell (2013), in order for sentences to be effective, treating severe problems that often underlie or strengthen delinquent behaviour in youth should be the focus. What makes treatments effective will vary from person to person. In theory, an intervention for youth offenders of serious violent and sexual offences is effective if it complies with the Risk, Need, and Responsivity (RNR) principles (Andrews and Bonta 2010). According to the risk principle, the intensity and duration of a sanction/intervention should be aligned with the risk of recidivism (Andrews and Dowden 2006). The higher the risk of recidivism, the more intensive and longer an intervention should be. The needs principle states that a sanction should be aimed at individual criminogenic needs, also known as dynamic risk factors of recidivism. Finally, the responsivity principle states that the sanction/intervention should be adjusted to the characteristics of the young person or his system, such as motivation, learning style, and intelligence.

Furthermore, when effectiveness of sentences in terms of reducing the risk of recidivism is examined, it is important to not only consider length of sentence and the extent to which treatment is carried out according to the RNR principles, but also the extent to which treatment is carried out as intended and the quality and competences of the professional (especially responsiveness) (Bonta and Andrews 2007).

In addition, research shows that a number of other factors that can be targeted in intervention and aftercare programs are important for successful reintegration in society and thus for the prevention of recidivism. For instance, stabilizing the young person's living situation is considered important to prevent a relapse in criminal behaviour (Dirkzwager *et al.* 2009). People who do not have stable housing tend to reoffend more than people with stable housing (O'Leary 2013). Lack of stable housing leads to exclusion from, for instance, benefits or work. Having a job is considered a protective factor in preventing recidivism (Redcross *et al.* 2011). Van der Geest *et al.* (2011) found that having a job for at least one year was associated with 65% fewer reconvictions compared to being unemployed. Another factor that may contribute to a stable life after detention is getting substance abuse under control. Substance abuse is a predictor of recidivism among youth (for a meta-analysis, see Assink *et al.* 2015) and should be treated to increase

the effectiveness of other interventions to reduce delinquent behaviour (Van der Put *et al.* 2014). When youth return to society after a period of imprisonment, the sudden freedom and accessibility of drugs can be an obstacle in creating a stable living situation. Offering drug assistance programs as part of aftercare may be a solution here (e.g., Van der Pol *et al.* 2017).

6.3 Literature Review

6.3.1 Aims and Method

The aim of the systematic literature review was to aggregate results from previous studies addressing recidivism in the target group of youth (aged 12–23) who committed serious offences, addressing the following questions: what is known from available research about recidivism rates of youth who commit serious offences? Are there differences in effectiveness for custodial and non-custodial sentences? Is detention length related to recidivism?

To identify relevant studies, a systematic literature search was conducted in three databases: PsycInfo, SocINDEX, and Web of Science. Selection criteria were: (1) studies had to contain quantitative data; (2) an upper age limit of study participants of 22 years at the time of the index offence; (3) participants had to have been convicted of one or more of the following serious acts of violence or sex crimes: murder, attempted murder, manslaughter, rape, or any form of violence resulting in serious physical injury or death; (4) the study had to include a report of criminal recidivism, such as self-reported recidivism or official records of an arrest or conviction for a new fact. For potentially eligible studies that focussed on a broader group of offenders, among which youth who committed serious offences, authors were contacted with the question to provide results and corresponding information for the specific subgroup of this review.

6.3.2 Results

The systematic literature search confirmed that research focusing on the specific subgroup of youth who commit serious offences is scarce. Only a limited number of studies, mostly conducted in European countries (46%) or in the United States (38%), reported recidivism rates for this specific group. A complete overview of the references to the studies can be found in Asscher *et al.* (2020). Even a smaller number reported on the relation between type of sentences and recidivism and, with the exception of a single study, none of the included studies reported on other indicators of reintegration, such as mental health, education, or work. In total, we identified 28 papers reporting on 26 different samples (ranging from 1 to 355 participants) examining recidivism in youth who committed serious offences.

Based on these studies, the average recidivism rate was 44% for total recidivism (regardless of severity or type) over a follow-up period of 8.94 years.

The average recidivism rate for violent recidivism was 30.26% over an average period of 12.16 years. For participants who were followed over a longer period of time, the rates of total recidivism and specific violent recidivism were higher. Also, as expected, recidivism rates were highest in studies in which recidivism was operationalized as an arrest for any new criminal offence. Because the target group was very specific, and the definitions of recidivism and the period over which recidivism was monitored differed between studies, these percentages cannot simply be compared with recidivism rates found in other studies.

Based on the limited available information, no differences in recidivism rates between youth offenders who received custodial versus non-custodial sanctions were found. However, given the small number of studies focusing on youth sentenced to a non-custodial sanction, this finding must be interpreted with caution.

Finally, this literature review did not reveal a significant association between detention length and recidivism. With the exception of a negative association in one of the included studies, based on data from only six participants, in none of the other studies the association between detention length and recidivism was significant. Based on this literature review, there are no indications that custodial sentences in general or longer custodial sentences in particular will lead to less (or more) recidivism for youth who commit serious violence.

6.4 Case Study: Evidence from the Netherlands

6.4.1 Quantitative Study

6.4.1.1 Aims and method

The results presented here were part of the aforementioned international comparative study aiming to compare recidivism rates of youth (ages 12–23) convicted for serious offences in the Netherlands versus five pre-selected European countries (Belgium, England/Wales, Ireland, Germany, and Sweden), and to examine the associations with imposed sentences. To obtain data, an information request was sent to (contact persons of) ministries of justice, identified by the Dutch Ministry of Justice and Security. For the Netherlands, a commitment to provide the requested data followed quickly. For the other selected jurisdictions, attempts to collect data were unsuccessful (Asscher *et al.* 2020). Therefore, only results for The Netherlands will be presented.

6.4.1.2 Results

As only Dutch data were provided, the results concern only the Dutch situation and comparison with other European countries was not possible.

The data file obtained consisted of 14,534 youth who committed a serious offence when they were 12–23 years old, for which they were convicted between 2005 and 2019. The largest group ($N = 10,833$, 74.5%) was convicted for serious assault. More than one fifth of the youth ($N = 3,033$, 20.9%) was convicted for murder/manslaughter, whether or not in combination with serious assault. In addition, $N = 638$ youth (4.4%) were convicted for rape. Finally, $N = 21$ youth (0.1%) were convicted for rape in combination with serious violence and $N = 9$ youth (0.1%) for a combination of murder/manslaughter with rape. Most of the convicted youth were male (91%) and born in the Netherlands (82%). The youth were on average 18.23 years old at the time of committing the offence ($SD = 2.51$, range 12–23).

The Dutch data revealed a difference between custodial and non-custodial sentences: recidivism was more likely and occurred faster in youth who were imposed a custodial sentence than in youth who were imposed a non-custodial sentence.

Significant associations were also found between detention length and recidivism, which differed per offender group: for youth convicted for violence resulting in serious bodily injury or death, longer detention length was related to more recidivism. For youth convicted for murder, manslaughter or rape, longer detention length was related to less recidivism. These results, however, do not allow for conclusions about the effectiveness of (custodial versus non-custodial) sentences nor detention length. That is, recidivism risk likely plays a role in both sentencing and recidivism, but could not be taken into account in this study. This will have affected the results on associations between sentences and recidivism.

6.4.2 Qualitative Study

6.4.2.1 Aims and method

The aim of the qualitative study was to obtain more information on whether sanctions had been carried out as intended and to assess predictors and indicators of successful reintegration of youth who committed serious offences. To this end, attempts were made to recruit youth from this target group on the basis of anonymized judgements published on the publicly available website of the Judiciary (*rechtspraak.nl*). Of 50 randomly selected judgements regarding youth who committed a serious offence, the youth's lawyers were contacted asking to send information about the study to the respective clients. If clients were interested in participating in this study, they were asked to contact the researchers. This resulted in three male participants who reported on whether their sanction was carried out as intended and on factors related to resocialization. Two participants (aged 18 at time of the offence) were convicted of violent sex offences, the other (aged 17 at time of offence) of murder. Both youth who committed a sex offence had been sentenced to youth detention, one with a partly conditional detention

sentence and the other with a subsequent placement in a youth treatment facility (PIJ-maatregel). The third participant had also been sentenced to youth detention and subsequent placement in a youth treatment facility. The Dutch youth justice system makes a difference between sentences and measures, with placement in a youth treatment facility being the most severe measure. Placement in a youth treatment facility is imposed for a period of two or three years, dependent on the age of the youth, but can be extended and even converted into a placement into a closed psychiatric treatment facility for adults (TBS-maatregel). At the time of data collection, one participant was still placed in a youth treatment facility. Of the other two, one participant was released after a year of detention, the other after five years of placement in a youth treatment facility.

6.4.2.2 Results

Before presenting the results, it is important to acknowledge the very low response rate, due to which generalization of results is compromised. For all three participants, the sentence included more than 200 days of liberty deprivation and was carried out as intended. As is standard for placement in a youth treatment facility, the participant who had been released spent the final year of the imposed measure outside the treatment facility. During this period, he attended a compulsory educational training program, that is implemented to guide the transition from staying in custody to reintegration to society after a period of imprisonment. This program with a focus on education seemed to correspond to his needs in that area, since he had not obtained any educational certificates. Unfortunately, based on the available data we could not determine to what extent this treatment or other treatments were carried out according to the risk-needs-responsivity principles.

In terms of reintegration chances, participants reported more protective than risk factors of recidivism, which might positively affect their resocialization. Protective factors were, for example, the support that they experienced and the presence of a social network. For all three participants, regular substance use was a risk factor that might negatively affect rehabilitation chances.

Of the three participants, two reported strong and supportive ties with their mother, of which one also reported a close relationship with his father. The third participant did not have contact with his family any more. Two participants reported to be in a romantic relationship and one reported that 'it is complicated, as there are multiple girls/women'. In terms of peer relations, one of the youth reported to have 50 friends, 10 of which he considered close friends. The other two participants reported to have 2 and 5 friends, of which some were reported as close friends. All participants reported to have someone, i.e., a friend, romantic partner, mother, grandmother, psychologist, and/or residential counsellor, to turn to if needed for help or relaxation and by whom they feel accepted. They were satisfied with

the level of support they received from these significant others. These close ties might positively affect resocialization.

One of the participants who was released from custody reported to rent a house and to be employed for over a year in a fulltime job that he had arranged himself. He reported to be satisfied with his job and did not experience any difficulties at his job relating to his criminal record. He was also satisfied with his financial situation. Since he finished compulsory visits to probation services twice a month, he did not receive any professional care. He planned to start a study and had not been reconvicted, which are all indicators of successful resocialization. The other participant who was released from custody reported to receive professional care from a residential counsellor and a psychologist. Unfortunately, he did not provide information about his living, work, or financial situation, and preferred not to disclose whether or not he had been reconvicted. As such, we could not estimate his level of resocialization.

6.5 Conclusion

This chapter described three studies that were conducted to gain more knowledge on available evidence on effectiveness of sentences for youth who commit serious offences. Results from the literature review confirmed that the number of available studies examining the relation between sentences and outcomes is limited, especially for the specific target group of youth who committed serious offences. Available research often did not distinguish between different groups of youth offenders. Factors that complicated comparability across studies were differences between studies in the definition of recidivism (Fazel and Wolf 2015; Van Ham and Ferwerda 2018; Yuhnenko *et al.* 2019) and differences in the period over which recidivism was monitored. Based on the limited number of available studies in this area, there was no difference in recidivism between youth who received custodial versus non-custodial sanctions. Also, no significant association was found between detention length and recidivism. With the exception of a single study, none of the studies reported outcomes other than recidivism, as a result of which nothing can be said about the relationship between sanction characteristics and indicators of reintegration for youth who committed serious offences.

Contrary to the literature review, the Dutch recidivism data did show a significant difference between custodial and non-custodial sentences, indicating that youth referred to a custodial sanction reoffended more often and faster than those who received a non-custodial sanction. Significant associations were also found between detention length and recidivism, which differed per offender group: for youth convicted of violence resulting in serious bodily injury or death, longer detention length was related to more recidivism. In contrast, for youth convicted of murder, manslaughter, or rape, longer detention length was related to less recidivism. The data on the

Netherlands, however, do not allow for conclusions about the effectiveness of custodial or non-custodial sanctions or longer custodial sentences. After all, the decision on a custodial versus non-custodial sanction and the duration thereof is based on a consideration by the court. This makes it probable that youth with a high risk of recidivism are more likely to receive (longer) custodial sentences.

The qualitative follow-up study identified three youth in the target group who were willing to reflect on their imposed sanctions and the effects thereof. It is important to optimize that possibly those youth who were willing to answer questions of the researchers were those that were doing relatively well. Two of the three respondents were still in custody. For all three participants, sanctions were carried out as imposed. We could not truly determine whether treatments were carried out according to the risk-needs-responsivity principles. All respondents reported to have an adequate social network; a protective factor that might positively affect their rehabilitation chances. Two out of three participants reported cannabis abuse; and two out of three reported alcohol abuse; a risk factor that might negatively affect rehabilitation chances. The respondent that was released from custody reported several indicators of successful rehabilitation, including having a house and a job, and no recidivism. The follow-up study is too small to optimize findings.

All in all, we can conclude that little is known about the effectiveness of sentences for youth who commit serious offences. As allocation to custodial sentences is not at random, it is probable that the higher recidivism rates demonstrated for those with custodial sanctions provide more information about the population referred to custodial sentences than about effects of imprisonment. In order to truly improve knowledge about the effectiveness of sentences, more data are needed about the way sentences are carried out, and about care provided after release from custody. To optimize the developmental outcomes for youth, it is advisable to attune sentences to the criminogenic risk factors, needs, and responsivity of the individual (Andrews and Bonta 2010), rather than restricting the focus to other characteristics such as the custodial nature and length of the sentence. To improve effectiveness and advance research in this area, it is imperative to monitor the implementation of imposed sentences.

The literature review revealed that little is known about this select group of youth that – with their serious offences – creates societal unrest. International comparison of study results on the effectiveness of sentences is difficult as there are differences in judicial systems (i.e., in age limits, but also in type of sentencing), in definitions of recidivism, and in follow-up duration. Generally, studies focusing on this specific group were scarce and information was difficult to retrieve.

To draw conclusions on the effectiveness of sentences imposed on youth who commit serious offences, longitudinal-experimental studies should be conducted. In case such research is complicated by the small number of youth, it is imperative to share anonymized datasets and to be able to

link various registration systems in order to combine data on imposed sentences, how sentences are implemented and outcomes including indicators of rehabilitation and criminal recidivism.

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