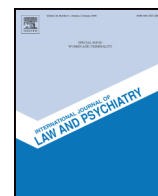




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## Older offenders deemed criminally irresponsible in Flanders (Belgium): Descriptive results from a retrospective case note study

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### ABSTRACT

**Introduction:** In Belgium, offenders who are deemed criminally irresponsible for their criminal actions because of mental illness or intellectual disability are subject to a specific safety measure with the dual objective of protecting society and providing mandated care to the offender. While Belgian law requires that offenders who are deemed criminally irresponsible should be in a hospital, clinic or other appropriate institution outside of prison, in practice, about one-third of all such offenders still reside in prison. Whether imprisoned or living in settings outside prison, there is a dearth of knowledge on the characteristics of the aging population among the criminally irresponsible offenders.

**Objective:** This paper aimed to explore the characteristics of older offenders categorized as criminally irresponsible in Flanders (northern Belgium) with a focus on the differences between imprisoned older offenders deemed criminally irresponsible and their peers who are residing outside prison.

**Method:** A retrospective case note study of all offenders deemed criminally irresponsible, >60 years of age ( $n = 174$ ), was conducted in the four Commissions of Social Defense, which implement the procedure in the case of those deemed criminally irresponsible in Flanders. The files were screened for (1) demographic characteristics, (2) criminal history as well as (3) mental and physical health issues.

**Results:** One-fourth of the population were >70 years of age. A total of 30.5% were in prison. Compared to their non-imprisoned peers, the imprisoned offenders had a history of having committed more serious violent crimes towards persons, such as homicides and sexual crimes. In addition, imprisoned older offenders categorized as criminally irresponsible are characterized more explicitly by personality traits that are likely to reduce their chances of being transferred to more appropriate settings in the community.

**Implications:** A comprehensive and systematic screening of all older offenders deemed criminally irresponsible with regard to health needs and social functioning, including age-related deterioration, alcoholism, and other causes of social disadvantages, is warranted to detect potentially hidden problems.

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### 1. Introduction

A heightened interest in the aging of offenders has been noted in many Western countries, mainly because of the high costs associated with age-related health care among the growing population of older prisoners (Chiu, 2010). The increase of imprisoned older offenders

may be partly explained by the aging of society, but may also have been exacerbated by the excessive use of punitive sentencing practices in the past, e.g., “the three strikes and you are out law” in the USA (Fellner, 2012). Although there is a noticeable difference in the growth of the population between the USA (16.5% > 50 years of age, according to Kim & Peterson, 2014) and most other Western countries [e.g., 10% in UK (House of Commons Justice Committee, 2013)], aging in prisons is an increasing concern (Aday & Krabill, 2013).

Consequently, correctional systems are challenged to address age-related problems, such as dementia (Maschi, Morgen, Zgoba, Courtney, & Ristow, 2011), and other needs, such as age appropriate accommodation and social isolation (Hayes, Burns, Turnbull, & Shaw, 2013).

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Internationally, most contemporary legal systems incorporate the principle of “legal insanity” for offenders diagnosed with mental disorders (Kalis & Meynen, 2014). According to this principle, offenders should be provided with appropriate care where they are either unable, or can only to a certain degree, be held criminally responsible for their offences (Penney, Morgan, & Simpson, 2013).

In this context, the Belgian law applies a dichotomized model in which offenders are considered either fully responsible or fully irresponsible for their criminal acts (Protais, 2014). In cases where individuals have the legal capacity to be responsible for their crimes, offenders can be found guilty by a judge or court and in such cases are subjected to a sentence, which is—in case of imprisonment—predetermined in time. On the other hand, criminal offenders who are evaluated by an expert-psychiatrist during the investigation process and found to be criminally irresponsible become subject to the so-called “measure of internment”, which is indeterminate in time (Vandeveldel et al., 2011). This judicial measure is aimed (1) at safeguarding society against dangerous offenders and—at the same time—(2) at treating the offenders who are considered as patients or as persons who should be supported, due to mental illness or intellectual disabilities (Van Assche, 2013). Up until now, the Commission of Social Defense (CSD) is responsible for the implementation and evaluation of the measure which means that it is the Commission's prerogative to decide on where the offender is referred to (Cosyns, 2005). The CSD also decides on the duration and termination of the measure, based on an evaluation of the “social dangerousness” of the individual and an improvement in the condition (e.g., the psychiatric illness) on which the measure is based (Vandeveldel et al., 2011). Given the insufficient capacity of (forensic) care facilities in Belgium, many offenders deemed criminally irresponsible are sent to prison, often without substantial care provision (Vandeveldel et al., 2011). In 2011, 28.3% ( $n = 1158$ ) of all Belgian offenders deemed criminally irresponsible ( $n = 4093$ ) were imprisoned in regular prisons (Moens & Pauwelyn, 2012). Furthermore, 45.2% ( $n = 2,255$ ) of the offenders deemed criminally irresponsible were managed within probation services, either living independently at home, or in other services such as specialized forensic units, regular mental health care settings or facilities for people with intellectual disabilities (Moens & Pauwelyn, 2012). Because of the precarious living conditions of imprisoned offenders deemed criminally irresponsible and the expectation that care provision outside prisons could not be created in a short amount of time, imprisoned offenders deemed criminally irresponsible have been separated in most prisons from the other prisoners and since 2007 they have been looked after by small multidisciplinary care teams. However, it cannot be ignored that these care teams are seriously understaffed in number and are only capable of dealing with the most immediate and basic care needs. Despite some additional initiatives that have been undertaken in some prisons, e.g., for those with intellectual disabilities (Vanden Hende, Caris, and De Block-Bury (2005), the overall situation of those offenders deemed criminally irresponsible accommodated in prison still remains at a substandard level; a situation for which Belgium has repeatedly been criticized by the European Court of Human Rights (ECHR).

At the time of the present study (2011), the Flemish population (the Dutch-speaking part of Belgium) of offenders deemed criminally irresponsible numbered 1962 (Moens & Pauwelyn, 2012), of whom 8.9% were >60 years of age ( $n = 174$ ). The main aim of the present study is to describe the situation of older offenders deemed criminally irresponsible in Flanders with respect to (1) demographic characteristics; (2) crime history; and (3) mental and physical health issues. As a substantial number of offenders deemed criminally irresponsible reside in prison and because a prison environment is not considered to be the most suitable environment for treatment, we have compared these characteristics for imprisoned offenders deemed criminally irresponsible and their non-imprisoned counterparts. As this is—to our knowledge—one of the first studies that tackles this question, the article reports on information that has not been available up until

now. In the discussion, we will reflect on the most pertinent findings, and make recommendations on how meeting the dual mandate which requires the provision of appropriate care to older criminally irresponsible offenders, while simultaneously protecting society, could be more optimally delivered in Belgium and internationally. Specific attention will be given to what we could learn from the differences between imprisoned and non-imprisoned older criminally irresponsible offenders.

## 2. Method

### 2.1. Setting and participants

A retrospective case note study of older offenders deemed criminally irresponsible was conducted in the four CSDs in Flanders, which are established in the regional cities of Ghent, Brussels, Antwerp, and Leuven. The Commissions' secretariats manage the files in which information from various sources is recorded, e.g., compliance with probation rules, periodic social reports, police reports, observation reports, psychological reports, and notifications of transfers or absence without permission. The CSD takes all judicial decisions concerning alterations in the probation rules, changes in the care trajectory, and if applicable, cessation of the status of criminal irresponsibility based on these files.

The inclusion criteria for the study were as follows: (1) case files of persons subjected to the measure of legal insanity at the time of the study; and (2) those >60 years of age.

### 2.2. Procedure and instruments

Since there is no central data management system across the four CSDs in Flanders, the relevant files were manually extracted from the case files in each of the four CSD secretariats. Between December 2010 and January 2011, the files of all 174 offenders deemed criminally irresponsible >60 years of age were identified. A codebook of 112 items was created comprising socio-demographic characteristics, criminal history factors, and psychiatric as well as the physical health issues of the offenders. The codebook was digitalized using Snap survey software (Snapsurveys, London, UK—version Snap 10 Professional, 2014). Although Snap is primarily intended as an online web application, it was used in this study as a stand-alone data input system on a laptop. The digital inputting of data was carried out onsite by the first author. This procedure enabled a congruent and uniform process of data collection and any chances of input errors were minimized.

### 2.3. Data analysis

Descriptive statistics (frequencies and crosstabs) were applied to map the characteristics of the older offenders deemed criminally irresponsible. Chi-square statistics were used to evaluate the differences between older imprisoned and non-imprisoned offenders deemed criminally irresponsible at a bivariate level. All analyses were performed in SPSS 20.0 using a statistical significance threshold of  $p < 0.05$ . In the results section of this paper, statistically significant results have been indicated in the tables by the symbol \*.

### 2.4. Ethical considerations

Ethical approval (B.U.N. 14320109752) from the Ethics Committee of the University Hospital of the Vrije Universiteit Brussel (Free University of Brussels) was obtained, as well as authorization from the Belgian Federal Public Service for Justice to conduct the study. Only the first author had access to the records and data were analyzed confidentially and reported anonymously.

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