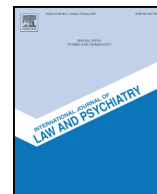




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Who decides? The decision-making process of juvenile judges concerning minors with mental disorders

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ABSTRACT

Previous research on juvenile judges' decision-making process has neglected the role of the different actors involved in judicial procedures. The decision can be considered as a result of information exchange between the different actors involved. The process of making a decision is equally important as the decision itself, especially when the decision considers minors with mental disorders. The presence and the type of interaction determine the information available to the juvenile judges to make their final decision. The overall aim of this study is to gain insight into the role of all actors, including the juvenile judge, in the juvenile judge's decision-making process in cases relating to minors with mental disorders. Semi-structured interviews were carried out with professional actors ($n = 32$), minors ($n = 31$) and parents ($n = 17$). The findings indicated that the judge's decision is overall the result of an interaction between the juvenile judge, the social services investigator and the youth psychiatrist. The other professional actors, the minors and the parents had only a limited role in the decision-making process. The research concludes that the judge's decision-making process should be based on dialogue, and requires enhanced collaboration between the juvenile court and youth psychiatrists from mental health services. Future decision-making research should pay more attention to the interactions of the actors that guide a juvenile judge's decision.

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1. Introduction

The decision-making process of a juvenile judge is of significant interest internationally (Cappon & Vander Laenen, 2011; Cauffman et al., 2007; Leiber & Johnson, 2008; Mears, 1998; Rodriguez, Smith, & Zatz, 2009). Mears (1998) states that the typical approach to sentencing research is to create a dependent variable that is then regressed on select legal (e.g. seriousness of offence, offence type) and extralegal (e.g. race, gender) variables.

A clear limitation of this typical approach is that the focus is on the analysis of decisions, and not on the process and background of these decisions (De Castro-rodriques & Sacau, 2012; Mears, 1998), even though judicial decisions are not based purely on rational and legal factors but are also influenced by social factors since decisions are made by humans (Beyens, 2000; Hutton, 2013; Tata, 2002). More specifically, Mears (1998) states that sentencing is a decision-making process that involves multiple actors, contexts and outcomes. Therefore, a number of authors have acknowledged that decision-making research should focus on the perspectives of different juvenile justice practitioners concerning how and why sentencing is used (Britner & Mossler, 2002; Mears, 1998).

Previous research partially followed this advice by examining the perspectives of juvenile judges (Brannen, Salekin, Zapf, Kubak, & DeCoster, 2006; Franssens, Put, & Deklerck, 2010; Grimshaw & Pratt, 1985; Martyn & Levine, 1998; Nuytiens, Christiaens, & Eliaerts, 2005; Sanborn, 1996; Sheehan, 2001) and other actors involved in judicial procedures (Banach, 1998; Beckett, McKeigue, & Taylor, 2007; Britner & Mossler, 2002; Gilbert, Mahieu, Goedseels, & Ravier, 2012; Mears, 1998; Rodriguez et al., 2009).¹ However, similar to traditional sentencing research, these studies focused on which legal and/or extralegal factors were considered important by the actors in the decision-making process, and not on the interactions between these actors. Paying attention to these interactions is important because a judge's decision can be perceived as a result of the interaction between the actors involved (Beyens & Vanhamme, 2008). Mears (1998) also states that the knowledge and motivation that each actor brings presumably has a bearing on the particular decisions made. More specifically, the information exchange or the lack of information exchange between the different actors shapes the decision. The role an actor plays seems

¹ More specifically, these studies examined the perspectives of the following actors: Banach (1998): judges, lawyers, caseworkers; Beckett et al. (2007): social workers; Britner and Mossler (2002): social workers, mental health providers, juvenile judges; Gilbert et al. (2012): juvenile judges, social workers, the institutions involved; Mears (1998): lawyers, juvenile judges, probation officers, prosecutors; Rodriguez et al. (2009): probation officers.

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to depend on the available information and the perception that the other actors have concerning the value of this information in shaping the final decision. When an actor is not involved in the decision-making process the actor's information will probably not be used to shape the final decision in the best interests of the child.

No research has yet been conducted that focuses on the role of the different actors in the juvenile judge's decision-making process, in the information exchange process, as far as we know. Even in adult sentencing research, this type of approach has only rarely been used (Beyens, 2000; Gelsthorpe & Loucks, 1997; Hannah-Moffat & Yule, 2011; Slotboom, Koppe, Passchier, De Jonge, & Meijer, 1992) – studies in this area have generally focused on the role of public prosecutors and/or lawyers. The overall quantitative approach to decision-making research may explain the lack of this type of research. However, the indirect impact of the different actors in judicial procedures, through the reports they administer, has been examined in juvenile justice settings. Previous research has indicated that social reports (Beckett et al., 2007; Britner & Mossler, 2002; Butler, Atkinson, Magnatta, & Hood, 1995; Franssens et al., 2010; Martyn & Levine, 1998; Sheehan, 2001), school reports (Ball, 1981) and mental health reports (Butler et al., 1995; Cappon & Vander Laenen, 2013; Hecker & Steinberg, 2002; Nairhos & Routh, 1992; O'Donnell & Lurigio, 2008; Rodriguez, 2003) influence the juvenile judge's decisions. These reports are written by the different actors (social workers, psychiatric experts) involved in the judicial procedures. This type of research indicates the importance of other actors in the decision-making process but does not profoundly describe the role the actors have in shaping and providing this information. Therefore, a profound understanding of the roles of these different actors is necessary.

For the reasons outlined above, and to extend previous decision-making research, this study will focus on the role the different actors have in the juvenile judge's decision-making process. Following the advice of Britner and Mossler (2002) that researchers should assess multiple perspectives in order to understand this process more profoundly, it will also explore how the actors perceive their and each other's role. In Belgium, where this study was carried out, the following actors are involved in judicial procedures: juvenile judge, clerk, youth prosecutor, minor's lawyer,² minor, parents, social services investigator,³ and representatives of the institution where a minor resides (Put, 2010).

1.1. A specific case: minors with mental disorders

This study examines the role of the various actors in relation to a specific subgroup of the juvenile court population – minors with mental disorders. International research has indicated that many of the minors in the juvenile justice system have mental disorders. Prevalence rates for mental disorders vary between 30 and 90% (Colins et al., 2010; Fazel, Doll, & Langstrom, 2008; Garland et al., 2001; Teplin, Abram, McClelland, Dulcan, & Mericle, 2002; Vermeiren, 2003; Vermeiren, De Clippele, & Deboutte, 2000). These figures are far higher than the 6–16% reported in the general population for the same age group (Costello, Mustillo, Erkanli, Keeler, & Angold, 2003). The high prevalence rates for mental disorders indicate that these minors may have mental health needs that should be addressed by the juvenile judge, since the juvenile justice system, especially in Belgium, is focused on rehabilitation (Muncie & Goldson, 2006; Put, Vanfraechem, & Walgrave, 2012). For many of these minors, the juvenile court may offer the first opportunity for their mental health needs to be identified and addressed (Grisso, 2007; Lederman & Osofsky, 2008).

² In Belgium, each minor is assigned to a lawyer when he/she needs to appear before a juvenile judge (Put, 2010).

³ In Belgium, juvenile judges are assisted by social services investigators, who are responsible for supervising the dispositions applied, and who advise the juvenile judge on which disposition should be taken next (Put, 2010).

In Belgium, as in other Western countries (Grisso, 2007; Lederman & Osofsky, 2008), minors with mental disorders in contact with the juvenile court have recently received more attention from the court's practice and policy workers (Merlevede, Vander Laenen, & Cappon, 2014; Vander Laenen, Merlevede, Van Audenhove, & Cappon, 2011), following reform of the Youth Protection Act of 1965 in 2006. The reform provided juvenile judges with the ability to apply specific mental health-related measures to minors with mental disorders who are in contact with the juvenile court (Rom, 2007). The applicable measures consist of ambulant counselling or placement in a mental health service (Put, 2010). However, these measures cannot currently be applied.⁴ In the meantime, a juvenile judge can apply the most appropriate measure according to the needs of the minor, which does not preclude mental health measures (Put, 2010).

Juvenile judges must make decisions that are in the best interests of the minors, which can be a challenging task given that these judges are trained in the law as opposed to child developmental psychology (Lederman & Osofsky, 2008). These juvenile judges must therefore rely on the input of the other actors involved in the decision-making process. Given the lack of knowledge of juvenile judges concerning psychiatry (Cappon & Vander Laenen, 2010; Lederman & Osofsky, 2008), the other actors may be even more important when the juvenile judges are considering minors with mental disorders. The other actors are especially important in providing useful information to further inform the juvenile judge concerning issues related to the mental disorders.

1.2. Admission to a mental health service: Belgian practice

The mental health needs of minors with mental disorders could potentially be met through the court's authority to mandate treatment (Breda, 2003; Cappon, 2014; Gilbert et al., 2012). The decision to refer minors to treatment resides with the juvenile judge, who has the authority and responsibility to determine case outcomes (Breda, 2001). However, this situation has engendered a need for collaboration between the mental health system and the juvenile justice system (Dickerson, Collins-Camargo, & Martin-Galijatovic, 2012; Kapp, Petr, Robbins, & Choi, 2013; Schwalbe & Maschi, 2012). This is challenging, because the two systems are different (Butler et al., 1995). The relationship between the juvenile court and mental health services is quite fragile, partly because collaboration between the two systems is a fairly recent development (Cappon, 2014; Kapp et al., 2013). Both systems need to get to know each other and further explore the advantages of collaboration. The youth psychiatrist can be considered as a quite new actor within the juvenile judges' decision-making processes, since youth psychiatry only recently became an important partner in the juvenile justice system (Cappon, 2014).

More specifically, in Belgium close collaboration is necessary because juvenile judges must obtain the approval of the mental health services involved before they can admit a minor to a mental health service (Van Audenaeye, 2006). When juvenile judges want to refer a minor to a mental health service, they must ask youth psychiatrists and their teams to administer the intake procedure. The minors and their families meet with the youth psychiatrists and their teams and, based on these meetings and the inclusion and exclusion criteria of the mental health service, the youth psychiatrists then decide whether the minor can be admitted (Van Audenaeye, 2006). So the juvenile judge can only refer the minor to the mental health service if the youth psychiatrist agrees to admit them.⁵

The use of an intake procedure for mental health services indicates that youth psychiatrists' role in this process is likely to be important, and worthy of further exploration. The youth psychiatrist seems to

⁴ The legislation states that these measures should be applicable by 1 January 2016.

⁵ This will change when the legislation is fully implemented, because a psychiatric expertise will then be necessary to admit a minor to a mental health service (Rom, 2007).

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