



## The blurred vision of Lady Justice for minors with mental disorders: Records of the juvenile court in Belgium



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### ABSTRACT

**Purpose:** This study examined (1) the information present in juvenile court records in Belgium (Flanders) and (2) whether there are differences in information between records that mention a mental disorder and those that do not. **Method:** The file study sample included 107 court records, and we used a Pearson's chi-square test and a t-test to analyze the information within those records.

**Results:** Information in juvenile court records varied considerably. This variability was evident when we compared juvenile court records with and without mention of a mental disorder. Significantly more information about school-related problems, the functioning of the minor, and the occurrence of domestic violence was included in records that mentioned a mental disorder compared with records that did not.

**Conclusion:** The content of the juvenile court records varied, particularly with regard to the mental health status of the minor in question. We suggest guidelines to standardize the information contained in juvenile court records.

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### 1. Introduction

Numerous studies have examined the decision-making process of judges in juvenile courts (Bond-Maupin & Maupin, 1998; Cappon & Vander Laenen, 2011; Cauffman et al., 2007; Leiber, Johnson, Fox, & Lacks, 2007; MacDonald, 2003; Mears, 1998; Stein, Blank, Avidan, Barel, & Elizur, 1995). In such research, while different methodologies were used, file studies—close examinations of juvenile court records—were the predominant research method employed (Cappon & Vander Laenen, 2011).

Using the information present in juvenile court records, file studies can identify which factors could potentially influence judges' decision-making (Campbell & Schmidt, 2000). The review by Cappon and Vander Laenen (2011) indicated that the following factors were most often included in decision-making research: legal (e.g., type of offense, prior juvenile court record), demographic (e.g., age, gender, ethnicity), family (e.g., family structure, family functioning, psychiatric history of parents), and school factors (e.g., school problems, truancy, suspension). However, the individual characteristics of the minor (e.g., behavior, gang involvement) were less often discussed in the decision-making studies that employed file studies. For example, the presence of mental disorders in minors was examined in only four of these studies (Cauffman et al., 2007; Gebo, 2007; Kempf-Leonard & Sontheimer, 1995; Wordes, Bynum, & Corley, 1994).

Despite the dominance of file studies in decision-making research, some researchers have criticized its use (Applegate, Turner, Sanborn, Latessa, & Moon, 2000; Kunin, Ebbesen, & Konecni, 1992; MacDonald & Chesney-Lind, 2001; Mears, 1998; Sanborn, 1996; Sheehan, 2001). Some have stated that the information in juvenile court records varies according to the author of the information, the amount of time available to prepare it, and the degree of access to family members to gather the information (Kunin et al., 1992; Sheehan, 2001). Others have argued that some potentially important influential factors cannot be researched because they are not present in the juvenile court records (Applegate et al., 2000; MacDonald & Chesney-Lind, 2001; Mears, 1998). This lack of information is especially noticeable regarding mental health information. Indeed, it has been suggested that this lack of discussion about mental health information in decision-making research might be a consequence of the overall absence of this information in juvenile court records (Breda, 2003; Herz, 2001; O'Donnell & Lurigio, 2008).

Nevertheless, extracting available mental health information from juvenile court records might be especially important because many minors going through the juvenile justice system have a mental disorder. Previous studies examining juvenile courts have indicated prevalence rates ranging from 30% to more than 75%, depending on the mental disorder examined (e.g., Colins et al., 2010; Doreleijers, Moser, Thijs, van Engeland, & Beyaert, 2000; Fazel, Doll, & Langstrom, 2008; Garland et al., 2001; Vermeiren, 2003). These rates are far higher than the 6% to 16% prevalence reported in the general youth population (Costello, Mustillo, Erkanli, Keeler, & Angold, 2003; Ford, Goodman, & Meltzer, 2003). Moreover, studies have indicated high rates of comorbidity and undiagnosed mental health problems in 50% to 75% of juvenile delinquents (Colins, Vermeiren, Schuyten, & Broekaert, 2009; Desai et al.,

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2006; Domalanta, Risser, Roberts, & Risser, 2003; Fazel et al., 2008; Vermeiren, Jaspers, & Moffitt, 2006).

In Flanders, Belgium, the juvenile justice system addresses two different types of cases: juvenile delinquent offenders and problematic educational situations (Grietens & Hellinckx, 2004; Put, 2010). “Juvenile delinquent offenders” are minors between the ages of 12 and 18 who have committed one or more delinquent offenses,<sup>1,2</sup> since minors under the age of 18 have no criminal responsibility, juvenile courts handle juvenile offenses in a “protective” manner, meaning that no punishments can be imposed, only measures that aim for rehabilitation (Muncie & Goldson, 2006; Walgrave, 2002). For minors who commit crimes under penal law, which applies only to adults, the law specifies that they have committed “acts defined as offenses,” and not “offenses,” to make clear that minors do not commit offenses because they cannot be punished (Walgrave, 2002). “Problematic educational situations”<sup>3</sup> is a term used to refer to minors between the ages of 0 and 18 who have committed “status offenses” (e.g., general misconduct, high intractability, truancy), as well as minors who are victims of child abuse or neglect (Grietens & Hellinckx, 2004; Put, 2010). Juvenile delinquency cases and problematic educational situations are both ruled by the juvenile judge. Because of the protective orientation of the law, many of the procedural rules and measures apply to both categories (Walgrave, 2002). Regarding legislation, the major difference between juvenile delinquency cases and problematic educational situations concerns which authorities are responsible. The judicial reaction to youth delinquency is a federal matter, while the communities are responsible for problematic educational situations (Van Dijk, Dumortier, & Eliaerts, 2008; Walgrave, 2002). Juvenile judges can apply similar measures to both groups in the same institutions with some additional measures and services specific to juvenile offenders (e.g., reprimands, juvenile detention, and restorative measures such as community service or mediation; Walgrave, 2002). Since the reform of the Youth Protection Act of 1965 in 2006, juvenile offenders with mental disorders in the juvenile courts have received increased attention in Belgium (Ministerial Circular concerning the reform of the Youth Protection Act of 1965, 2006). The reform provided juvenile judges with the ability to apply specific measures related to mental health to juvenile offenders with mental disorders (Rom, 2007). The applicable measures consist of ambulant counseling or placement in a hospital, mental health service, or drug or alcohol treatment service (De Smet, 2006; Ministerial Circular concerning the reform of the Youth Protection Act of 1965, 2006). However, these measures might not be applied at present, because implementation of legislation that makes a clear distinction and definition between open and closed mental health services is pending. Moreover, the reformed law requires a medical-expertise report (verifying that due to the minor's mental disorder and/or addiction, treatment is necessary to safeguard his or her integrity) before the minor can be placed in a mental health or drug treatment service. However, currently, the provision of this report has not been put into practice. Moreover, since the law regarding psychiatric expertise is pending implementation, there are no

guidelines as to who is providing this expertise or what it comprises. Consequently, the diagnosis of a mental disorder is not systematically included in court records before a minor's referral to mental health services. The inclusion of this information depends on its availability and the decision of the author of the reports on whether to include the diagnosis. Therefore, mental health status can be included in juvenile court records to provide insight into the overall situation of the minor and his or her environment or to specifically advise the juvenile judge to apply a mental health measure. In the meantime, the juvenile judge can apply the most appropriate measure according to the needs of the minor, which does not preclude mental health measures (Put, 2010).

Despite the delay in implementation of the amended law, the specific legal attention to minors with mental disorders further underscores the importance of researching this subgroup.

Therefore, the purpose of this study was twofold. First, we aimed to examine the information present within juvenile court records in Belgium. Second, we sought to study the differences in juvenile court records between those that mentioned a mental disorder and those that did not.

## 2. Method

### 2.1. Setting

This study gathered data from a juvenile court in Flanders, Belgium. There are two groups of minors that come into contact with the juvenile court, according to Belgian law: (1) minors who have committed delinquent offenses (*juvenile delinquents*) and (2) minors who have committed so-called status offenses (e.g. truancy, general misconduct, or high intractability) or were victims of child abuse or neglect (*problematic educational situation cases*; Grietens & Hellinckx, 2004; Put, 2010). Both groups are discussed in this study.

### 2.2. Selection of juvenile court records

The data were collected using a file study at the juvenile court. A record is kept in the juvenile court of each minor that comes into contact with it, and each of these records consists of three parts. First, each record contains the reasons for the minor's referral to the juvenile court. This part is constructed by the public prosecutor.

Second, each record contains reports by the social services investigators of the juvenile court. Specifically, these are reports of the social relationship and personality investigations<sup>4</sup> and any treatment programs the minor has taken part in, and reports evaluating the minor's overall situation. In addition, some records contain reports from the institution where the minor resides (Put, 2010; Walgrave, 2002).

Third, each record contains the decisions of the juvenile judge, which are recorded and included in the record by the office of the clerk of the juvenile court (Walgrave, 2002). The information about these decisions includes a summary of the personality or environment of the minor (or any facts) that justifies the judge's decision, a mention that the minor was heard (or an explanation for why this was not the case), a reference to one or more decisive factors in the decision-making process, and a specific explanation of the decision when a combination of measures have been applied (Put, 2010).

In some cases, additional reports by other authors can be included in the records, such as police reports in the cases of minors who had attempted to run away, school reports, and letters from the parents.

<sup>1</sup> In exceptional cases, the minor can stay under the supervision of the juvenile court until the age of 23. This can be the case when two conditions are met: (1) a minor is referred to the juvenile court because of a serious offense committed between the ages of 12 and 17 (that would be punishable with a prison sentence of 10 years when committed by an adult) and (2) when the minor has been placed in a community institution. Minors—mostly juvenile delinquents, but also those in a problematic educational situation—can be placed for both protective and educational aims in a community institution. These institutions have an obligation to admit minors. The minor can be admitted to closed or open education settings and to reception and observation units (Grietens & Hellinckx, 2004).

<sup>2</sup> Before the age of 12, the minor is considered to be incapable of understanding his actions (De Smet, 2006; Van den Wyngaert, 2006). However, minors can be referred to the court due to an act defined as an offense before the age of 12, although in that case only a limited number of measures can be applied; namely, a reprimand, being put under the supervision of the court, and intensive educational counseling (Put, 2010).

<sup>3</sup> In exceptional cases, minors in problematic educational situations can stay under the supervision of the juvenile court until the age of 21. For instance, this is the case when the minor is living independently under the supervision of the court.

<sup>4</sup> In this report, information about the minor and his/her family is included. Specifically, these are descriptions and information on the development (and, optionally, a diagnosis) of the minor's situation and the reasons for the minor's reference to the juvenile court. Next, a description and evaluation of what care has been provided for the minor can be included. Finally, when necessary, a proposal/advice on appropriate measures can be included.

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