Summary

Research question and approach

When a juvenile between the age of 12 and 18 commits a serious crime, the court may sentence the juvenile to be placed in an institution for juvenile offenders for compulsory treatment, up to a maximum of 6 years. In the Dutch legal system this sentence is the measure of last resort for juvenile offenders; we will call it hereafter the pij-measure. After 2005 the number of juveniles that was imposed a pij-measure decreased substantially. The Research and Documentation Centre of the Dutch Ministry of Security and Justice commissioned the research bureau ‘Decide’ to uncover the cause(s) of this decrease.

A juvenile who commits a serious crime for which the pij-measure may be an suitable sentence is, while in custody, subject to a decision making process in which several actors are involved, such as the public prosecutor, the Child Welfare Council, the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP) and the bureau for juvenile probation and after-care.

This research focuses on this pre-trial stage: has any change taken place in the decision making that could explain the decrease of the number of juveniles who were imposed a pij-measure. The sentencing of the courts is no part of this research.

Apart from autonomous changes in the attitude of the actors involved, the researchers also looked into possible effects of external factors or developments. The question was, if there has been any external change that could have influenced the decisions made by the actors. Examples of external developments are the coming of the ‘Jeugdzorg plus’, a new custodial care facility within juvenile civil law and the ‘gedragsbeïnvloedende maatregel (GBM)’, a new measure in juvenile criminal law, which imposes treatment or therapy to a juvenile, mainly non-custodial, to correct his behaviour.

The investigation into the decision making and the influence of external factors is limited to the legal districts of Amsterdam, Utrecht, Rotterdam and Den Haag. In these so-called G4 districts a substantial part of the pij-measures in the period examined has been imposed. In these districts qualitative data has been gathered by interviewing extensively 29 staff members of the public prosecutor, the Child Welfare Council and the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP).

Besides, different sorts of quantitative data on all legal districts have been used. The most important ones are longitudinal data on pre-trial forensic diagnostic examination of the personality and mental health of juvenile offenders. These so-called ‘Pro Justitia’ examinations are conducted by independent psychiatrists and psychologists. They draw up a ‘Pro Justitia’ report that is of much significance to the decisions of the court. The examinations proceed by interference of the NIFP.

101 The pij-measure can be sentenced suspended and non-suspended. In this summary we always refer to the non-suspended sentenced pij-measure.
102 For reasons of readability only male pronouns and conjugations are used.
Conclusions

Development of the number of imposed pij-measures
There appears to be a considerable drop in the number of imposed pij-measures nationwide in the years 2006, 2007 and 2008. After 2008 the number stabilizes. We see this trend present in all legal districts but two.

Decision making
In the pre-trial decision making on juveniles who eventually may be sentenced with a pij-measure, the following actors play an important part: the public prosecutor, the examining judge, the Child Welfare Council and the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP). The bureau for juvenile probation and after-care appears not to bear much influence on discussions about imposing the pij-measure.

When a juvenile commits a crime for which he may be sentenced with the pij-measure, the public prosecutor nearly always requests detention on remand and the examining judge nearly always grants it. Exceptionally it is decided for some juveniles under the age of 15 that they will not be prosecuted according to criminal law, but that they are adjudicated according to civil law.

In this stage the following decisions or events appear to be decisive with respect to the chance of a juvenile to be sentenced with a pij-measure:

1. A ‘Pro Justitia’ report by a psychologist as well as a psychiatrist – a so-called ‘double report’ – is requested. The request for a double report is a legal condition for imposing the pij-measure on a juvenile.
2. The ‘Pro Justitia’ examiners advise to impose the pij-measure.
3. The public prosecutor and the Child Welfare Council adopt the advice of the examiners.

Because the advice of the ‘Pro Justitia’ examiners is adopted in most cases, the first two events mainly determine the outcome. Other research shows that the court in most cases decides in accordance with the advice of the examiners.

In practice the professionals of the Child Welfare Council and the NIFP and the ‘Pro Justitia’ examiners appear to have the most influence on the decision making. The question whether a double report should be requested is mainly determined by the expert opinions of the Child Welfare Council and the NIFP. In this respect the public prosecutor will rely heavily on the behavioural and psychiatric experts. Exceptions are cases in which the juvenile in question is a severe threat to society; in that case the public prosecutor becomes more decisive.

Once a ‘Pro Justitia’ double report has been requested, the advice of the examiners is in most cases decisive.

Overall the Child Welfare Council plays an important part in this pre-trial stage: it advises the public prosecutor and the examining judge during the first days of custody of the juvenile, the Council consults with the NIFP with respect to the question which sort of ‘Pro Justitia’ examination the juvenile should get. When the juvenile is brought before the examining judge, the council is always present and also to the final court session. It also can take an initiative to adjudicate the case according to civil law or it can examine the juvenile whether a GBM is a suitable measure.
If the juvenile apparently suffers from a mental disorder then the decision which sort of examination he should get, is mostly left to the NIFP.

**External factors and developments**
The respondents were also questioned about the possible effect of a number of phenomena and developments in the last years that may be (partly) responsible for the drop of imposed pij-measures. What follows is an enumeration of the most important factors together with the main conclusion with respect to their effects.

**The coming of the ‘gedragsbeïnvloedende maatregel’ (GBM):** from the first of February 2008 juvenile offenders can be imposed a so-called GBM. For certain juveniles this measure may be a suitable alternative for the pij-measure, which could have an effect on the number of imposed pij-measures. However, the number of juveniles that was sentenced with a GBM appears to be quite small: 15 in 2008 and about 100 in 2009 and 2010. For this reason the coming of the GBM could at the most have prevented the number of imposed pij-measures from rising again after 2008.

**The coming of the ‘Jeugdzorgplus’:** from 2008 up to 2010 more and more capacity came available of the new custodial care facility ‘Jeugdzorgplus’ within juvenile civil law. From the first of January 2010, juveniles who need treatment and supervision in a custodial setting according to civil law are no longer allowed to stay in an institution for juvenile (criminal) offenders and so enter the ‘Jeugdzorgplus’. For certain juvenile offenders the professionals may judge this form of custodial care more suitable than the pij-measure. However, the coming of the ‘Jeugdzorgplus’ only can have a limited effect on the number of imposed pij-measures in the period 2006 – 2008: not before 2008 a substantial number of ‘Jeugdzorgplus’ places came available.

Furthermore, this research shows that the most relevant criteria to decide that certain juvenile criminal offenders should (only) be adjudicated according to civil law – age and the seriousness of the crime – did not change in the past decade. In other words: no (extra) change in the number of imposed pij-measures is to be expected from the coming of the ‘Jeugdzorgplus’.

Nonetheless, there could have been a limited increase in the number of juvenile criminal offenders adjudicated according to civil law for another reason: from 2005 on the pij-measure was even more applied as a last resort. In this context civil custodial care before 2008 and later on ‘Jeugdzorgplus’ is one of the alternative options to avoid the pij-measure and for that reason could have been imposed more often.

**The reputation of the institutions for juvenile offenders:** from 2005 on the reputation of these institutions has been damaged a number of times. In 2006, research showed that the recidivism of the juveniles that stayed in the institutions is relatively high. Several other official reports confirmed in 2007 the criticism of the institutions, in particular the way they executed the pij-measure.

This research shows that because of this criticism the professionals within the Child Welfare Council and the NIFP as well as the examiners ‘Pro Justitia’ became very reluctant to advise the pij-measure. This in all probability caused fewer requests of double reports ‘Pro Justitia’ and fewer advices to impose a pij-measure. This in turn is probably the most important cause...

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103 In Dutch: ‘Justitiële Jeugdinrichting’.
of the decrease of the number of imposed pij-measures. This decrease started precisely in the year that the reputation of the institutions was questioned.

**The development of new behaviour therapies:** during the last decade the interest into new behaviour therapies for juvenile offenders, like Functional Family Therapy (FFT), grew. In these kinds of therapies often the family and the social network of the juvenile are involved. Therefore these therapies are by nature none-custodial and are imposed in combination with a suspended detention sentence or with a GBM.

This research shows that professionals believe that for certain juvenile offenders these new therapies are a good alternative for a pij-measure. First of all non-custodial sentences are in general considered more effective in reducing re-offending than custodial sentences. Furthermore the professionals sought alternatives for the pij-measure because of the damaged reputation of the juvenile institutions. These considerations contributed to the fact that the pij-measure was applied even more as a last resort. So the developments of new behaviour therapies directly and indirectly contributed to the decrease of the number of juveniles that were imposed a pij-measure.

**Fewer serious crimes of juveniles?:** there are some indications that the number of serious crimes by juveniles decreased in the years 2006-2008. To confirm this, an extensive quantitative analysis is required, also involving figures on the prosecution and tracing of juvenile offenders. This was beyond the scope of this research. Nonetheless, we can’t exclude the possibility that a part of the decrease in imposed pij-measures is caused by a descent of the number of serious crimes committed by juveniles.

**Decision making: a change of considerations**

To impose a pij-measure three criteria have to be fulfilled (cumulatively) in Dutch juvenile criminal law:

1. The crime concerned is very serious.
2. The chance of re-offending is large and forms a threat to people.
3. The pij-measure is in the interest of the personal development of the defendant.

Nearly all respondents agreed that the application of the first two criteria did not change in the last six years, the application of the third criterion on the contrary did. A number of factors caused the behavioural and psychiatric professionals to think that the pij-measure is not in the interest of a growing part of the juvenile offenders that commit serious crimes. The most important argument for this is the bad reputation of the juvenile institutions for juvenile offenders, emerging in 2006/2007. Secondly the belief of the professionals in the effectiveness of the pij-measure reduced, partly because a growing value is attached to non-custodial therapies in which the family of the juvenile is involved. After all, very often the problems of juvenile offenders spring from their situation at home. These developments have led to the fact that the pij-measure even more is applied as a last resort. Nowadays more juvenile offenders of serious crimes, more than before 2006, are corrected with other sentences, mostly non-custodial. For juveniles in the age of 12 to 15, civil custodial care may be used more as an alternative for the pij-measure.

For some juveniles the pij-measure cannot be prevented. Non-custodial treatments or therapies are only possible if the juvenile wants to cooperate and is able to cooperate. For juveniles with a serious mental disorder custodial treatment often is necessary. And of course the risk of re-offending and the danger for other people cannot be allowed to be very high.
The consequence of this all is that the professionals only give an advice for a pij-measure for those juveniles, who are considered ‘really’ untreatable, or who have had numerous unsuccessful treatments already or refuse any form of cooperation, or juveniles who have a serious mental disorder. To put it simply: juveniles without a serious mental disorder will not get a pij-measure imposed as long as they are considered treatable. This is ironic because the pij-measure is a sentence for treatment. All this caused the number of imposed pij-measures to drop in the period 2006-2008.

Changes in the number of requested double reports ‘Pro Justitia’ and advices to impose a pij-measure
The conclusion based on the interviews is that the drop in imposed pij-measures mainly has been caused by the change in attitude of the professionals towards this measure, stimulated by external factors. If this is true, one would expect a decrease of the number of requested double reports ‘Pro Justitia’ in the period concerned, because these requests anticipate on the possibility of a pij-measure. One would expect even more the number of advices for a pij-measure of the examiners ‘Pro Justitia’ to drop because in these advices the pij-measure is implicitly evaluated with respect to its content and expected effectiveness.

In graphic I the development of the number of all reports ‘Pro Justitia’, the special kind of double reports, the number of pij-advices and the number of actual sentences of the pij-measure are compared between 2005 and 2010. All numbers are presented as indices with respect to 2005 (=100). So the trend lines represent the relative changes since 2005.

Graphic I: development of the total number of reports ‘Pro Justitia’, the number of double reports, of pij-advices and sentences of pij-measure, expressed as indices with respect to the year 2005 (=100)
The graphic shows a slight decrease of the number of all reports ‘Pro Justitia’ between 2005 and 2008. The number of double reports however, is decreasing more during that period. The number of pij-advises, compared to the number of double reports, is dropping even more, which means that less and less double reports resulted in an advice to impose a pij-measure between 2005 and 2008.

Furthermore we can see that the changes in the numbers of pij-advises and actual pij-sentences almost coincide. The stabilization after 2008 of the number of juveniles who were imposed a pij-measure goes together with a stabilization of the number of double reports ‘Pro Justitia’ and of the number of pij-advises.

The trend lines confirm in every aspect the conclusions based on the interviews: the drop of imposed pij-measures is mainly caused by a change in attitude towards the pij-measure of the professionals of the Child Welfare Council, the NIFP and the examiners ‘Pro Justitia’. After all, in particular the professionals determine if a double report ‘Pro Justitia’ should be requested and the decision in the end to impose a pij-measure is mainly determined by the advice of the examiners ‘Pro Justitia’. The bad reputation of the juvenile institutions, the changing views on treatment of juvenile offenders and the coming of new behaviour therapies, seem to have played an important part in this change in attitude.