

# Bonger International Bulletin

## Milder offences, more punishment. A study on the nature and the prosecution of violent youth crime in the Netherlands

Dirk J. Korf, Annemieke Benschop, Tom Blom and Maike Steen

### Introduction

Young people fighting, threatening police officers, damaging cars, smirching walls with graffiti. These are all behaviours that have attained an increasingly prominent place in Dutch media, politics, and crime statistics. The complaints are two-sided: not only does youth crime occur more often, also the criminal acts have become more severe. Violence, so it is said, would produce increasingly severe injuries, and acts of vandalism would cause increasingly greater damage. If we look at statistics from the police and the judicial system, such claims seem in order. On the long term, these statistics show a clear increase in youth crime, in particular in acts of violence. However, critics oppose that these statistics generate a skewed image of youth crime. They argue that certain behaviours, for which young people were not arrested hitherto, are now seen by police and justice as an occasion to arrest and prosecute them. Subsequently, young people will enter youth criminality statistics sooner. Moreover, critics state, judges would have punished similar criminal acts with increasingly stricter measures.

These different perspectives on developments in youth crime can be summarized in three theories. According to the *escalating crime theory*, youth crime has (a) increased and/or (b) become more severe in nature. Then, according to the *mischievous theory*, police and justice (a) act more often against behaviours that were hitherto not classified as youth crime and/or (b) classify similar (criminal) behaviours as being more severe. Finally, the *tougher punishment theory* is concerned with the way justice responds to youth crime, namely by (a) sanctioning behaviour more often and/or (b) use stricter measures to do so.

These three theories all resonate either implicitly or explicitly in literature on youth crime. For example Dutch criminal law expert Buruma (2005) talks of miniaturization of criminal law; the trend to criminalize provocative behaviour more and more often – a perspective similar to the mischief theory. Among other criminologists and legal experts studying trends in youth crime, is American criminal law researcher Zimring. In the United States, statistics of the police and justice showed a strong increase in murder, rape, and abuse. This proved powerful evidence for supporters of the aggravation theory. Subsequently, in the early nineties, violent youth crime was emphasized and a stricter approach to these issues was advocated for. Oppositely, Zimring (1998a, 1998b) states that these American police statistics could be explained by the reclassification of the police, rather than increased violent behaviours among young people. "How assaults are counted and classified is essentially a matter of police discretion. Changing police standards can have a huge impact on statistical trends." (Zimring, 1998a, p. 736).

Zimring is concerned with a shift in the boundary between simple and aggravated assault; i.e. an upgrade of behaviour that was formerly classified as lighter violence, to heavier violence. This lowers the threshold for making an official police statement of a certain assault, which artificially increase crime statistics: "While the statistics indicate an increase in assaults, the actual behaviour had remained unchanged." (Zimring, 1998a, p. 743). With this argument, Zimring can be defined as a proponent of mischief theory. However, simultaneously, the author warns us for a narrow, negative interpretation of reclassification. The old classification is not necessarily better than the new one. Moreover, reclassification is an interesting fact in itself as it reveals an attentional shift among policy-makers and other institutions. Zimring illustrates this by the example of domestic violence. Since this received more attention in the policy-making arena, police and justice in the United States have taken violent domestic fights more seriously.

### Research

In the present study, we limit our research to youth crime (ages 12 up to 24) and primarily target the question how developments in registered crime within this age group can be explained. The different theories of aggravation, mischief, and punishment aggravation serve to inform our empirical findings. The problem addressed in this research report can be described as follows: *What specific acts have young people perpetrated when they get charged with public order offences or violent offences? Do those acts differ from the acts perpetrated ten years ago? Do episodes that are comparable in nature lead to different charges or punishments today than a decade ago?* We translated this problem into several specific research questions and hypotheses and investigated them primarily in a representative sample of 800 files (500 from 1999 and 300 from 2008) of juvenile crime cases referred to the Dutch Public Prosecution Service (OM) for disposal decisions. The sample was stratified by five categories of offences as defined by Statistics Netherlands (CBS) – threatening behaviour, assault, offences against public authority, public order offences and vandalism – as well as by the age of the suspects (half of them aged 12-17 and half aged 18-24). We also organised a focus group discussion with experienced experts from the judiciary, the police, and the legal and academic professions. We will first summarise the key findings of the study and then report in more detail on the results for the various topics, research questions and hypotheses.

### Box I Key findings in brief

The research findings apply solely to selected types of recorded public order and violence offences committed by offender aged 12 to 24.

- In the category of threatening behaviour, more cases of verbal harassment and far fewer cases of brandishing a weapon or other object were recorded in 2008 than in 1999. Threatening acts were generally less serious in 2008.
- In the assault category, a development was seen from heavier to lighter injuries.
- In the public order category, the use of weapons and other objects decreased.

- Comparable acts with comparable consequences for victims did not result in more serious or less serious charges in 2008 as compared to 1999.
- Charges were neither less likely nor more likely to be dropped by the OM in 2008 than in 1999.
- Courts did not impose heavier or milder punishments in 2008 than in 1999 for comparable acts with comparable consequences for victims.
- In both the years analysed, with out-of-court disposals included, the likelihood of punishment was greater in cases involving more serious injury or property damage.
- With out-of-court disposals included, threatening behaviours were more likely to be punished in 2008 than in 1999.
- There was a sharp increase from 1999 to 2008 in the number of offenders receiving community punishment orders issued by prosecutors or courts.

### More mischief

*What specific acts had been perpetrated by young suspects charged with public order offences or violent offences in 2008 and in 1999?*

*Were the acts committed in 2008 different from those in 1999?*  
Our empirical data for investigating these issues was derived from the *specific acts* described in the case files, irrespective of the offence category to which they were assigned by the prosecution. Using checklists, we systematically collated relevant components (behaviours and any consequences) of each offence, distinguishing between threatening acts, violent acts against persons, damage to property, and other acts. We also noted additional particularities of each type of act (including whether threats were verbal or physical, whether weapons were used, and the financial impact of the damage).

Analysis of the files revealed many similarities between the specific acts committed in 1999 and in 2008. In both years, for instance, more than half of the acts that prompted charges of threatening behaviour were directed at ordinary citizens, as was a larger percentage of the acts that led to assault charges and a still greater percentage of the violent acts against persons that resulted in public order charges. Rates of violence directed at persons in authority and public service workers remained stable (at least for the youthful age group and the offence categories we studied).

Some differences were also discernible between the years analysed, and the main general trend seemed to be towards acts of a less serious nature. Although the trend could not be significantly demonstrated in all categories due to the limited numbers in subgroup comparisons, all the significant differences pointed in the same direction – a distinct shift towards less serious acts. Compared to the 1999 files, those in 2008 showed a higher rate of verbal threats and a lower rate of non-verbal physical threats within the offence category of threatening behaviour, as well as a far lower rate of physical threats involving weapons or other objects. By and large, threatening acts in 2008 were milder in nature. In the offence category of assault, there was a shift from more serious to less serious injuries, and in the category of public order offences there was a clear decrease in the use of weapons and other objects.

The observed trends are in line with the predictions of our mischief theory, which maintains that law enforcement authorities are now taking action at earlier stages, or more frequently, against behaviours that previously did not result in juvenile crime charges. Consistent with this finding, experts in our focus group reported that increased pressure was now being applied on police to make more arrests for minor violations, and that the police themselves had begun making more arrests for failure to comply with police orders and

for resisting arrest. Consistently with this finding, experts in our focus group reported that increased pressure was now being applied on police to make more arrests for minor violations, and that the police themselves had begun making more arrests for failure to comply with police orders and for resisting arrest.

### Charges equally tough

*Do incidents of a comparable nature now lead to different charges from those a decade ago? If so, what differences are evident?*

For every offence we studied, we made a descriptive synopsis of the specific acts involved and any consequences they had. We next translated the synopses (without regard for the offence category to which the files belonged) into vignettes representing more abstract categories of actions. The vignettes were divided into four categories (threats, physical abuse, resistance and vandalism) and three grades of severity (mild, moderate and serious acts), see table 1. Acts assigned to each vignette category were then examined to ascertain which Penal Code articles had been specified by the prosecution in the statement of offence.

In the threat vignettes, the charge most commonly brought by the Public Prosecution Service (OM), both for milder and for more severe categories, was violation of Penal Code article 285 (threatening behaviour). No difference was seen between 1999 and 2008. The toughness of the charges also remained stable when quantified as the average of the maximum penalties stipulated by the articles used. In the physical abuse vignettes,

*Table 1 Vignettes (per vignette category), deduced from synopses*

	1999 (n = 480)		2008 (n = 355)		p
<b>Threat</b>					
Light threat (without object/weapon)	64	52.0%	41	70.7%	.033
Mild threat (with object)	13	10.6%	2	3.4%	
Severe threat (with weapon)	46	37.4%	15	25.9%	
TOTAL	123		58		
<b>Physical abuse</b>					
Light physical abuse (no/superficial injuries)	54	35.3%	68	46.6%	n.s.
Mild physical abuse (light injuries)	56	36.6%	44	30.1%	
Severe physical abuse (heavier injuries)	43	28.1%	34	23.3%	
TOTAL	153		146		
<b>Resistance</b>					
Light resistance (failure to comply with an order by a public official)	25	24.3%	22	39.3%	.009
Mild resistance	9	8.7%	9	16.1%	
Severe resistance	69	67.0%	25	44.6%	
TOTAL	103		56		
<b>Vandalism</b>					
Light vandalism (damage up to 250 EUR)	23	24.2%	18	18.9%	.499
Mild vandalism (damage up to 1000 EUR)	14	14.7%	14	14.7%	
Severe vandalism (damage >1000 EUR)	12	12.6%	13	13.7%	
Vandalism with unknown damage	46	48.4%	50	52.6%	
TOTAL	95		95		
<b>Miscellaneous</b>					
	6				

just under half of the OM charges were for article 300 (battery) and more than one in three charges were for article 141 (public violence). Article 300 was used relatively more often in 2008 than in 1999, especially for the milder category of actions. In terms of average maximum penalties, the charges in 2008 were slightly milder. In about half of the OM charges in the resistance vignettes, article 180 (resisting arrest) was chosen, and article 184 (failure to comply with an order by a public official) was used for about one third of the vignettes. Mild resistance was usually charged under article 184 and more vehement resistance under article 180. These charges seem legally appropriate, as article 180 does not apply to mild resistance and article 184 to heavier resistance. On the whole, we found no differences in the charges laid by the OM between 1999 and 2008. In the vandalism vignettes, almost three quarters of the OM charges were based on article 350 (vandalism) and most others on article 141 (public violence). The apparent tendency was to use article 350 for mild vandalism and article 141 for moderate and serious vandalism. Toughness of punishment in terms of average maximum penalties remained approximately the same.

From our analysis of comparable acts (as described in the synopses) in the two years in question, it was predominantly similarities that emerged, in terms of both the types and the toughness of the charges brought. Although the police and the OM did bring tougher charges for a small proportion of comparable acts in 2008 than in 1999, the reverse was equally likely to occur. The bottom line was that there was no significant difference in the toughness of charges.

#### Case dismissals stable, more community punishments

To analyse the penal sanctions imposed on young suspects for public order and violent offences, we likewise employed the data on the specific acts performed, rather than the offence categories of the charges made. We again used the four vignette categories (threats, physical abuse, resistance, vandalism) and the three severity grades of the acts perpetrated (mild, moderate, serious), plus combinations of vignettes and severity. Analysis was confined to data from 472 single-offence files.

*What penal sanctions were imposed in 1999 and in 2008 on young offenders charged with public order offences or violent offences? What cases were not further prosecuted and for what reasons?*

In approximately one fifth of the 472 files, the Public Prosecution Service (OM) decided not to prosecute. One third of cases were administered as out-of-court disposals (community punishment orders and/or fines, sometimes combined with damage compensation payments). Court summonses were issued in the remainder (212 cases, 44.9%). Mild and moderate cases were more likely to be dropped than serious ones. In 1999, relatively more cases involving threat acts were dropped and fewer involving resistance; in 2008, cases involving vandalism were most likely to be dropped and threat cases least likely. In both years, prosecution dismissals were more likely to be unconditional dismissals on grounds of prosecutorial discretion or unlikelihood of conviction and less likely to be conditional dismissals. The most common reason for unconditional discretionary dismissals was that offences were 'dated'.

Of the total of 212 cases that went to court in the years we analysed, four out of five ended in sentencing, and most others in acquittal. In the 171 cases that ended in sentencing, the heaviest punishment imposed was a fine in over one third of cases, a community order in about one third and a custodial punishment in one quarter of cases. All fines and community orders were imposed unconditionally; most custodial

sentences were fully suspended. One out of seven sanctions included damage compensation.

#### Did the 2008 sanctions differ from those in 1999?

On the basis of the 472 OM files, we found for 2008 that the OM was less likely to issue court summonses than in 1999 and slightly less likely to drop charges, but notably more likely to administer out-of-court disposals. Courts (212 files) were equally likely to impose sentences in 2008 as in 1999, but the nature of the sentences changed: community orders were issued by judges at nearly three times the 1999 rate, while the percentage of custodial sentences (including suspended ones) fell by half. The proportion of court cases in which fines were imposed as heaviest punishment remained rather stable.

A clear shift in the types of sanctions imposed also emerged from the analysis of the 472 OM files. In comparison to 1999, the OM was about one-and-a-half times as likely in 2008 to administer out-of-court disposals; courts were more than twice as likely to impose community orders but less likely to impose custodial penalties or fines. Given that many of the OM disposals consisted of community punishment orders, the major overall change was a shift towards more community orders, in inverse relation to suspended and non-suspended custodial sentences.

Table 2 Verdicts by a judge, with vignettes from files with one concrete act

	1999 (n = 130)		2008 (n = 82)		p
<b>Verdict</b>					
Acquittal	13	10.0%	14	17.1%	n.s.
Dismissal of further prosecution	4	3.1%	1	1.2%	
Conviction without sanction	7	5.4%	2	2.4%	
Conviction with sanction	106	81.5%	65	79.3%	

Table 3 Disposal and punishment with vignettes from files with one single act

	1999 (n = 264)		2008 (n = 208)		p
<b>Disposal and punishment</b>					
No transaction (OM) or no sentence (judge)	84	31.8%	51	24.5%	.000
Transaction (OM)	74	28.0%	92	44.2%	
Fine (judge)	41	15.5%	23	11.1%	
Community punishment (judge)	16	6.1%	28	13.5%	
Custodial penalty (judge)	49	18.6%	14	6.7%	

#### No tougher punishment for comparable acts

*Were different sanctions imposed in 2008 from those imposed for comparable acts in 1999? If so, what differences are evident?*

No significant differences between 1999 and 2008 emerged in any of the four vignette categories in relation to how the OM dealt with cases, although an upward tendency towards out-of-court disposals was seen in all four categories. Though the statistics do not permit firm conclusions, there was an apparent decrease in case dismissals in the threat and physical abuse vignettes and a decrease in court summonses issued in the resistance and vandalism vignettes. In terms of severity of the acts perpetrated, a significant overall shift from summonses to out-of-court disposals occurred from 1999 to 2008 for acts involving minor damage or injury. Broken down further, the OM was more likely in 2008 to issue summonses for threat acts of the mild category (without weapons or other objects) but less likely to do so for mild physical abuse (minor or no injury).

In cases that went to court, judges were less likely to impose punishments in 2008 for acts in the vignette category of physical abuse than they were in 1999. In the threat and vandalism categories, the probability of sentencing seemed to rise, but the tendency was statistically non-significant. In the vignette category of resistance, the likelihood of punishment remained stable. Within the severity gradings, the probability of court sentencing appeared to have decreased in particular in the mild category, but the trend was also not significant. Further differentiation by combining severity rankings with vignette categories resulted in diminishing numbers of cases per cell. When 2008 was compared to 1999, none of these combinations showed significant differences. What did emerge, though, was that, in contrast to 1999, courts imposed sentences in 2008 for all acts of threat, whether mild, moderate or serious. For acts of physical abuse, courts seemed less likely to impose sentences in 2008, especially for milder incidents.

Within the set of cases that went to court, the percentage of custodial sentences declined from 1999 to 2008. The decrease was particularly evident in the vignette category of physical abuse, whereas for threats there was an apparent tendency towards more custodial sentences, albeit mostly suspended ones. All in all, the relatively small numbers of court cases per vignette category and year allow no firm conclusions. For all three severity grades (mild, moderate, serious), a downward trend in the rates of custodial sentences was apparent from 1999 to 2008. The decline was significant only in the vignette category of physical abuse, both for the mild and moderate and for the more serious cases. When the various imposed sanctions were translated into 'prison day equivalents', no difference between 1999 and 2008 was seen in the average toughness of punishment.

#### **Punishment more likely for threatening behaviour**

We employed two different perspectives to assess whether punishments were more likely or less likely to be imposed on young offenders in 2008. We called these the judicial and the experiential perspectives. For both perspectives, we took the criminal files of the Public Prosecution Service (OM) as the starting point.

For the judicial perspective, we defined as 'punishments' only the sanctions imposed by a court of law (and not the out-of-court disposals administered by the OM). In our vignette category of threat, offenders appeared more likely to receive punishments in 2008 than in 1999, whereas the reverse seemed true for the other three categories; none of these tendencies reached significance. Ranked according to the severity of the acts committed, only the acts in the mild category were significantly less likely to be punished in 2008. More in particular, the mild acts in the resistance category were only half as likely to be punished.

In our experiential perspective, 'punishments' included both sanctions imposed by courts and those imposed out of court by the OM. In that analysis, threatening acts were significantly more likely to be punished in 2008, but the tendencies in the other three vignette categories were no longer observable. The percentage of threatening acts receiving punishment in the mild category (without a weapon or other object) doubled from 1999 to 2008.

#### **Continued higher rate of summonses and punishments for older youth**

We used regression analysis to assess whether case disposal by the prosecution or punishment by the courts could be predicted by the year studied (2008 vs. 1999), by characteristics of suspects (minor or adult age, gender, reoffending), by vignette category or by severity of the acts

perpetrated.

In two of the five analyses we performed, the year of the episode emerged as a factor. In cases that went to court, the likelihood of receiving a custodial sentence was lower in 2008; but in the experiential perspective that included all cases, the likelihood of receiving some type of punishment (by court sentence or out-of-court disposal) was greater that same year. Across the board, age was a stronger and clearer-cut predictor: in comparison with the suspects aged 12–17, those in the 18–24 age group were more likely to be summoned to court, and their probability of being punished was greater in both the judicial and the experimental perspectives. Gender, by contrast, was not found to be a factor in any analysis. Recidivism was sometimes a factor, with reoffenders found more likely to receive summonses from the OM and sentences from the courts.

#### **More chance of punishment for offenders causing greater injury or damage**

In terms of the nature of incidents (the acts committed), the probability of being summoned by the OM or being sentenced by a court was lowest for acts in the vandalism vignette category. Within the subgroup of cases that went to court, the probability of punishment was lowest in the vignette category of resistance. The severity of the act committed (in terms of damage or injury) had no demonstrable effect on the likelihood consequences. From the experiential perspective, the chance of punishment was lower in both the mild and the moderate categories of severity than in the most serious category.

#### **Continuity and change in the charging of offences**

*Can changes in rates of recorded youth crime be explained by differences in the types of criminal charges brought or upheld by police, prosecution or the judiciary?*

In the introduction, the various viewpoints that exist on trends in youth crime, and in reactions to it, were grouped together into three theories: the escalating crime theory, the mischief theory and the tougher punishment theory. The *escalating crime theory* argues that juvenile crime has increased and/or taken on more serious forms. Our study does not allow for conclusions about the overall scale of youth crime (and whether it has increased or decreased), as the files we studied related solely to legally recorded crime and were confined to violent and public order offences. In terms of the nature of youth crime, the predominant picture arising from our review of case files is that both the behaviours and their consequences grew milder over the ten-year period. This is at variance with the escalating crime theory.

The *mischief theory* suggests that law enforcement authorities are taking action more frequently, or at an earlier stage, against behaviours that were previously not regarded as youth crime and/or that such behaviours are now subjected to more serious criminal charges. On the basis of our case reviews and the practice experiences reported by the experts in our focus group, the mischief theory appears to hold for the offence categories of threatening behaviour and assault, at least in the sense of more frequent law enforcement action. Focus group experts attributed the greater frequency of action primarily to a growing public tendency to lodge complaints for milder forms of threatening and physically abusive behaviour. Law enforcers were also said to be under increased pressure, both from the community and from their own organisations, to make more arrests and press more charges. In addition, the experts reported that the police and justice authorities are now taking stricter action against people who fail to obey police orders or resist arrest.



The *tougher punishment theory* focuses on the responses of criminal justice officials, arguing that they are more likely to press charges and/or seek more stringent punishments. We formulated three hypotheses based on this theory:

1. More serious types of charges were brought and upheld by police, prosecutors and courts in 2008 than in 1999 for acts of a comparable nature with comparable consequences for the victims.
2. The prosecution was less likely to drop charges in 2008 than in 1999.
3. Comparable acts were punished more heavily by the courts in 2008 than in 1999.

All three hypotheses were rejected upon analysis of the criminal file data. Criminal justice responses to recorded offences committed by young people did not grow tougher, at least not with respect to the public order and violent offences we studied. We did observe a higher probability of court sentences and out-of-court disposals in 2008. If custodial sentences were imposed, they were usually suspended. Community punishment orders were never suspended by either prosecutors or courts.

We thus arrive at three conclusions. First, viewed from what we have called the experiential perspective, the probability of punishment, especially for threatening behaviour, is greater today than a decade ago. Second, although the broader prosecution powers to impose out-of-court community punishments may have helped reduce the probability of custodial sentences, the major and most profound effect of out-of-court disposals may have been to help *widen the criminal justice net* with respect to youthful suspects of public order or violent offences. Finally, in view of the greater likelihood of unconditional community service punishments, it seems justifiable to speak of decreasing leniency in criminal justice responses.

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*Willem Adriaan Bonggr (1876-1940) was one of the founding fathers of Dutch criminology and the first professor of sociology and criminology in the Netherlands. He argued that crime is social in origin and is causally linked to economic and social conditions.*

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