National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

Child Sexual Abuse on Trial

Part 2: The sentences

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Reference: National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2016). *Child Sexual Abuse on Trial. Part 2: The sentences*. The Hague: National Rapporteur.

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Graphic and digital production: Studio Kers
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Contents

Foreword

Every case is different. Every sentence is unique. These are phrases I frequently used during my thirty years as a criminal and juvenile law judge, and they are as true now as they ever were. But what do those phrases actually mean? Do they legitimize disparity in sentencing? And if so, what are the implications for equality before the law?

This report analyses the sentences that were demanded by the Public Prosecution Service (PPS) and imposed by the courts for various forms of indecent assault against children. The cases involved physical contact, and more than half of them involved sexual penetration. Some cases involved a single incident of abuse, but in others the abuse continued for years. In other words, they are cases involving serious offences from which the child victims can continue to suffer psychological as well as physical problems for years afterwards. As a children's court judge I not only tried young offenders, but also issued child protection orders for young victims and saw for myself how profound and harmful the consequences of sexual abuse can be. The number of children that are victims of sexual abuse is substantial; the number of cases that actually reach the courts is small. And the number of convictions is even smaller. This report analyses those convictions – not the evidence, only the sentences demanded by the PPS and imposed by the courts.

The sentence demanded by the public prosecutor has an effect on the sentence imposed by the court. On average, when a longer sentence is demanded, a longer sentence is imposed. This study examines factors that are statistically predictive of the sentence that will be demanded and imposed. It reveals a discrepancy between the findings of the courts regarding the factors that play a role in sentencing and the factors that, according to the statistics, actually determine a sentence. This is strange and should lead to reflection.

The legislature felt that some victims were particularly vulnerable to the forms of sexual violence studied in this report and that certain circumstances made the offences particularly heinous. Accordingly, it prescribed higher maximum sentences in those instances. Indecent acts with a child under the perpetrator's care is one such circumstance. The maximum sentence is also higher if the indecent acts occurred repeatedly rather than just once. However, these factors do not appear to influence either the sentence demanded or the punishment imposed. Even if no two cases are the same and every sentence is unique, these aspects should at least be taken into account.

And shouldn't relevant crimes committed previously by the perpetrator and the degree of criminal responsibility also carry the same weight in determining the punishment in similar cases? It will then still

be possible to treat each case on its own merits, but will also make it clear what distinguishes one case from another, which would be a step in the direction of equality before the law.

The secrecy of judicial deliberations is sacred, but it also creates the obligation to explain why a particular decision was reached. The law prescribes a number of basic conditions that a court's grounds for sentencing have to meet. But are they the only criteria? The explanation of why the court has decided on a particular sentence is important for offenders, but also for victims. One element of the protection of underage victims as described in this report lies in their being able to understand why the court imposed a particular sentence on the perpetrator.

I am very grateful to the Council for the Judiciary, the National Consultative Body for Presidents of Criminal Sectors of Courts (LOVS) and the district courts for their assistance in providing access to all the judgments. I would also like to thank the Research and Documentation Centre of the Ministry of Security and Justice (WODC) for providing the case numbers from which I was able to select the sample.

I particularly wish to thank the staff and interns of my bureau for the valuable contribution they made to the production of this report.

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1 Introduction

1.1 Background and purpose

Every year the courts convict just over 300 perpetrators of committing some form of hands-on sexual abuse of a child.[1] This form of sexual violence embraces offences that involve physical contact between the perpetrator and the victim without any violence or force being used. Although the law provides for heavy maximum sentences, ranging from six to twelve years' imprisonment, for perpetrators of the various forms of indecent assault, many of them do not receive a prison sentence at all (either unconditional or partially conditional) from the courts.
In her report On solid ground, the National Rapporteur observed that the percentage of convicted perpetrators of hands-on sexual offences who receive a prison sentence is very small, even in relation to the sentences imposed on perpetrators of other forms of sexual violence against children.[2] The National Rapporteur concluded that, in light of the statutory maximum sentences, one would expect a significantly larger proportion of convicted perpetrators of hands-on indecent assault to receive prison sentences.

Without studying the case law, it is impossible to discover what information the courts based a particular sentence on, or what sentence had been demanded by the public prosecutor. For this report, judgments in which suspects were convicted during the period 2012-2013 were studied in order to learn more about the variation in sentencing, the factors that possibly influence a decision to impose a particular type or length of sentence, and what the courts said in their grounds for sentencing. A random sample[3] of 200 judgments was requested from the district courts. Eighteen of these 200 judgments could not ultimately be used,[4] so this report is based on a quantitative and qualitative study of 182 judgments in

1 This figure is based on the PPS databases from 2008 to 2012. For more information, see National Rapporteur 2014, p. 217.
2 Including rape and sexual assault, and the combination of hands-on and hands-off sexual violence.
3 This means that all convicted perpetrators of indecent assault in 2012 and 2013 were equally likely to be included in the sample. The sample is therefore representative and the results of this study can be generalized to the entire population.
4 In two cases the relevant judgments could not be found, four cases involved a judgment by a police magistrate with only notes of the verbal ruling which did not set out the court's reasoning and therefore did not contain the information necessary for this study. In twelve cases the judgments were found not to meet the criteria: the victim was an adult (six times), the purported conviction for hands-on indecent assault proved to have been an acquittal (five times) or the case did not involve a hands-on offence (once).

which perpetrators were convicted for hands-on indecent assault. The study specifically covers convictions for offences under the following four articles of the Dutch Criminal Code (DCC): Article 244 (sexual penetration of a child below the age of twelve), Article 245 (sexual penetration of a child between the ages of twelve and sixteen), Article 247 (indecent acts with a child under the age of sixteen) and Article 249(1) (indecent acts with a minor entrusted to the offender's care). Approximately 95% of all cases of hands-on sexual abuse fall within the scope of these four articles.[5]

> *Child Sexual Abuse on Trial – Part 1: The cases*
> Child Sexual Abuse on Trial is a report in two parts. The first part was published in February 2016 and reviewed the nature of the cases that were studied. The common denominator in all of the 182 cases that were examined was that they led to a conviction for hands-on indecent assault of an underage victim. Most cases (89%) involved the two most serious categories of sexual acts, acts that included sexual penetration. It was also found that most victims were abused by someone they knew, frequently a family member (36%). However, the judgments covered a wide variety of situations, ranging from a 15-year-old boy who abused his little sister to a gym teacher who groped his pupils and a man who abused his step-daughter.[6]

1.2 Research questions

This second part of the study discusses the sentences that were imposed, the factors that influenced the sentences demanded by the PPS and imposed by the courts and the reasons given by the courts for the sentence. There is considerable international, and increasingly, national interest in quantitative studies into sentencing. This study, which is in part quantitative, contains a number of unique elements that will add to the body of knowledge about sentencing in cases of indecent assault. In the first place, no quantitative studies were found relating specifically to the sentences imposed in cases involving sex offences, particularly cases of indecent assault. The decision to employ a combination of quantitative and qualitative analyses in this study means that the findings provide insight into both the factors that the courts and public prosecutors take into account (consciously or unconsciously) and the factors that the courts specifically mention in their grounds for sentencing. Finally, this study also looks at the influence of the demand made by the public prosecutor on the sentence that the court imposes.[7]

This study addresses the following questions:

1. What sentences and measures do the courts impose on perpetrators of hands-on sexual abuse of children?

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5 Although offences under Article 248a DCC (inducing a minor to perform indecent acts) and 248b DCC (having sex with a child aged sixteen or seventeen for payment) also fall under the definition of hands-on sexual abuse, they were not included in this study because they occurred so sporadically that they would scarcely be representative. For the distribution of the cases among the individual articles of the law, see National Rapporteur 2014, pp. 199-202.

6 National Rapporteur 2016.

7 Although some studies do discuss the relationship between the sentence demanded and the sentence imposed, and others have also looked at the factors that influence the prosecution's demand for a sentence, none of these studies also considered the sentence demanded as a variable for predicting the sentence that would be imposed. Since this study shows that there is a strong correlation between the sentence demanded and the sentence imposed, that step has been taken in this study (see Chapter 3).

2. To what extent is there a discrepancy between the sentences demanded and the sentences imposed?
3. If perpetrators receive a prison sentence (partially conditional or unconditional), what is the length of the sentence?
4. Statistically, what factors influence the type of sentence that is demanded and imposed?
5. Statistically, what factors influence the length of the prison sentence (partially conditional or unconditional) that is demanded and imposed?
6. What factors do the courts take into account in determining the sentence according to the grounds for sentencing given in the judgments?

Constraints

This study only covers convictions for hands-on sexual abuse at first instance. It is not known what proportion of the convictions investigated were appealed or what the outcome was of any appeals. Furthermore, only the judgments were studied for the purposes of this analysis. An inherent constraint in this method of research is that factors which the courts may have considered in determining the sentence but which they did not mention in their judgments could not be included in the analysis.

1.3 The aim of greater transparency in the reasons for a sentence

This study is concerned with the sentences that were imposed in the cases that were reviewed and the reasons given by the courts for imposing a particular sentence. How the court reaches its decision on the sentence in a criminal case is subject to the 'secrecy of judicial deliberations': the three judges of the multi-judge bench that hears the case meet behind closed doors to assess the evidence and determine the sentence. Anything that is said during the deliberations remains secret. It is therefore possible that the three judges initially disagreed about the sentence. In the judgment, however, they only give their ultimate assessment of the evidence and pronounce the sentence.

The underpinning of the sentence is to be found in the grounds for sentencing, an important cornerstone of the judgment in which the court explains the factors that were considered in determining the appropriate sentence. The grounds for sentencing are intended to explain the court's decision, to allow that decision to be scrutinized by a higher court and to reflect its own accountability.[8] Grounds for sentencing have attracted a lot of attention in recent years, leading, among other things, to the introduction in 2008 of the so-called PROMIS procedure.[9] The aim of PROMIS was to improve the explanation given by courts of their findings regarding the evidence and the reasons for the sentence, thus improving the communication between the court, the lawyer, others involved in the proceedings and the public, and ensuring that the reasons given provide a clearer insight into the court's thought process.[10] An evaluation carried out for the Council for the Judiciary in 2014 showed that there was still room for improvement, since the professionals who were interviewed still regarded the reasons given by courts for their sentences to be fairly weak aspects of their judgments.[11] In other words, there is still work to be

8 Abbink 2016, p. 16.
9 PROMIS stands for *Project Motiveringsverbetering in Strafvonnissen* (Project to Improve the Statement of Reasons in Criminal Judgments).
10 De Groot-Van Leeuwen, Laemers & Sportel 2015, p. 8.
11 De Groot-Van Leeuwen, Laemers & Sportel 2015, p. 6.

done. This study also reaches the conclusion (see Chapter 4) that there is still little uniformity or transparency in the reasons given by courts for the sentences they impose in cases of sexual abuse.

1.3.1 Orientation points

As briefly described above, the discussions of the three judges regarding the sentence fall under the secrecy of the deliberations in chambers. Where do they start in their consideration of the sentence? For some offences, so-called orientation points have been drafted to guide the courts in their decisions on sentences.

Orientation points set out the sentence that the courts ought to impose for the most common form of a particular criminal offence.[12] They are limited to a brief description of this standard case, together with a specific guideline for the sentence that should be imposed.[13] For example, the orientation point for the crime of rape is a term of imprisonment of 24 months.[14] The explanatory notes to the orientation point set out the circumstances that could lead to a heavier or a lighter sentence, such as the frequency and duration of the offence, the age of the victim and whether the perpetrator has committed the offence before. Orientation points are not binding on the court, but form a starting point for the deliberations on the appropriate sentence.[15]

Orientation points are adopted by the National Consultative Body for Presidents of Criminal Sectors of Courts (LOVS) on a proposal from the Commission on Legal Uniformity. The Commission formulates orientation points after conducting a review of sentencing in practice and after consulting all the courts.[16] Its review does not necessarily provide a quantitative underpinning of the sentences that are actually imposed in practice. In that sense, orientation points reflect the sentences that should theoretically be imposed in a standard case involving the relevant offence.

Orientation points versus sentencing guidelines

The PPS has its own guidelines for sentencing. In contrast to the judicial orientation points, these guidelines on the sentences that public prosecutors should demand for particular offences are also influenced by the views of politicians and the public.[17] For example, civil forums were organized and an online survey was conducted prior to the adoption of the sentencing guidelines for the sexual abuse of minors in 2015.[18]

Whereas the PPS's directives have democratic legitimacy, the judiciary's orientation points can only acquire legitimacy, according to the chairman of the Commission on Legal Uniformity, from sustained and consistent application of sentences by district courts and courts of appeal.[19] The method by which orientation points are formulated is open to criticism. In theory, they reflect existing practice in terms of sentencing, but there does not seem to be any reflection on what that practice entails. In principle,

12 De Rechtspraak 2016, p. 1.
13 Schoep & Schuyt 2005, p. 2.
14 De Rechtspraak 2016, pp. 7-8.
15 De Rechtspraak 2016, p. 1.
16 De Rechtspraak 2016, p. 1.
17 NJB 2015/536, p. 658.
18 *Government Gazette* 2015, No. 4052, p. 1.
19 Abbink 2016, p. 15.

questions such as 'How serious do we find this offence to be and what sentence is therefore appropriate?', 'To what extent do the sentences in practice correspond with the seriousness of the offence as reflected by the maximum sentences prescribed by the legislature?' and 'To what extent do the sentences in practice reflect society's views regarding the seriousness of the offence?' appear to play no role in the process of drafting the orientation points. It seems to be a fairly introspective process and one that leaves little scope for further development of sentencing practice regarding the offences they relate to.

Although the formulation and legitimacy of orientation points are open to criticism, the fact is they have led to greater uniformity in sentencing.[20] 'In other words, they work well,' the chairman of the Commission on Legal Uniformity observed recently.[21] Earlier academic research also concluded that the orientation points appeared to be successful, although it ascribed that success mainly to the fact that the orientation points closely matched normal practice in terms of sentencing and addressed a need for guidance in determining sentences.[22]

Following decisions in similar cases

There are no national orientation points for the sentences for sexual abuse by adult offenders. In other words, the courts have no framework to guide them in determining the sentences for these offences other than the statutory maximum sentence. However, some courts do seem to look for them. In 28% (*N*=51) of the cases studied, the court referred in its judgment to sentences that were generally imposed in similar cases. The question that needs to be asked is what precisely 'the sentences in similar cases' are, since this study will show that the sentences for similar offences vary greatly, from community service and entirely conditional prison sentences to unconditional prison sentences of varying length.

Reference to 'the sentences in similar cases'

What does the court mean when it refers in the grounds for sentencing to 'the sentences in similar cases'? In some of the cases in which the court used the term, its explanation was that the point of departure in cases of this kind is a prison sentence, sometimes adding the phrase 'of considerable length'. In other judgments, however, it was not clear from the grounds for sentencing what the court felt 'the sentence in similar cases' actually was. In five cases, it is clear from the judgment that the court considered the point of departure in cases of sexual abuse to be an entirely conditional prison sentence and/or a sentence of community service.

Significantly, in three cases the court explicitly referred in their judgments to the absence of orientation points formulated by the LOVS for sexual abuse. Two of the courts resolved this by referring to other orientation points: one (Zwolle-Lelystad District Court) referred to orientation points formulated by Leeuwarden Court of Appeal,[23] while Dordrecht District Court formulated its own.[24] No other orientation points formulated by the courts themselves were found in the judgments that were studied.

20 Abbink 2016, p. 15.
21 Abbink 2016, p. 15.
22 Schoep & Schuyt 2005, p. 70.
23 Zwolle-Lelystad District Court 3 April 2012, ECLI:NL:RBZLY:2012:BW0706.
24 Dordrecht District Court 16 October 2012, 11-860236-12 (not published).

Finally, it is highly remarkable that in four separate cases the courts referred to the national orientation points for sexual abuse drawn up by the LOVS,[25] although there are no such orientation points and never have been.[26]

The fact that in more than a quarter of the cases the court referred to the sentences in similar cases indicates that the courts felt it was important to arrive at a sentence in line with those other sentences. But precisely what the sentence in similar cases encompasses is not clear.

New orientation points for sexual abuse by underage perpetrators

In July 2016, new orientation points were adopted for sentencing under juvenile criminal law.[27] Whereas there are no orientation points for perpetrators tried for indecent assault under adult criminal law, there now are for perpetrators who are minors. The point of departure for offences involving sexual penetration[28] by a minor is six months' juvenile detention. For other acts of indecency, the point of departure, depending on the nature of the act, is a sentence of between 20 and 120 hours of community service.[29] This is remarkable, because, since April 2014, community service can no longer be imposed on minors as a separate principal sentence for the sex offences to which the orientation points relate, but only in conjunction with detention in a youth facility.[30]

The sentencing guidelines also include a number of aggravating and/or mitigating circumstances, including the frequency and duration of the abuse and the age of the victim. Two of the factors affecting the severity of the sentence stand out in particular: 'prior voluntary sexual relationship offender/victim' and 'relevant personal behaviour of the victim'. How are these factors relevant for the sentence? After all, the offences have been declared proven. Is it the intention that the court should impose a lighter sentence if the victim previously had a voluntary sexual relationship with the offender? That should be totally irrelevant. Even more dubious is the 'relevant personal behaviour of the victim'. When a serious sex offence has been declared proven, the behaviour of the underage victim is totally irrelevant. By including these two factors as factors influencing the severity of the sentence in the orientation points for sexual abuse, the judiciary appears to be assigning some of the blame for the crime to the victim ('blaming the victim'). That cannot have been the intention.

25 Alkmaar District Court 29 November 2012, 14-810293-12 (not published); Zwolle-Lelystad District Court 10 July 2012, ECLI:NL:RBZLY:2012:BX1662; Zwolle-Lelystad District Court 24 April 2012, 07-690235-10 (not published); and The Hague District Court 24 December 2013, 09-665311-12 (not published).

26 In July 2016, orientation points for sexual abuse tried under juvenile criminal law were published. However, they did not exist at the time of the judgments to which this study relates (2012-2013).

27 De Rechtspraak 2016.

28 This covers all acts that are criminal offences under Articles 242, 244 and 245 DCC.

29 Fondling buttocks/breasts once: 20 or more hours of community service; French kissing: 60 hours of community service; and assault (other): 120 hours of community service or (corresponding) youth detention (De Rechtspraak 2016, p. 31).

30 Article 77ma DCC (community service cannot be the sole sentence imposed on minors in cases of sexual abuse) took effect on 1 April 2014. On this point, see also §2.2.2.

1.4 Structure of the report

The research questions were presented in §1.2. The first three questions regarding the sentences that were imposed and the differences between the sentences demanded and the sentences imposed are answered in Chapter 2. The chapter illustrates how varied the sentences are. It also includes a discussion of the sentences demanded by the PPS and the extent to which they matched or differed from the sentences imposed by the courts.

Chapter 3 focuses on the fourth and fifth research questions. The factors that influence the sentence demanded and the sentence imposed are assessed on the basis of statistical models. For example, are offenders who have been convicted previously of a sex offence punished more severely than offenders who have no relevant criminal record? And does it make a difference for the length of the sentence that aggravating factors prescribed by law have been declared proven? The analysis reviews the impact of twelve factors on both the type of sentence and the length of a custodial sentence. After all, sentencing can be seen as a two-step process, with first the decision on the type of sentence (in this case, whether or not there will be a prison sentence), and then the decision about the length of any prison sentence.[31] In addressing these two questions, the national and international literature on sentencing is followed.

The answers to questions 4 and 5 provide valuable insights into the factors that can influence the sentences in cases of hands-on sexual abuse. These factors are not necessarily the factors that the public prosecutor and the court consciously and explicitly consider in the sentence they demand or impose. The statistical models in Chapter 3 consist exclusively of measurable factors. However, other factors can also play a role in determining a sentence. Because it is not possible to include all the facts and circumstances in a quantitative study of sentencing, it is also important to explore the qualitative aspects.[32] That part of the study is the subject of Chapter 4, where the final research question is answered. That chapter contains a qualitative analysis of the grounds for sentencing in the cases that were studied, providing insight into the factors that the courts explicitly took into account, as shown by the grounds for sentencing, and how they did so.

Combining the results of the three chapters produces a more comprehensive picture of the sentences, the factors that played a role (possibly unconsciously) in arriving at the sentence, and the factors that the courts said they had taken into account in their grounds for sentencing. In the final chapter (Chapter 5), all the findings are pulled together and recommendations are made to the judiciary and the Public Prosecution Service.

31 See, for example, Wermink et al. 2015, pp. 12-13.
32 Van Wingerden, Moerings & Van Wilsem 2011, p. 20.

2 The sentences

2.1 Introduction

This chapter is devoted to the type and severity of sentence demanded by the Public Prosecution Service (PPS) and imposed by the courts. The maximum prison sentence for offences under the four articles relating to indecent assault that have been investigated varies from six years (Articles 247 and 249(1) DCC) to eight years (Article 245 DCC) and twelve years (Article 244 DCC). These sentences can also be increased by a third if there are aggravating circumstances as set out in Article 248 DCC. Sexual abuse of a child therefore carries a potentially heavy prison sentence. The National Rapporteur has previously observed that only a minority of those convicted of hands-on sexual abuse of a child are given a custodial sentence, and that the length of the prison sentences imposed are also relatively short.[1] In light of the maximum sentences prescribed by law, one would expect that significantly more convicted paedosexuals would receive a prison sentence (either unconditional or partially conditional). The decision to further investigate these cases was prompted by the small number of prison sentences and the relatively short terms of imprisonment.

Conviction for other offences

Of the offenders convicted of indecent assault, 9% (*N*=17) were also convicted of at least one other – non-sex-related – offence.[2] Because the conviction for these other offences could have influenced the sentence, those seventeen cases were omitted from the analysis in this chapter,[3] which is therefore based on 165 convictions solely for indecent assault of minors.

Conviction for offences in addition to indecent assault

The types of offences for which the perpetrators were convicted (in addition to indecent assault) in those other seventeen cases varied. Three offenders were also convicted of uttering threats (Article 285 DCC) and three others were also found guilty of human trafficking (Article 273f DCC).

1 National Rapporteur 2014, pp. 196-225.

2 The PPS charged 31 of the 182 suspects with other offences in addition to indecent assault. In seventeen cases, the suspect was found guilty of other offences. These seventeen cases were disregarded for the analyses in Chapters 2 and 3.

3 These cases were also disregarded in the statistical model in Chapter 3. However, every case is considered in the qualitative analysis of the grounds for sentencing in Chapter 4.

Removal of a minor from the person exercising legal authority over them (Article 279 DCC) was found proven in two cases, as was destruction of property (Article 350 DCC). Other offences, such as theft, a breach of the Opium Act, simple assault and overt use of force, each occurred in one case. The victim of the indecent assault for which the suspect was convicted was not always the victim of the other offence that was declared proven.

Distinction between trial as an adult and trial under juvenile criminal law

The 165 perpetrators who were convicted solely of indecent assault included both adults (*N*=137) and minors (*N*=28). In this chapter, the offenders tried under adult criminal law are discussed separately from the perpetrators tried under juvenile law, since the sentences depend to a large extent on the regime under which a suspect was tried. Of the 28 offenders who were minors at the time of the commission of the (first) offence, 25 were tried under juvenile criminal law.[4] The other three suspects were prosecuted as adults.[5]

Minors who are tried under the juvenile criminal law regime are treated differently from adults. A prominent feature of juvenile criminal law is its pedagogical character. The most important objective of punishment is to prevent the minor from committing an offence again.[6] In adult criminal law, the basic principle behind the punishment and the prescribed maximum sentence is retribution.[7] The sanction also has other purposes, such as general or special (aimed at the individual) deterrence, reparation and re-socialization. However, with retribution as the basic principle in adult criminal law and specific deterrence in juvenile criminal law, it is logical for the sentences to differ greatly, both as regards the type and length of sentence. Furthermore, Article 77g DCC prescribes a separate system of alternative and lighter sanctions for suspects tried under juvenile criminal law. For example, the most severe principal sentence under juvenile criminal law is youth detention for a period of 24 months. This sentence applies for perpetrators who were sixteen or seventeen years of age at the time of the offence (Article 77i(1)(b) DCC). For young offenders between the ages of twelve and sixteen, the maximum custodial sentence is twelve months (Article 77i(1)(a) DCC). The statutory maximum sentence for the sex offences investigated in this report is the same for minors and adults and is between six and twelve years in prison. For minors tried under juvenile criminal law, however, the maximum prison sentence that the court can impose is one or two years. Given the difference between the maximum sentences under the juvenile and adult criminal law regimes, in the analysis of the sentences demanded by the PPS and imposed by the courts a distinction is always made between adult offenders and offenders tried under juvenile criminal law.

4 The adolescent criminal law regime entered into force on 1 April 2014 and therefore does not relate to the rulings that were studied, which fall into the period 2012-2013. The study therefore does not cover any young adults who were tried under adolescent criminal law.

5 Pursuant to Article 77b DCCP, sanctions that apply for adults can be imposed on young offenders aged sixteen or seventeen. This was the case in the three following cases: The Hague District Court 25 October 2012, 09-655346-10 (not published); Zwolle-Lelystad District Court 6 December 2012, 07-690328-11 (not published); and Leeuwarden District Court 18 December 2012, 17-885099-12 (not published).

6 Meijer, Seuters & Ter Haar 2013.

7 Van Wingerden & Wermink 2015, p. 14.

Structure of the chapter

This study focuses on the sentences imposed by the courts. The courts are in no way legally bound by the sentence demanded by the public prosecutor,[8] but because the sentence demanded is regarded as an important guide when the court starts considering the sentence, this chapter also investigates the correlation between the sentences demanded and the sentences imposed. In §2.2 the focus is on the types of sentence, starting with a discussion of the relationship between the type of sentence demanded and imposed, followed by a more detailed discussion of the types of sentence that were actually imposed. This is followed in §2.3 by a similar discussion in relation to the length of the unconditional part of the custodial sentences. Measures and special conditions imposed by the courts are then discussed in §2.4 and §2.5, followed in §2.6 by the conclusions and a review of the principal findings.

2.2 The types of sentence

Although the maximum sentence for the indecent assault of which the 165 perpetrators were convicted is from six to twelve years' imprisonment, the courts only imposed an unconditional or partially conditional custodial sentence on 57% of the adult offenders. What types of sentences were imposed on the other offenders? What combinations of sentences were imposed? For the purposes of analysing and comparing the sentences in this study, the principal sentences are divided into four categories, in which they are broken down into prison sentences (or youth detention for minors) and sentences of community service. A fine was neither demanded nor imposed as the principal sentence in any of the 165 cases that were examined.[9] These four categories of principal sentence (in descending order of severity) appear repeatedly in this report:

- Unconditional custodial sentence (sometimes in combination with a TBS/PIJ order[10] and/or community service)
- Partially conditional custodial sentence (sometimes in combination with community service)
- Entirely conditional custodial sentence (sometimes in combination with community service)
- Unconditional or partially conditional sentence of community service

2.2.1 Relationship between the type of sentence demanded and imposed

An analysis of the relationship between the types of sentence demanded by the PPS and imposed by the courts shows a strong positive correlation.[11] This applies both for perpetrators who were tried under juvenile criminal law[12] and for offenders tried under adult criminal law[13] and indicates that the more severe the type of sentence demanded by the PPS, the more severe the type of sentence the court imposes.

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8 Schuyt 2010, pp. 58-59.

9 Acquittal was demanded in one case (but the suspect was nevertheless convicted and punished) and in one case the suspect was found guilty but not punished (Article 9a DCC).

10 TBS stands for 'detention under a hospital order'. PIJ stands for 'Placement in a custodial institution for juveniles'. It is also sometimes referred to as 'youth detention under a hospital order'.

11 The analysis only covers those suspects and perpetrators who were not charged with or convicted of offences other than hands-on sexual offences (juvenile criminal law: N=21 | adult criminal law: N=126).

12 $r_s(19)= 0.87$; $p<0.001$.

13 $r_s(124)= 0,79$; $p<0.001$.

The sentences demanded for and imposed on perpetrators tried under the juvenile criminal law regime do not differ significantly, which means that the courts do not depart from the demand by the PPS in their decisions on the type of punishment to impose.[14]

Despite the strong positive correlation between the type of sentence demanded and imposed for perpetrators tried under adult criminal law, there are significant differences between them.[15] Table 2.1 shows the similarities and differences between the type of sentence demanded for adult offenders and the type of sentence imposed on them. The sentences most often imposed by the courts were partially conditional (*N*=50) or entirely conditional (*N*=49) prison sentences. The sentence most frequently demanded by the PPS was a partially conditional prison sentence (*N*=67).

Table 2.1 Quantitative similarities and differences in the types of sentence demanded and imposed for perpetrators of hands-on offences (2012-2013) punished under adult criminal law (*N*=126)[16]

	Most severe type of sentence imposed				Total
Most severe type of sentence demanded	**Community service**	**Entirely conditional prison sentence**	**Partially conditional prison sentence**	**Unconditional prison sentence**	
Community service	4	0	0	0	4
Entirely conditional prison sentence	3	31	1	0	35
Partially conditional prison sentence	1	18	44	4	67
Unconditional prison sentence	0	0	5	15	20
Total	8	49	50	19	126

Note: The totals of the most severe types of sentence imposed are shown vertically at the end of the columns. The totals of the most severe types of sentence demanded are shown horizontally at the end of the rows. The shaded diagonal shows the number of cases in which the sentence demanded was also imposed.
Source: Convictions for indecent assault 2012-2013.

14 It is possible that in individual cases the court did depart from the sentence demanded by the PPS. At population level, however, the discrepancies found did not differ significantly from each other. The fact that there is no significant difference means that the chance that the differences are purely coincidental is too great.

15 Marginal homogeneity test: χ^2=129.00; z=3.88; p<0.001.

16 The figures for the most severe types of sentence imposed differ somewhat from the figures shown in Table 2.2. This is due to the fact that this table is based on the sentences demanded. A total of 129 adults were suspected solely of sexual violence against children. In the case of one suspect, it is uncertain whether the PPS demanded a prison sentence in addition to a TBS order, and in one case, the PPS demanded acquittal of the suspect. The court found one perpetrator guilty without imposing a punishment. Hence, the table is based on 126 suspects and perpetrators. In Table 2.2 only the perpetrators who were actually convicted of other offences are omitted.

Looking at the diagonal column, it can be seen that the courts imposed the type of sentence that the PPS demanded in 75% (*N*=94) of all cases.[17] This was often a partially or entirely conditional prison sentence. In 21% (*N*=27) of cases, the court imposed a milder form of sentence than had been demanded.[18] The most common alternative in cases in which a court imposed a less severe type of sentence was the imposition of an entirely conditional prison sentence when a partially conditional prison sentence had been demanded (*N*=18). A possible explanation for the discrepancy between the sentence demanded and the sentence imposed could be the fact that in a small proportion of cases the court acquitted the perpetrator on the principal charges (on which the public prosecutor's demand was based) and convicted him on alternative charges which were, in legal terms, less serious.[19]

Finally, the courts imposed a more severe type of sentence than had been demanded in 4% (*N*=5) of the cases.

2.2.2 The types of sentence imposed

In the previous section, the relationship between the type of sentence demanded and imposed was discussed. This section reviews the types of sentence imposed by the courts in greater detail. Under certain circumstances, any of the principal sentences set out in §2.2 can be combined with another principal sentence, and additional punishments (such as a prohibition on practising a profession) or measures can also be imposed. The courts can also attach special conditions to a conditional sentence or measure. The various combinations are shown in the tables below.[20]

For a proper analysis, only judgments involving perpetrators who were convicted solely of hands-on sexual abuse are used (*N*=165). The sentences imposed on perpetrators who were tried under adult criminal law (*N*=140; 85%) are presented in Table 2.2. Table 2.3 shows the types of sentence imposed on perpetrators who were tried under juvenile criminal law (*N*=25; 15%). A comparison of these two groups shows that the types of sentence imposed on those who were tried under adult criminal law differed significantly from the sentences for those tried under juvenile criminal law.[21] Minors received a milder form of sentence than adults who committed sexual abuse.[22] For example, minors received a community service sentence[23] as the most severe form of punishment far more often than adult offenders, while on the other hand few were given unconditional or partially conditional custodial sentences compared with adult offenders.

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17 That the courts follow the demand by the PPS with respect to the type of sentence in a large proportion of cases is also apparent from research into sentencing in cases involving other types of crime. See Van Wingerde & Van de Bunt 2016, p. 21; Bosmans & Pemberton 2012, p. 23.

18 For an explanation of how a lighter type of sentence can have a more severe impact in practice, see §2.3. For example, an unconditional prison sentence of one day is a shorter, lighter sentence than a three-month prison sentence, of which one month is suspended.

19 In 7% of cases the court convicted for an offence under an article of the law with a lower maximum sentence than for the offence charged by the PPS. In that respect, the offences charged by the public prosecutor and for which the court convicted differed significantly. Marginal homogeneity test: p=0.005.

20 The associated punishments are not included in this table. In two cases, only the punishment of a ban on practising a profession (Article 251 DCC) was imposed. This subject is discussed separately in §2.2.3.

21 U=2.613; z=4.68; p<0.001.

22 Mean rank juvenile criminal law= 42.62; mean rank adult criminal law= 88.80.

23 Since 2014, a sentence of community service can no longer be imposed as the sole principal sentence under juvenile criminal law for the offences covered in this study. However, the judgments that were studied date from the period 2012-2013, when that provision did not yet apply. The prohibition was already introduced for adults in 2012.

Adult criminal law

Table 2.2 Heaviest principal sentence imposed on perpetrators of hands-on offences tried under adult criminal law (2012-2013) (*N*=140)[24]

	Total	
	N	%
Entirely unconditional prison sentence...		
... with community service	1	1%
... with (partially) conditional community service with special conditions	1	1%
... without community service *	20	14%
Subtotal of entirely unconditional prison sentences	***22***	***16%***
Partially conditional prison sentences...		
... with community service	5	4%
... with special conditions and community service	6	4%
... without community service	13	9%
... with special conditions, without community service	34	24%
Subtotal of partially conditional prison sentences	***58***	***41%***
Entirely conditional prison sentences...		
... with community service	17	12%
... with special conditions and community service	26	19%
... without community service	3	2%
... with special conditions, without community service	4	3%
Subtotal of entirely conditional prison sentences	***50***	***36%***
Entirely unconditional community service	5	4%
Partially conditional community service...		
... with special conditions	2	1%
... without special conditions	1	1%
Entirely conditional community service	1	1%
Subtotal for community service	***9***	***6%***
Convictions without punishment	1	1%
Total	***140***	***100%***

**Two offenders were sentenced to TBS with mandatory treatment in addition to an entirely unconditional prison sentence, and four were sentenced to TBS with conditions.*
Source: Convictions for indecent assault 2012-2013.

As the table shows, the courts imposed a partially or entirely conditional prison sentence on most paedosexual offenders, often in combination with special conditions.[25] Fewer than one in six offenders

24 The figures in this table differ from those in Table 2.1 for the types of sentence imposed by the courts. This is due to the fact that Table 2.1 is based on *suspects* of exclusively hands-on offences, while this table is based on persons *convicted* exclusively of hands-on indecent assault.

25 The various types of special conditions are discussed further in §2.5.

(16%) received the heaviest type of sentence, i.e., an entirely unconditional prison sentence. In all, 57% of adult offenders who were convicted of sexually abusing a child had to serve a prison sentence. In principle, the other 43% of adult offenders did not have to go to prison at all. As mentioned in the first part of this study, the perpetrators had committed very serious sex offences. Almost 90% of the proven sexual acts fall into the two most serious categories, involving sexual penetration or the touching of naked genitals.[26] Furthermore, the maximum sentences for these forms of abuse are prison sentences of six, eight and twelve years. It is therefore remarkable that as many as 43% of the adult perpetrators of one of more of these paedosexual offences were *not* given a prison sentence.

Offenders tried under juvenile criminal law

Table 2.3 Most severe principal sentence imposed on perpetrators of hands-on offences tried under juvenile criminal law (2012-2013) (*N*=25)

	Total	
	N	**%**
Entirely unconditional youth detention...		
... with special conditions, without community service*	1	4%
Subtotal for entirely unconditional youth detention	***1***	***4%***
Partially conditional youth detention...		
... with special conditions and community service	2	8%
Subtotal for partially conditional youth detention	***2***	***8%***
Entirely conditional youth detention...		
... with community service	1	4%
... with special conditions and community service	4	16%
... with special conditions, without community service	6	24%
Subtotal for entirely conditional youth detention	***11***	***44%***
Entirely unconditional community service	2	8%
Partially conditional community service...		
... with special conditions	2	8%
... without special conditions	1	4%
Entirely conditional community service		
... with special conditions	4	16%
... without special conditions	1	4%
Subtotal for community service	***10***	***40%***
Entirely unconditional PIJ order	1	4%
Total	***25***	***100%***

**The perpetrator received an entirely unconditional sentence of youth detention in combination with a conditional PIJ order. The special conditions were imposed in the context of the conditional PIJ order.*
Source: Convictions for indecent assault 2012-2013.

26 National Rapporteur 2016, pp. 10-11.

As mentioned in the introduction to this section, underage offenders receive significantly lighter types of sentence than offenders who are tried as adults. Looking at the types of sentence imposed on minors who are convicted of sex offences under juvenile criminal law, the most notable finding is that 84% of them did not receive a custodial sentence or measure. This total is divided into 44% who received an entirely conditional sentence of youth detention, almost always with special conditions, and 40% whose heaviest sentence was community service.

These lighter forms of sentence are not entirely surprising given the paedagogical character of juvenile criminal law, in which the most important objective is to deter the perpetrator from repeating the offence. Furthermore, the framework for sentencing can be different, with maximum sentences generally lower than under adult criminal law. It is therefore also explicable that offenders tried under juvenile criminal law are given different and lighter sentences for the same types of offence.

> *Prohibition of community service as the exclusive sentence for minors*
> At 40% of the total, a large proportion of the group is represented by minors whose principal sentence for abusing a child was a community service order. It is relevant to note here that the judgments studied related exclusively to offences committed before the introduction of Article 77ma DCC, which provides that a sentence of community service cannot be the sole sentence for minors convicted of the offences covered in this study. Since the introduction of this provision in 2014, a sentence of community service or an order to attend education or training can no longer be imposed as the heaviest principal sentence for offences carrying a maximum sentence of six years or more and which have resulted in a serious violation of the victim's physical integrity.

As discussed above, the prohibition of imposing only a community service sentence on minors in these cases only applies to offences committed after 1 April 2014 and does not cover the judgments studied in this report. Nevertheless, it is useful to note that the distribution of sentences presented in Table 2.3 will probably change dramatically in the coming years, since in principle a community service sentence can no longer be imposed as the most severe principal sentence for these forms of sexual abuse. In fact, Article 77ma DCC (prohibition of a community service as the principal sentence for minors) differs from Article 22b DCC (prohibition of a community service sentence as the principal sentence for adults) in the sense that minors may be given a community service sentence in combination with a fully conditional custodial sentence.[27] The proportion of entirely conditional sentences of youth detention in combination with community service orders (currently 20%) could rise as a result of the introduction of Article 77ma DCC.

One in eight child perpetrators tried under juvenile criminal law was given a custodial sentence that had to be served.[28] In 4% of these cases the youth detention was unconditional, and in 8% it was partially conditional. Offenders tried under adult criminal law received an unconditional custodial sentence four times as often and a partially conditional custodial sentence five times as often as minors who were convicted of similar sex offences. This can be explained by the different purposes of the sanctions that apply for minors compared with adult offenders, as well as the disparity in the prescribed maximum sentences.

27 Cleiren, Crijns & Verpalen 2014, Article 77ma DCC, note 4.
28 In addition, 4% (*N*=1) were given an entirely unconditional PIJ order and no sanction.

2.2.3 Professional ban

Under Article 251 DCC, persons convicted of a number of sex offences, including the offences under the four articles discussed in this study, can be given the additional punishment of being barred from practising their profession. Disbarment is limited to the profession in which the offence was committed, and the term 'profession' implies a paid position.[29] It was reported in Part 1 of this study (Figure 5.1) that 10% (*N*=23) of the victims in the study had been abused by a perpetrator who worked with children. The sixteen perpetrators concerned abused their victims in their positions as a teacher, sports coach, sports masseur, host parent or babysitter. Some were the victim's colleague or boss. The court banned two of these sixteen offenders (13%) from practising their profession. One was a female teacher and mentor, who abused a 14-year-old pupil over a period of four months[30] and the other was a man who, as national coach in the sport of motocross, sexually assaulted two pupils for a period of three years[31].,[32]

Although the other fourteen perpetrators will not all have been in a 'paid position', it is still remarkable that the sanction of banning a person from practising their profession has been applied so seldom. The PPS demanded professional disbarment in five cases.

Rejection of the demand for professional disbarment

In three cases, the PPS did demand professional disbarment but the court did not impose this additional sentence. The first case involved a man who was convicted of committing indecency with his daughter and her girlfriend.[33] This second victim was also the offender's judo pupil. Although the victim was the offender's pupil at the time of the abuse, the court found that there was little relationship with his profession as a judo teacher because the offences were not committed in his capacity as a judo teacher. They took place during a holiday, so the court did not prohibit the man from practising his profession.

At the end of 2013, a 29-year-old teaching assistant was convicted of abusing a 14-year-old female pupil. The Zeeland-West-Brabant District Court did not order the professional ban demanded by the PPS, reasoning as follows: 'The court does not, however, accept the demand for a contact ban and a professional ban as special conditions attached to the conditional prison sentence. In that context, in particular the court has taken into account the suspect admission of the offences and has said that he realises the despicable nature and the criminal aspects of his actions. He expressed genuine remorse at the trial and seems to have learned from the event. The suspect has said in that context that he no longer wishes to work in education and has recently – since his dismissal from [name of school, NR] – performed a different type of job in the business sector. [...] The court has also taken into account that there was no question of long-term and systematic abuse, but a single incident. The court is therefore confident that the pressure of the conditional prison sentence will be sufficient motivation for the suspect not to transgress again.'[34]

29 Cleiren, Crijns & Verpalen 2014, Article 28 DCC, note 6.
30 The Hague District Court 29 March 2013, ECLI:NL:RBDHA:2013:BZ5880.
31 Utrecht District Court 16 October 2012, ECLI:NL:RBUTR:2012:BY0213.
32 National Rapporteur 2016, p.21.
33 Oost-Nederland District Court 25 January 2013, ECLI:NL:RBONE:2013:BY9608.
34 Zeeland-West-Brabant District Court 2 December 2013, 02-666507-12 (not published).

> Finally, the Noord-Holland District Court convicted a 32-year-old female teacher of indecently assaulting a 14-year-old pupil. The court did not follow the public prosecutor's demand to prohibit her from practising her profession: 'The court will not impose a professional ban on the suspect because the psychological report shows that the suspect does not have paedosexual feelings. The suspect has no teaching qualifications and it is a well-known fact that nowadays a Certificate of Good Conduct is required for almost all paid and unpaid jobs with children.'[35]

In its judgment in the latter case, the court took account of the fact that the offender did not have paedosexual feelings in the decision not to impose a professional ban. However, the fact that a person has no sexual feelings towards children says nothing about the risk of recidivism.

The fact that a Certificate of Good Conduct is required by a growing number of professions that involve working with children, as well as for voluntary work, does raise the question of the number of situations in which the option of imposing a professional ban still has added value. It can in any case have added value if the offender is still working with children at the time of the judgment, since in that case a certificate will have been issued before the conviction.[36] The professional ban is also clearly of greater value than the Certificate of Good Conduct in professions where the perpetrator can work in a self-employed capacity.

2.3 The length of the custodial sentence

In researching the sentencing in sexual abuse cases, it is important to look not only at the type of sentence, but also at the severity of the sentence. For example, on the face of it, an unconditional custodial sentence is heavier than a community service sentence; however, if the custodial sentence is just one day and the community service is for 240 hours, many would still regard the latter sentence as more severe. As discussed in §2.2, the courts impose many different combinations of sanctions, measures and special conditions. How does one sentence compare with another? How do you decide which sentence is more severe than another, and how much more severe one sentence is than others, when the types of sentences differ?

> *The 'crime-sentence index'*
> One way of comparing the severity of sentences is by converting them using the crime-sentence index, which provides a formula for comparing different types of sentences. For example, the index equates one day in prison with two hours of community service and with a fine of €36.[37] The index makes no distinction between conditional and unconditional sentences.

35 Noord-Holland District Court 9 December 2013, 15-706149-13 (not published).

36 Employees working in child care form an exception to this. They are subject to continuous screening for the purposes of the Certificate of Good Conduct. For more information about the system of continuous screening, see the Dutch government's website, www.rijksoverheid.nl/documenten/richtlijnen/2013/02/18/handleiding-continue-screening-kinderopvang (consulted on 6 July 2016).

37 Beerthuizen et al. 2015, p. 17.

The subjective perception of the relative severity of a particular type of sentence therefore plays no role.[38] Furthermore, measures and additional sanctions are not quantifiable with the standard formula, so there are additional rules that apply for them,[39] while special conditions are not covered in the crime-sentence index.

Comparing different types of sentences according to their severity is quite problematic. For the purposes of this study, therefore, it was decided to further analyse and compare only the length of the unconditional part of the custodial sentences that were imposed. Accordingly, only the first two types of sentence, which together represent 57% of the sentences imposed on adult offenders, were studied in more depth.

2.3.1 Relationship between the length of sentence demanded and imposed

Adult criminal law

There is a strong positive correlation between the duration of the unconditional part of a prison sentence that is demanded for and imposed on suspects and perpetrators who are tried under adult criminal law.[40] In other words, the longer the prison sentence demanded, the longer the sentence imposed by the court. A possible explanation for this strong correlation could be that the public prosecutor and the court share common standards with regard to cases of hands-on sexual abuse. It is also possible that the PPS anticipates the court's ruling. It seems highly likely, however, that there is a causal relationship (in other words, cause-effect) between the sentence demanded by the PPS and the actual sentence.[41]

This does not mean that the court follows the PPS's demand, since the length of prison sentence demanded and actual length of the sentence imposed differ greatly. In cases where a term of imprisonment was demanded and imposed (N=68), the PPS demanded a significantly longer sentence than the court pronounced.[42] In 10% of these cases, a partial explanation of why the courts imposed a shorter (unconditional or partially conditional) prison sentence could be that the perpetrator was ultimately convicted of a less serious offence in legal terms than the principal offence charged in the indictment.[43]

38 Beerthuizen et al. 2015, p. 11.

39 Beerthuizen et al. 2015, pp. 17-18.

40 $r_s(86)= 0.74$; $p<0.001$.

41 Not all the observed relationships, the correlations, justify the conclusion that a causal relationship exists between the relevant variables. In this case, however, a causal relationship is likely in view of (1) the strong relationship between the sentence demanded and imposed ($r_s(86)= 0.74$), (2) the fact that the demand is made before the sentence is pronounced, (3) the fact that it is frequently mentioned in the literature that the court includes the sentence demanded in its considerations and (4) a spurious relationship is unlikely as shown in Chapter 3 (the sentence demanded and the sentence imposed are not explained by the same variables).

42 Wilcoxon signed-rank test: $z=-5.47$; $p<0.001$. The median difference in the duration of the sentence between the demand and the sentence imposed is five months (150 days). The median length of sentence demanded is just over ten months (302 days) and the median length of sentence imposed is eight months (240 days).

43 Marginal homogeneity test: $p=0.005$.

There were another twenty perpetrators who did not receive any prison sentence from the court, although the PPS had demanded one,[44] while in two other cases the court did impose a prison sentence when the PPS had not demanded one.

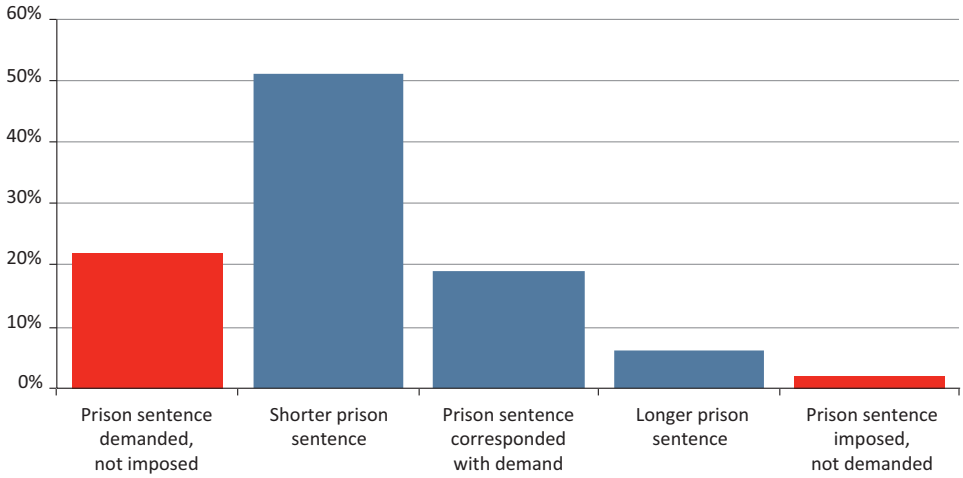


Figure 2.1 The relationship between the length of prison sentence demanded and imposed under adult criminal law (*N*=90)
Source: Convictions for indecent assault 2012-2013.

As Figure 2.1 shows, in half of all cases (51%) the courts imposed a shorter prison sentence than the sentence demanded by the PPS.[45] The difference ranges from four days to three years. The courts sometimes imposed a longer prison sentence than the PPS had demanded, but that seems to be the exception: in five cases the court imposed a longer prison sentence than had been demanded and in two cases the court imposed a prison sentence when the PPS had not demanded one.[46] Finally, in almost one in five cases (19%) the court pronounced a prison sentence of exactly the same length as the sentence demanded by the PPS.

44 In every one of these twenty cases the PPS demanded a partially conditional prison sentence. In eighteen of them, the court imposed an entirely conditional prison sentence, in one a sentence of community service and in one the court found the perpetrator guilty without imposing a sentence.

45 In twenty cases, the court did not impose an unconditional or partially conditional prison sentence although the PPS had demanded one, and in 46 cases the court did impose a prison sentence but a shorter sentence than had been demanded.

46 In one case, the PPS demanded an acquittal, but the district court convicted and sentenced the suspect to fifteen months in prison, with nine months suspended (Haarlem District Court 20 August 2012, 15-710689-10 (not published)). In the second case, the PPS demanded a community service sentence and an entirely conditional prison sentence, and the court imposed a sentence of community service and a partially conditional prison sentence ('s-Hertogenbosch District Court 29 October 2012, ECLI:NL:RBSHE:2012:BY3404).

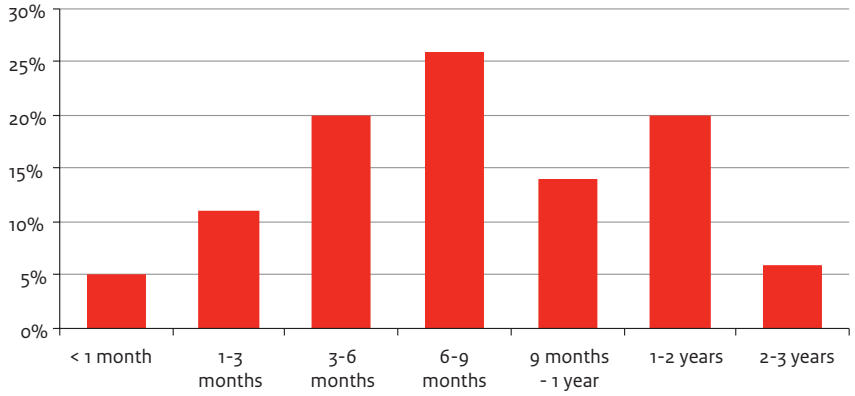


Figure 2.2 Difference between the sentence demanded and imposed in terms of the length of the unconditional part of the prison sentence (*N*=66).[47]
Source: Convictions for indecent assault 2012-2013.

Figure 2.2 shows how much shorter the sentences imposed by the courts were than the PPS had demanded. The figure relates to the 73% of the cases in Figure 2.1 in which the court imposed a shorter prison sentence (*N*=46) or no prison sentence at all (*N*=20). Looking at the discrepancy between the sentences demanded and imposed, it is noticeable that the difference was substantial (six months or more) in almost two-thirds of the cases. In 26% of the cases, the difference between the unconditional prison sentence demanded and the sentence imposed was more than a year.

Two cases in which the sentence imposed differed greatly from the sentence demanded
In 46 of the cases in which the length of the prison sentence imposed was shorter than the sentence demanded, the difference ranged from four days to three years. In a judgment of the Noord-Nederland District Court, the unconditional prison sentence ultimately imposed was three years shorter than the public prosecutor had demanded. In this case a father was convicted of sexually abusing his three daughters over a period of years. 'The abuse occurred very regularly, sometimes three or four times a week. The abuse of the youngest daughter also regularly involved intercourse,[48] the court said in its grounds for sentencing. The public prosecutor had demanded an unconditional prison sentence of six years. The court, which convicted on all of the charges, imposed a prison sentence of four years, with one year suspended with a probation period of three years and with special conditions attached. Regarding the fact that it had halved the unconditional portion of the term of imprisonment compared with the demand of the public prosecutor the court found as follows: 'In the suspect's favour, the court will take into account his remorse, the fact that he has already sought help for his problems and the fact that the criminal records pertaining to the suspect [...] show that he has not previously been convicted of a criminal

47 A month is 30 days, a year is 365 days.
48 Noord-Nederland District Court 22 January 2013, ECLI:NL:RBNNE:2013:BY9090.

offence. In light of that, the court sees cause to depart from the sentence demanded by the public prosecutor.'[49]

In this case, the court attached a great deal of weight to the factors mentioned above, which is not in itself unique in cases involving sex offences. Most perpetrators of a sex crime have a clean record, many offenders have already started receiving treatment in the course of the criminal proceedings, and an expression of remorse is also not unusual in this type of case. The frequency with which courts refer to these factors in their grounds for sentencing and how they treat them are discussed in more detail in Chapter 4.

The courts can sometimes also impose a higher sentence than the PPS had demanded as is illustrated by the following case. In 2013, The Hague District Court convicted a man who had abused his daughter from the age of eight until she was twelve in the 1980s (sexual penetration, Article 244 DCC). The public prosecutor demanded an unconditional prison sentence of six months, but the sentence imposed by the court was three times longer: eighteen months' unconditional imprisonment. The court gave the following reasons for this longer sentence: 'In the opinion of the court, the seriousness of the proven offences and the circumstances taken into account by the court are not adequately reflected in the sentence demanded by the public prosecutor, even taking into account the considerable length of time that has elapsed. In view of the aforementioned circumstances and in light of the sentences that are imposed in similar cases, where a prison sentence of several years is not unusual, the court finds that a lengthy unconditional prison sentence is appropriate and necessary. The court will therefore impose the following heavier sentence than demanded by the public prosecutor.'[50]

It is noteworthy that in this case the court referred to the fact that a prison sentence of several years was not unusual in similar cases. Although it seems logical to assume, on the basis of the maximum sentence of twelve years, that such a sentence is not unusual, this study shows that there is considerable variation in the sentences for similar offences and that a prison sentence of several years is in fact exceptional. Of the 165 perpetrators convicted of hands-on sex offences, only 12 (7%) were given a prison sentence of two years or longer (see Figure 2.2).

Juvenile criminal law

The PPS only demanded a sentence of unconditional or partially conditional youth detention against three of the suspects who were tried under juvenile criminal law. That number is too small to calculate the correlation between the sentence demanded and the sentence imposed.

2.3.2 Length of custodial sentence imposed

As shown in Tables 2.2 and 2.3, 83 perpetrators convicted exclusively of hands-on sexual abuse had to serve a (partially) unconditional custodial sentence (*N*=80 under adult criminal law, *N*=3 under juvenile criminal law). The length of the custodial sentence varied greatly, both for offenders tried under the juvenile criminal system and offenders who were tried as adults.

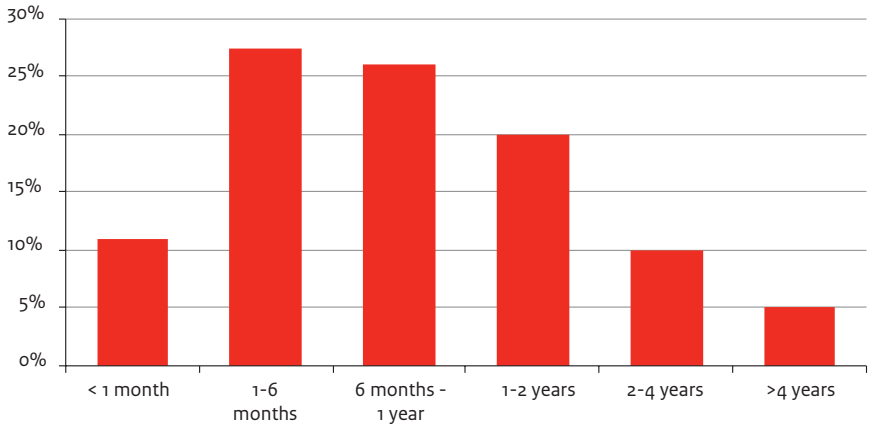
49 Noord-Nederland District Court 22 January 2013, ECLI:NL:RBNNE:2013:BY9090.
50 The Hague District Court 7 November 2013, 09-715845-12 (not published).

Adult criminal law

The length of the unconditional prison sentences imposed on perpetrators who were tried under adult criminal law ranged from one day to ten years. The average length of a sentence was less than one year, at 352 days (SD=383.33).[51] The rules on conditional release do not apply for prisoners serving sentences of less than a year, which means that these perpetrators had to serve their sentences in full.[52]

Given the very wide variety of sentences imposed, the average does not provide sufficient insight into the diversity of the length of the prison sentences. The median is 240 days (eight months), which means that 50% of the offenders received a prison sentence of less than 240 days and 50% received a longer sentence. The lengths of the prison sentences imposed are shown in the figure below.

Figure 2.3 Lengths of the unconditional part of prison sentences (*N*=80).[53]



Source: Convictions for indecent assault 2012-2013.

In §2.2.2 it was mentioned that just over half of the adult perpetrators of sexual abuse of a child received a custodial sentence (57%). As figure 2.3 shows, almost two-thirds of them (65%) received a sentence of less than a year, with the vast majority sentenced to less than six months in prison. This is a remarkably short term of imprisonment considering they were convicted of offences for which the prescribed maximum sentence is between six and twelve years in prison. The factors that influence the length of a

51 The average length is calculated on the basis of 79 offenders. The offender with a maximum sentence of ten years was removed because that sentence was an outlier that would distort the results too heavily.

52 The rules for conditional release (Article 15 DCC) do apply for offenders who are sentenced to an unconditional prison sentence of a year or longer, which means that they can qualify for early release under certain circumstances. Offenders with a prison sentence of between one and two years are eligible for conditional release after serving one year plus a third of the sentence in excess of one year (Article 15(1) DCC). Offenders serving an unconditional prison sentence of two years or longer are eligible for conditional release after serving two-thirds of their sentence (Article 15(2) DCC). Conditional release does not apply for offenders who have received a partially conditional prison sentence.

53 A month is 30 days, a year is 365 days.

prison sentence (Chapter 3) and the factors explicitly mentioned by the courts in their grounds for sentencing (Chapter 4) are further analysed in the following chapters.

Juvenile criminal law

For the three juvenile offenders who received unconditional or partially conditional sentences of youth detention, the unconditional part of the sentence ranged from 2 to 117 days. The fact that the custodial sentences for offenders tried under juvenile criminal law are lower than those for offenders tried under adult criminal law is easily explained by the lower maximum sentences that apply in the juvenile criminal system. A lengthy custodial sentence for an underage offender is also not really appropriate in light of the pedagogical nature of the juvenile regime.

Because of the small number of child offenders who were given an unconditional custodial sentence, it was not possible to analyse statistically whether the length of the custodial sentences imposed on them differed from those imposed on offenders tried as adults.

Three cases involving youth detention for underage offenders

The courts imposed entirely unconditional (*N*=1) or partially conditional (*N*=2) sentences of youth detention on three of the 25 minors who were tried under juvenile criminal law. What types of cases were they?

The heaviest sentence was imposed on a 14-year-old boy who penetrated the vagina of a 7-year-old girl with his finger.[54] The boy had grabbed the girl at random from a playground and taken her to his bedroom, where he abused her. The Rotterdam District Court ruled that the boy had severely diminished responsibility. He was sentenced to 117 days in youth detention, with a conditional PIJ order and a probation period of three years.

The Haarlem District Court convicted a 13-year-old boy for the anal penetration of two boys aged eight and nine and for getting one of the victims to perform fellatio on him.[55] The court also found severely diminished responsibility on the part of the offender in this case. The young offender was sentenced to youth detention for 100 days, with 56 days suspended, together with an order to undergo 20 hours of training and a probation period of 3 years.

Finally, the Zeeland-West-Brabant District Court sentenced a 15-year-old boy to three months and two days of youth detention, with three months suspended, for abusing two sisters aged eight and ten.[56] He had penetrated the vagina of the older victim with his finger and French kissed her and had fondled the younger victim. In addition to the partially conditional custodial sentence, the court ordered the boy to perform 150 hours of community service and attached special conditions, including the obligation to receive treatment, and imposed a probation period of two years.

54 Rotterdam District Court 15 August 2013, 10-690161-13 (not published).
55 Haarlem District Court 22 November 2012, 15-750077-11 (not published).
56 Zeeland-West-Brabant District Court 24 April 2013, ECLI:NL:RBZWB:2013:3815.

2.4 Measures

In addition to penal sanctions, in a great many cases the courts also imposed a measure on the offender. In the majority of cases, the measure was an order to pay compensation (*N*=100), while in some cases a hospital order (TBS) or an order for placement in an institution for juveniles (PIJ) was made. The measure of a confiscation order was imposed against three offenders.

2.4.1 TBS and PIJ

The courts issued a TBS or PIJ order only sporadically. A TBS or PIJ measure was imposed on eight (5%) of the 165 offenders who were convicted solely of hands-on sexual abuse. Of the 140 offenders who were tried under adult criminal law, two were sentenced to TBS with compulsory treatment and four to TBS with conditions. In all six cases, the measure was imposed in combination with an entirely unconditional prison sentence, as shown in Table 2.3.

Table 2.3 also shows that the measure of a PIJ order was imposed on two of the 25 offenders tried under juvenile criminal law solely for hands-on indecent assault: one offender was sentenced to entirely unconditional PIJ, without any additional sanction, the other received a sentence of unconditional youth detention in combination with a conditional PIJ measure.

2.4.2 Compensation

Most children who are victims of a sex crime will have suffered harm. The harm can be material, for example damage to clothing during the commission of the offence or the costs of therapy to help recover from the incident. Far more often, however, the damage is immaterial, primarily the psychological harm ensuing from the offence. A victim who has suffered harm can submit an injured party claim during the trial. If the claim is upheld, the offender must pay the victim the amount the court has awarded.

Of the 241 victims of indecent assault in this study, 134 (56%) submitted an injured party claim. More than half of the claims (*N*=71; 56%) were for both material and immaterial damages, while just over a third (*N*=47; 35%) were exclusively for immaterial damages. In most cases, the court awarded the injured party claim either partially (*N*=86; 64%) or entirely (*N*=37; 28%). Nine claims were declared inadmissible, while in two cases the court rejected the claim of the injured party.

> *Two cases in which injured party claims were rejected*
> In two cases, the court rejected the injured party claim. In the first, the Rotterdam District Court convicted a man aged 25 for having repeated intercourse with a 14-year-old girl. The grounds for sentencing state that it appeared that the sex was consensual. The victim submitted a claim of 2,750 euro for immaterial damages. The court ruled: 'The claim will be rejected because, in light of the substance and the explanation of the claim, what was said at the hearing and the underlying case documents, it has not been sufficiently established that the injured party suffered immaterial damage as a direct result of the proven offences.'[57]
>
> In another case in which the injured party claim was rejected, The Hague District Court convicted a 14-year-old youth who had fellated and masturbated his five-year old nephew. A claim for 1,500

57 Rotterdam District Court 8 June 2012, 10-750205-10 (not published).

> euro in immaterial damages was submitted on behalf of the victim. The court found as follows: 'The court will reject the claim of the injured party because hearing the claim will impose a disproportionate burden on the criminal proceedings. The court finds that there is nothing in the complaint and the other statements in the case file, including the findings of the family doctor, to show that the victim suffered psychological effects of such a nature as to require therapy. To what extent the damage to the victim's foreskin can be attributed to the suspect's indecent acts requires such further substantiation that it would delay and burden the criminal proceedings.'[58]
>
> That hearing the claim would cause a disproportionate burden for the criminal proceedings is not a ground for rejecting the claim. The claim could have been declared inadmissible for that reason pursuant to Article 361(3) of the Dutch Code of Civil Procedure (DCCP), which would have allowed the victim to submit a claim under civil law.

As well as awarding an injured-party claim, the court can also order the offender to pay compensation pursuant to Article 36f DCC. In that context, there is a scheme for advancing the compensation awarded by a court to victims of violent and sexual offences.[59] With this scheme, victims of sex offences are assured of payment of any damages awarded by the court. If the perpetrator fails to pay the compensation, the State pays the amount due to the victim and then seeks recourse to the offender for that amount, thus sparing the victim the burden of recovering it personally.

The courts wholly or partially awarded the injured-party claims of 123 victims, and in 120 cases they also issued a compensation order pursuant to Article 36f DCC. These 120 compensation orders related to 100 offenders. In two of the three cases in which the injured-party claim was (partially or entirely) awarded but the court did not issue a compensation order, the offender was younger than fourteen.[60] The other case involved a claim for compensation by a boy who was abused by his brother, who was four years older. In this case, the court did not order the payment of compensation 'in light of the suspect's personal circumstances and his familial relationship to the victim'.[61] The fact that this circumstance played a role in the decision on whether to order the payment of compensation is remarkable, since the familial relationship between the offender and the victim is irrelevant in that context. It is also unclear why personal circumstances should form a barrier to ordering the payment of compensation. A decision not to issue an order to pay compensation leaves the victim with the task of personally seeking compensation. If the offender does not pay, the victim is left empty-handed.

58 The Hague District Court 3 October 2013, ECLI:NL:RBDHA:2013:18229.

59 Article 36f(7) DCC in conjunction with Article 1 of the Advance on Compensation (Implementation) Decree (*Uitvoeringsbesluit voorschot schadevergoedingsmaatregel*).

60 The compensation measure can only be imposed insofar as the minor is responsible under civil law for the damage he or she has caused. Liability is excluded for 12- and 13-year-olds pursuant to Article 6:164 of the Dutch Civil Code. See Cleiren, Crijns & Verpalen 2014, Article 77h DCC, note 6 under e.

61 Oost-Nederland District Court 31 January 2013, 07-651021-12 (not published).

2.5 Special conditions

As §2.2.2 shows, a substantial proportion of offenders are given a (partially) conditional sentence. In addition to the general conditions set out in Article 14c(2) DCC, special conditions can be attached to such a sentence. This section briefly reviews the special conditions imposed by the courts.[62]

Adult criminal law

Of the 140 adults who were convicted solely of hands-on sexual abuse, 113 were given a (partially) conditional sentence.[63] Special conditions were attached to the sentences of 65% (*N*=73) of these perpetrators, most commonly a combination of supervisory and behavioural conditions (*N*=48; 66%). The conditions were usually a combination of supervision by the probation service (supervisory condition) and an order to follow a course of treatment for sex offenders (behavioural condition). Special conditions other than supervisory or behavioural conditions were imposed on 31% (*N*=21)[64] of the adult offenders on whom special conditions were imposed, including injunctions against visiting particular locations or restraining orders prohibiting the offender from having contact with the victim.

A closer look at special conditions

The two following cases illustrate the variety of special conditions that can be imposed.

In 2013, the Zeeland-West Brabant District Court convicted a man of abusing his two grandsons.[65] The court sentenced the man to 240 hours of community service, and also imposed an entirely conditional prison sentence of six months with a probationary period of two years. The court attached special conditions to the suspended prison sentence. The supervisory condition involved monitoring by the probation service – the suspect had to report to the probation service and follow its instructions. He was also ordered to continue his treatment for sexually transgressive behaviour and to continue taking the medication he had been prescribed as part of that treatment. A final condition, which falls into the category of 'other special conditions', was that the man was prohibited from having contact with the two victims.

A man who abused a girl from the age of nine until the age of twelve was given a three-year prison sentence by Assen District Court, with one year suspended and a probationary period of three years.[66] The conditional part of the prison sentence was made subject to the man following an intensive course of treatment, which was reflected in a number of special conditions. For example, after the period of his incarceration the offender had to enter a forensic psychiatric clinic and, on completion of the programme there, seek treatment on an out-patient basis. These were the behavioural conditions. The supervisory condition was that he had to follow the instructions of the probation service. Finally, the offender was prohibited from having contact with the victim

62 This report does not cover the demands made by the PPS with respect to special conditions.

63 I.e., an entirely unconditional prison sentence with a (partially conditional) community service sentence: *N*=1 + partially conditional prison sentence: *N*=58 + entirely conditional prison sentence: *N*=50 + partially conditional community service sentence: *N*=3 + entirely conditional community service sentence: *N*=1 = 113. See Table 2.2.

64 A combination of supervisory, behavioural and other conditions was imposed on eighteen offenders, a combination of supervisory and other conditions on one offender and only other conditions on two offenders.

65 Zeeland-West-Brabant District Court 3 December 2013, 02-666148-12 (not published).

66 Noord-Nederland District Court 2 April 2013, 17-880421-12 (not published).

or her immediate family ('other conditions'). The public prosecutor had also demanded a protection order (a street injunction). The court rejected this demand on the advice of the probation service.

With respect to 13 (18%) offenders, the court ordered that the special conditions should take effect immediately. Conditions can be enforced immediately by virtue of Article 14e DCC, a provision that entered into force on 1 April 2012. Immediate enforcement prevents a convicted person from avoiding supervision by the authorities by filing an appeal. A requirement for immediate enforcement of special conditions is that 'it should be taken seriously into account that the convicted offender will again commit a serious crime against or endanger the physical integrity of one or more persons' (Article 14e(1) DCC).

Juvenile criminal law

The court attached special conditions (regulated for minors in Article 77z DCC) to the sentences of nineteen (86%) of the 22 underage offenders who received conditional or partially conditional sentences. In most cases (*N*=12; 63% of the nineteen offenders) – as with adult offenders – a combination of supervisory and behavioural conditions were attached. In four cases (21%), the court ordered that the special conditions were to be enforced immediately (Article 77za DCC).

2.5.1 Probationary period

When the court imposes a conditional or partially conditional sentence, it also stipulates a period of probation. During the probationary period, the general conditions laid down in Article 14c(1) DCC apply. If the court imposes special conditions, they apply throughout the probationary period or during that part of the probation prescribed by the court.

Under Article 14b(2) DCC, in principle the maximum probationary period for offenders tried under adult criminal law is three years, or ten years if there are serious indications that the convicted offender will again commit a serious crime against or endanger the physical integrity of one or more persons. The maximum probationary period of ten years was introduced in 2012; the maximum period of three years applies for offenders tried before 1 October 2012.[67]

67 Since the extension of the probation period cannot be regarded as an amendment of the legislation relating to the definition of a crime or the maximum sentence for a crime, its immediate enforcement is not in conflict with the legality principle. See Supreme Court 27 August 2013, ECLI:NL:HR:2013:493.

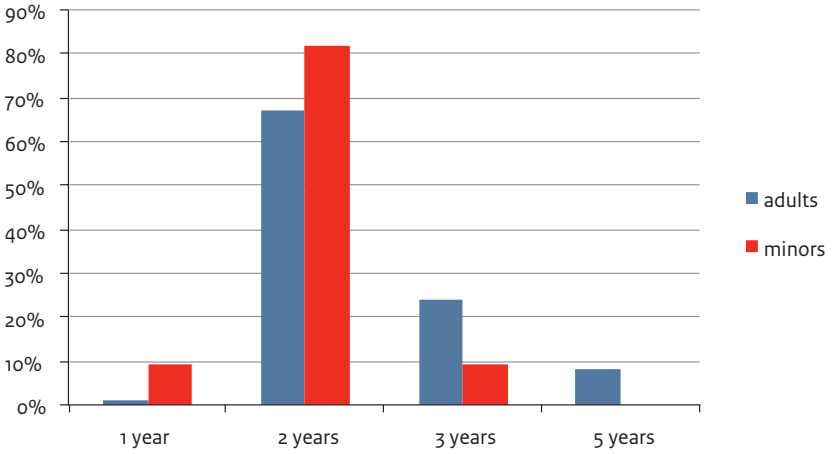


Figure 2.4 Length of the probationary period for offenders tried under adult criminal law (N=113) and offenders tried under juvenile criminal law (N=22).
Source: Convictions for indecent assault 2012-2013.

As the figure above shows, most offenders who received a conditional or partially conditional sentence were given a probationary period of two years. The maximum probationary period of ten years was not imposed on any perpetrator of a sexual assault on a child, although nine adult offenders were placed on probation for five years. A partial explanation of why the courts ordered more than three years' probation for only a small number of the convicted offenders in 2012 and 2013 might be the fact that the lengthier maximum probationary period only applied to just over half of the cases that were studied. One case stands out in this respect. In July 2012, Zutphen District Court convicted a man of abusing two teenage girls and sentenced him to 32 months' imprisonment, with sixteen months suspended and a probationary period of five years.[68] The court found as follows: 'However, the court sees cause to attach a longer probationary period than was demanded to the special conditions, specifically five years. The court considers this longer probationary period necessary since it has to be taken seriously into account that (without treatment and supervision by the probation service) the suspect will again commit similar crimes.'[69] This ruling is at odds with the fact that the maximum probationary period was still three years on the date of the judgment.

The probationary period stipulated for offenders tried under juvenile criminal law was two years in most cases, which is also the statutory maximum under juvenile criminal law (Article 77y DCC). Notably, however, one court nevertheless imposed probation of three years, as demanded by the public prosecutor, on an underage offender who was tried under the juvenile regime.[70] That period exceeded the statutory maximum of two years and therefore appears to have been unlawful.

68 Zutphen District Court 11 July 2012, 06-940325-11 (not published).
69 Zutphen District Court 11 July 2012, 06-940325-11 (not published).
70 Haarlem District Court 22 November 2012, 15-750077-11 (not published). A probation period of three years can however be imposed as part of a conditional PIJ measure. This happened in one case: Rotterdam District Court 15 August 2013, 10-690161-13 (not published).

2.6 Conclusion

All of the judgments that were studied concerned hands-on sexual abuse of a victim who was a minor. Part 1 of this study revealed that 89% of the cases involved touching the genitals and/or vaginal, anal or oral penetration.[71] The offences declared proven were therefore serious forms of sexual abuse, for which the maximum sentences are consequently severe, ranging from six to twelve years' imprisonment.

Often no prison sentence

Very frequently, however, the maximum sentences were not imposed. In practice, 43% of the adult perpetrators were not sent to prison, but were given an entirely conditional prison sentence or sentenced to community service. Of the adult offenders who were imprisoned, most received a conditional or partially conditional sentence. In two-thirds of the cases, the court attached special conditions to this type of sentence.

The types of sentence imposed differed significantly from the sentences demanded by the PPS, but the differences were not particularly great. In three-quarters of the cases, the court imposed the type of sentence that the PPS had demanded. In one in five cases, the court imposed a lighter type of sentence. These were mainly cases where the PPS had demanded a partially conditional prison sentence and the court imposed an entirely conditional prison sentence.

Relatively short prison sentences

Most adult offenders who had to serve a partially conditional or unconditional prison sentence received a sentence that was distinctly milder than the law allows. The sentences ranged from one day to ten years in prison, but for most offenders who received a prison sentence the unconditional part of the sentence was less than one year. Only one in five of all adult offenders who were convicted of indecency with a child (*N*=28) served a year or more in prison.[72] Prison sentences of four years or longer come closer to the statutory maximum sentence, but were seldom imposed: only 3% (*N*=4) of adult offenders received a prison sentence in excess of four years.

The longer the prison sentence demanded by the PPS, the longer the sentence the courts imposed. But as with the type of sentence, there is also a significant disparity here. The PPS demanded substantially longer prison sentences than the courts imposed. In almost three-quarters of the cases, the court imposed a shorter prison sentence than the PPS had demanded or did not impose a prison sentence at all. In two-thirds of the cases, the difference between the sentence demanded and the sentence imposed was six months or longer, and in a quarter of the cases, the difference in terms of the unconditional part of the prison sentence was a year or more.

71 National Rapporteur 2016, pp. 10-12.

72 The rules relating to conditional release apply for offenders who are sentenced to an unconditional prison sentence of a year or longer (Article 15 DCC), which means they can be released early under certain conditions. Offenders with a prison sentence of between one and two years are conditionally released after a year plus a third of the period in excess of the year (Article 15(1) DCC). Offenders serving an unconditional prison sentence of two years or longer are released after serving two-thirds of their sentence (Article 15(2) DCC). The conditional release scheme does not apply for offenders who have been given a partially conditional prison sentence.

Minors receive different and lighter sentences

Offenders tried under juvenile criminal law committed sexual acts that were just as serious as those committed by the adult offenders in this study.[73] In practice, however, offenders tried under juvenile criminal law were given a less severe type of sentence significantly more often than adult offenders. For example, 84% of underage offenders were not given a custodial sentence or measure – they were sentenced to entirely conditional youth detention (44%) or community service (40%). With the abolition of the possibility of imposing only a sentence of community service for the offences covered in this study, in principle it is no longer possible for the principal sentence to be a community service sentence in the juvenile criminal justice system. Sentences of unconditional or partially conditional youth detention are the exception in the case of minors, which can be explained by the different objectives of sentencing for minors compared with adult offenders, as well as the difference in maximum sentences.

Ban on practising a profession seldom applied

In addition to the principal sentence, the courts can make an order prohibiting persons who have committed sexual offences from practising their profession if the offence was committed in the course of their professional practice. Although it was reported in part 1 of this study that one in ten victims had been abused by a person who worked with children, the courts only barred two offenders from practising their profession. A professional ban has distinct added value in relation to professions in which people work in a self-employed capacity and in cases where the employer is not aware of an earlier conviction, for example because the offender was not given a prison sentence. It is therefore remarkable that this additional sanction – which was created specifically for sex offences – is almost never used in practice.

A look ahead

Although there are many similarities in the offences that were committed in terms of the nature of the sexual acts, the sentences varied enormously. In that respect, it is noteworthy that relatively few offenders were given a custodial sentence – whether unconditional or partially conditional – and that the sentences were generally short. The next two chapters provide more insight into how sentences are arrived at. In Chapter 3 statistical models are used to analyse the factors that influence the variation in sentences, and Chapter 4 contains a qualitative analyse of the grounds for sentencing.

73 National Rapporteur 2016, p. 15.

3 What do the statistics tell us about the sentences?

3.1 Introduction

The previous chapter described the sentences the Public Prosecution Service (PPS) demanded and the court imposed on perpetrators of hands-on sexual abuse. The sentences for similar offences varied from community service or an entirely conditional prison sentence to a lengthy unconditional term of imprisonment. Why do the courts sentence one child molester to a few days in prison but another to a prison term of two years?

This chapter explores the legal and procedural aspects and the characteristics of offenders, victims and offences that influence the type of sentence and the severity of the sentence on the basis of the information provided by the judgments that were studied. It contains statistical analyses of whether factors such as the statutory maximum sentence, the statutory grounds for increasing a sentence, the offender's criminal record or the victim's gender influence the sentences that are demanded and imposed. To investigate the impact of the various factors on sentencing, the study looked at the group of perpetrators of hands-on sexual abuse who were punished under adult criminal law,[1] and provides an answer, at group level, to the question of why some perpetrators received heavier and lengthier sentences than others. However, the results do not necessarily explain why in two individual cases one offender is given a three-month conditional sentence and another a prison sentence of two years.

The statistical analysis in this chapter examines the impact of twelve measurable factors on both the sentence demanded and the sentence imposed, first in terms of their influence on the type of sentence and then on the length of the unconditional part of a prison sentence. A flaw in this study is that the analysis of the type of sentence imposed proved to be insufficiently reliable. Consequently, it has not been possible to answer the question of which factors played a role in a court's decision to impose a particular type of sentence in this chapter.

1 Of the 165 offenders convicted of hands-on indecent assault, 25 were tried under juvenile criminal law (see Chapter 2). This number is so small that it was decided only to analyse the factors that influence the sentences imposed on offenders tried under adult criminal law.

Because little is known about the influence of factors on the sentences in cases of sexual abuse specifically, the quantitative analyses are exploratory in nature. The factors that do have an objective and measurable influence on the sentence are not necessarily factors that the PPS and the courts consciously and explicitly take into account in their decisions, since decisions are made partly on the basis of unconscious thought processes.[2] The findings from these statistical analyses therefore do not necessarily match the impression that public prosecutors and judges themselves have of the influence of particular factors on the sentence. These findings could therefore help to provide greater insight into and awareness of the influence of the measured factors on sentences. Clarity about the reasons for imposing a particular sentence is important for criminal justice in general. After all, some factors were found to determine the length of the prison sentence imposed by the court to a substantial extent. Nevertheless, in addition to the measurable factors covered in this study, other non-measurable factors, or factors that cannot be identified from the judgment, can play an important role in determining the sentence that is demanded or imposed. After all, it is impossible to include all the facts and circumstances of a criminal trial in a quantitative study of sentencing. This constraint has been partly addressed in the next chapter by examining the characteristics that the courts themselves considered important in determining the sentence, as set out in the grounds for sentencing.

It was seen in the previous chapter that the framework for punishing offenders tried under juvenile criminal law differs significantly from that for persons tried under the adult regime. Because of the significant differences, the suspects and perpetrators who were tried as juveniles were excluded from the analyses in this chapter. As in Chapter 2, cases in which persons were also suspected or convicted of offences other than hands-on sexual abuse, were also omitted from the analyses in this chapter.[3]

Structure of the chapter

The research method employed and the factors included in the analysis are explained in §3.2. The influence of these factors on the type of sentence demanded and the length of the unconditional part of the prison sentence demanded and imposed are discussed in §3.3 and §3.4, respectively.

Since it was found in Chapter 2 that there are significant differences between the sentence that the PPS demands and the sentence the court imposes,[4] this chapter also explores whether the PPS and the courts are influenced by different factors in determining the severity of a sentence. The conclusions from the chapter are set out in §3.5.

3.2 Research method

For the purposes of the study, various factors were selected that could influence the decision of the PPS or the court to demand or impose a particular sentence. In that context, a distinction is made between

2 Gommer 2007, p. 133. Deelen 2015, pp. 356-363.

3 A total of seventeen perpetrators were *convicted* of other offences in addition to hands-on indecent assault and excluded from the analysis. Eight other persons were excluded who were *suspected* of other sex offences in addition to hands-on indecent assault (rape, sexual assault and/or inducing a child to engage in indecent acts by means of gifts or promises of money or goods) and six persons who were *suspected* of committing offences other than sex offences.

4 The PPS demanded heavier and longer prison sentences than the court imposed.

factors that determine the bandwidth of possible sentences (such as the maximum prescribed sentence) and those that could influence the severity of the punishment within that bandwidth (such as the degree of criminal responsibility).

The selection of factors

Many factors can influence the sentence. For the purposes of the analysis, twelve factors were selected for investigation of their influence on both the sentence demanded and the sentence imposed. The length of sentence demanded was also taken as a thirteenth factor in relation to the length of sentence imposed.

The first criterion is that the factor must be objectively identifiable in the judgments that were studied. For example, there is no information in the judgments about the ethnic background[5] of the offender, a factor that could influence the sentence, and it is therefore not included in the statistical model. Another factor that is mentioned in the literature as influencing the type of sentence is the question of whether the offender has a job or not;[6] this factor could also not be included for the same reason, since practically none of the judgments contained any information about whether or not the offender was employed.

A second criterion is that the factors must be quantifiable (measurable). For that reason, other factors mentioned in the literature as consciously or unconsciously influencing a decision on sentencing, such as the suspect appearing bored or aggressive during the trial[7] or the mood of the judge,[8] could not be assessed because they are not measurable.

A third requirement is that each factor had to reach a certain minimum threshold in the distribution in order to be included in the analysis. If the distribution of a factor is too imbalanced (for example, one group includes 94% of the offenders and the other group only 6%), the factor creates a numerical problem that prevents the statistical analysis from being performed. For that reason, the gender of the perpetrators is not included, for example, because the number of female offenders is too small to enable the impact of that factor to be calculated.[9] The same applies for the cases in which the suspect was charged with attempt or co-participation.

On the basis of previous studies of sentencing, thirteen factors that meet all three of these criteria were selected and grouped according to the classification used by Van Wingerden and Nieuwbeerta for their

5 Previous research has shown that the ethnic origin of the perpetrator influences the decision on sentencing. See, for example, Wermink et al. 2015; Wermink, de Keijser & Schuyt 2012; Van Wingerden & Wermink 2015; Steffensmeier, Ulmer & Kramer 1998.

6 See, for example, Van Wingerden & Wermink 2015; and Van Wingerden, Moerings & Van Wilsem 2011, p. 123.

7 The suspect's attitude can, however, genuinely influence the court's judgment, albeit unconsciously. See Deelen 2015, p. 360. In §4.3.8 there is a discussion of findings by the courts in their judgments with regard to a suspect's negative attitude during the proceedings.

8 Deelen 2015, p. 360.

9 It follows from earlier research that the perpetrator's gender influences the punishment. On this point, see Wermink, De Keijser & Schuyt 2012, and Van Wingerden & Wermink 2015, who describe studies that show that men receive an unconditional prison sentence more often than women, and that the length of the prison sentence is shorter for women than for men. See also Van Wingerden, Moerings & Van Wilsem 2011, p. 17; Steffensmeier, Ulmer & Kramer 1998.

quantitative study of the sentencing of murderers,[10] i.e., legal and procedural aspects and the characteristics of offenders, victims and offences.

Legal aspects

The legal aspects are the statutory parameters that the PPS and the courts have to respect in a specific case:[11] the legal definition of the offence and the maximum sentence that applies for it. The four offences covered in this study carry a maximum sentence of six (Articles 247 and 249(1) DCC), eight (Article 245 DCC) and twelve (Article 244 DCC) years' imprisonment, respectively. These maximum sentences can be increased by a third if the statutory aggravating circumstances apply. In the judgments that were studied, there were instances of the aggravating circumstances as set out in Article 248 DCC and concurrence of offences (Article 57 DCC).[12] These three factors (the prescribed maximum sentence and the grounds for increasing the sentence under Article 248 DCC and Article 57 DCC) together determine the bandwidth of the punishment the court can impose. Logically, these factors will influence the severity of the sentence. A previous conviction for a similar offence as a ground for increasing a sentence (pursuant to Article 43a DCC) was not included as such in the analysis because it had not been charged in any of the cases that were studied. The maximum sentence cannot be raised without the application of Article 43a DCC. The question of whether a relevant criminal record influenced a sentence is therefore reviewed in the discussion of the characteristics of offenders.

1 ***Articles of the law charged/proved by highest maximum sentence***

The 'most serious' offence for which each perpetrator was charged and convicted was analysed on the basis of the article of the law with the highest maximum sentence for the offence. If the perpetrator was charged with and convicted of offences under different articles, the point of departure was the offence under the article with the highest maximum sentence. That principle led to the following classification:

- Twelve-year offence: Article 244 DCC as the article with the highest maximum sentence
- Eight-year offence: Article 245 DCC as the article with the highest maximum sentence
- Six-year offence: Article 247 and/or Article 249(1) DCC as the article with the highest maximum sentence

2 ***Concurrence of offences (Article 57 DCC)***

Sexual abuse is an offence that is frequently not committed just once. An offender can repeatedly abuse a single victim, abuse multiple victims once or abuse multiple victims on multiple occasions. These situations fall under the rules governing concurrence of offences as laid down in Article 57 DCC. By virtue of subsection 2 of that article, the maximum sentence can be increased by a third in

10 Van Wingerden & Nieuwbeerta 2010. Because no quantitative studies into sentencing in sexual abuse cases could be found, the sentences in murder cases were chosen for the classification of factors in this study. The categories of factors in those cases can be easily applied to offences other than murder and manslaughter.

11 Van Wingerden & Nieuwbeerta 2010, p.13.

12 Only statutory factors that affect sentencing and which appeared frequently enough were included in the analysis. For example, attempt, an offence that carries a lighter sentence than the completed offence (Article 45 DCC), was only charged in five cases, and co-participation (Article 48 DCC) only in two cases. The aggravating ground of a relevant prior offence within the previous five years (Article 43a DCC) did not apply in a single case.

the event of concurrent offences. There are four different forms of concurrence.[13] The most common forms in the cases studied were 'successive commission of the same offence'[14] and 'successive commission of different offences.'[15] An offender who has been convicted of repeatedly committing indecent assault should obviously be punished more severely than a perpetrator who has abused a single child on one occasion.[16] Concurrence of offences corresponds in part with the duration of the abuse, since abuse committed once (no concurrence) occurs on a single day, while repeated abuse (concurrent offences) usually – but not necessarily – occurs on different days. When the abuse occurs on different days, the period of abuse can range from several days to many years. How long the abuse continued could only be ascertained on the basis of the period of abuse specified in the indictment or the verdict and cannot be established on the basis of the classification of concurrent offences. Hence the two factors are discussed separately (see factor 9 for the duration of the abuse).

3 ***Grounds for increasing the sentence under Article 248 DCC***
By virtue of subsection 1 (an offence committed by two or more persons in concert) and subsection 2 (indecent assault of the offender's own child) of Article 248 DCC, the maximum sentence for the offence can be increased by a third when either of those grounds is declared proven. It is therefore to be expected that the sentence will be higher in cases where those circumstances apply.[17]

These three factors determine the range within which the public prosecutor can demand a sentence and the court can determine the punishment. Within that range, there are numerous factors that influence the sentence: the procedural aspects and the characteristics of the perpetrator, the victim and the offence.

Procedural aspects

Procedural aspects relate to the circumstances of the criminal proceedings, such as the suspect's attitude.[18] The suspect's attitude during the proceedings is accounted for as follows:

4 ***Denial and confession***
All of the judgments that were studied involved convictions for indecent assault. In every judgment, therefore, the court found that the perpetrator had committed the offence. Does it affect

13 These are simultaneous repeated commission of the same offence, simultaneous commission of different offences, successive commission of the same offence and successive commission of different offences. See Cleiren, Crijns & Verpalen 2014, Article 57 DCC, note 1.

14 This is the case, for example, if a father repeatedly abuses his child over a period of a year with repeated acts of sexual penetration (Article 244 DCC), or if a perpetrator abuses multiple victims once or repeatedly and the offences all fall under the same provision of criminal law.

15 This is the case, for example, if a father repeatedly abuses his child between the ages of eleven and fourteen with acts involving sexual penetration (Article 244 DCC and Article 245 DCC) or if a perpetrator abuses multiple victims once or repeatedly and the offences fall under different provisions of criminal law (for example, both Articles 244 and 245 DCC).

16 See also Van Wingerden & Nieuwbeerta 2010, p. 14.

17 See §4.4.1 and §4.6.1 for a qualitative analysis of the use of these grounds for increasing the sentence in the judgments.

18 Van Wingerden & Nieuwbeerta (2010, p.14) also regard the court district in which the suspect is tried as a procedural aspect. The court is always named in the judgment, and is a measurable factor, but could not be included as a predictor in the model because the judgments that were studied for this report cover the period 2012 and 2013. The Judicial Map (Revision) Act (*Wet herziening gerechtelijke kaart*) entered into force in 2013, so there are now only eleven district courts rather than eighteen.

the punishment whether the offender admitted the offences or continued to deny them? If so, does a confession lead to a lighter sentence?[19] And does a full confession lead to a lighter sentence than a partial confession? To investigate the influence of a confession on sentencing, the judgments were divided into four groups: a complete confession, a partial confession, a complete denial, and a final category comprising judgments that contained no information about whether the suspect admitted or denied the offence.

Characteristics of offenders

Characteristics of the offender himself can influence the sentence imposed (see also §4.3). Factors that can be relevant are the suspect's criminal record and degree of criminal responsibility.

5 ***Relevant criminal record***

It seems self-evident that an offender who has previously been convicted of a sex offence should receive a heavier sentence than a person who has no previous record of committing such an offence.[20] The law provides that the sentence for an offender who was convicted of a similar crime in the preceding five years can be increased by a third. This provision (Article 43a DCC) was not included in the indictment in any of the cases that were studied. However, it emerged from a number of judgments that the perpetrator had previously been convicted of a sex offence. To investigate whether these offenders were punished more severely than offenders who had no relevant criminal record, the grounds for sentencing in the judgments were studied to ascertain whether they contained any information about a prior conviction of the perpetrator for a sex offence.[21] The review extended to all previous convictions, not just convictions in the previous five years.

6 ***Degree of criminal responsibility***

An offender with diminished responsibility has a lesser degree of culpability, and hence less criminal liability, than a person with full criminal responsibility.[22] Following the principle that 'the punishment should fit the degree of guilt,' it is logical to assume that perpetrators with diminished responsibility will in principle receive a lighter sentence than offenders with full criminal responsibility.[23] Research has shown that diminished responsibility does frequently lead to a lighter sentence or is a reason for imposing a measure, in combination with a punishment or otherwise.[24] To investigate whether this factor plays a role in the sentences demanded and imposed in cases of hands-on sexual abuse, the sentences imposed on offenders with full criminal

19 Previous research into sentencing has shown that offenders who deny the charges receive longer prison sentences. See Wermink 2014, p. 93.

20 It is customary to include the existence of a (relevant) criminal record in research into sentencing. See, for example, Wermink 2014, p. 65; Wermink, De Keijser & Schuyt 2012; Van Wingerden & Nieuwbeerta 2010, pp. 14-17.

21 In §4.3.1 there is a discussion of the consideration given by courts to relevant previous offences in their grounds for sentencing.

22 For a description of the degree of guilt and sentencing in cases in which there was found to be diminished responsibility, see Claessen & De Vocht 2012.

23 Claessen & De Vocht (2012) concluded that this is not necessarily the case.

24 Schuyt 2010, p. 281.

responsibility were compared with the sentences for offenders who were regarded by the public prosecutor or the court as having some degree of diminished responsibility.[25]

Characteristics of victims

Although there is some evidence in the literature that characteristics of victims, such as their gender and age, can influence the sentence,[26] from a legal perspective it seems unlikely that this also applies in cases of sexual abuse of underage victims. To test that assumption, two characteristics of victims were included in the analysis.

7 ***Age of victim(s)***

With the difference in the prescribed maximum sentences in Articles 244 and 245 DCC, the legislature reflected the fact that sexual penetration of a child under the age of twelve is a more serious offence demanding a heavier sentence than penetration of a child aged twelve or older. Apart from the difference in the maximum sentences, does the victim's age influence the sentences that are demanded and imposed?[27] For example, is a young child seen as more defenceless and more innocent, making the charges against the offender more serious and justifying a heavier sentence?[28] The analysis looked at whether the offender had abused at least one victim under the age of twelve or solely victims aged twelve or older.

8 ***Gender of victim(s)***

As shown in Part 1 of this study, most victims in the judgments that were studied were girls.[29] Does the victim's gender influence the sentence that is demanded or imposed? There are no legal arguments for assuming that it does, but female victims might be regarded as less resilient, which could result in a heavier sentence.[30] To test this hypothesis, judgments in cases in which at least one boy was abused were compared with judgments in which the victims were exclusively girls.

Characteristics of the offence

Characteristics of the offence relate to the seriousness of the circumstances. The *modus operandi*, the *locus delicti* and the relationship between the perpetrator and the victim fall under this heading.[31] The four factors discussed below were included in this analysis since they could be objectively measured and could be derived from the judgments that were studied.

9 ***Duration of the period during which the abuse occurred***

Does abuse that continued for a year lead to a more severe sentence than abuse that lasted for two months? To analyse the influence of the duration of the period of abuse on the sentence, for each case the longest period of abuse of each victim was studied.[32] In cases involving multiple

25 The qualitative analysis of the courts' findings on the criminal responsibility of offenders in their judgments is discussed in §4.3.3.
26 See Van Wingerden & Nieuwbeerta 2010, p. 15.
27 The age-specific consequences of sexual violence are discussed in §4.2.
28 See Van Wingerden & Nieuwbeerta 2010, pp. 15 and 17.
29 National Rapporteur 2016, p. 23.
30 Van Wingerden & Nieuwbeerta 2010, p. 15.
31 Van Wingerden & Nieuwbeerta 2010, p.15.
32 See §4.4.4 for a qualitative analysis of the courts' findings in their judgments regarding the duration of the abuse.

victims, the duration of the abuse was calculated for each victim[33] and, at perpetrator level, only the longest period of abuse was included in the analysis.

10 ***Relationship between victim(s) and offender34***
As reported in Part 1 of this study, the vast majority of the victims were abused by a person they knew and 36% of the victims were abused by a family member.[35] Accordingly, family members formed the largest single group of perpetrators. Does the fact that the abuse was committed by a family member influence the sentence?[36] And if so, how? On purely legal grounds, one would not expect the relationship between the offender and the victim to be a separate factor influencing the sentence, over and above the effect of the aggravating ground in Article 248(2) DCC (the offender's abuse of his own child).[37] To determine whether this hypothesis is correct, the cases in which at least one family member was abused were compared with cases in which none of the victims were family members.

Two further factors that might be expected to influence the punishment specifically in cases of hands-on sexual abuse were also assessed. These factors (the number of victims and the nature of the sexual acts) relate to the seriousness of the circumstances of the case and can therefore also be regarded as characteristics of the offence.

11 ***Number of victims in the indictment/conviction***
Is an offender who abuses two children punished more severely than an offender who abuses a single child? And, if so, does the sentence increase in proportion to the number of victims? Research into sentences in murder and manslaughter cases shows that the PPS demands and the courts impose a heavier sentence if there was more than one victim.[38] Therefore it is likely that the number of victims will play a role in the sentence demanded and imposed for sexual abuse. Whether that is actually the case is discussed in §3.3 and §3.4.

33 That is the length of time between the date on which the most recent proven offence involving a particular victim ended and the date on which the first proven offence involving the same victim commenced. A longer proven period can also relate to a single incident of abuse, for example, when the precise date on which the single incident of abuse took place cannot be established. Therefore, in cases where there was no concurrence of offences (Article 57 DCC) but where the period of the proven offence was longer than a day, the period of abuse was manually adjusted to a single day, since a single incident of abuse that took place at a particular time within a longer period clearly did not last for longer than a single day within that period.

34 In addition to the *modus operandi*, Van Wingerden and Nieuwbeerta also make a distinction in the characteristics of the offence between the types of murder or manslaughter that were committed, such as the killing of a partner, the killing of a child and the killing of a parent. In other words, they examine the relationship between the victim and the perpetrator. It therefore also seems logical to regard the relationship between the victim and the perpetrator as a characteristic of the offence in cases of hands-on sexual abuse.

35 National Rapporteur 2016, p.20.

36 See §4.6.1 for a qualitative review of the grounds for sentencing on this point.

37 Van Wingerden & Nieuwbeerta (2010, p. 15) describe how the victim-perpetrator relationship and the associated public disquiet can influence the severity of the sentence. Their research also shows that murder committed within a relationship (parent-child) is punished more lightly. See Van Wingerden & Nieuwbeerta 2010, p. 18.

38 Van Wingerden & Nieuwbeerta 2010, pp. 17-19.

12 ***Nature of the sexual act***

As explained in Part 1 of this study,[39] the sexual acts for which perpetrators were charged and convicted were divided into four categories, corresponding with the classification in the Directive on Sentencing for the Sexual Abuse of Minors drafted by the Council of Procurators-General.[40] Under these guidelines – which did not exist at the time of the judgments that were studied – the more serious the category of abuse, the higher the upper and lower thresholds of the bandwidth of the sentence that the PPS can demand. To investigate whether the sentence demanded, and perhaps also the sentence imposed by the court, already corresponded with the nature and seriousness of the sexual acts before the directive took effect, for each case it was determined what the most serious sexual act charged and declared proven was.[41] For statistical reasons, only sexual acts in category 3 (touching the genitals and penetration other than with a genital organ) and category 4 (penetration with a genital organ)[42] were included in the analysis.

Finally, the length of the prison sentence demanded is also included in the model, as a thirteenth factor, in the analysis of the length of the prison sentence imposed.

The application of the factors in the analysis

Twelve factors that could influence both the sentence demanded and the sentence imposed were selected. To investigate the influence of these factors, multivariable regression analyses were carried out for the types of sentence and lengths of sentence that were demanded and imposed. Regression analyses are frequently-used statistical methods for quantitative research into sentencing.[43]

The statistical analyses were performed in such a way as to automatically eliminate the factors that did not have any significant influence. This means that for each research question a model was automatically created with the factors that could best predict the type of sentence and the length of prison sentence.[44] Only the significant results are mentioned in this chapter. By significant is meant that there is less than a 5% chance that the results are based purely on coincidence. For more information about the method used to produce the statistical models, see Explanation of Research Methods A.1.4.

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39 National Rapporteur 2016, pp. 10-11.

40 Government Gazette 2015, 4052.

41 When various offences and multiple sexual acts were charged or declared proven in a case, only the most serious sexual act was included in the analysis.

42 Category 1 (corruption and undressing a victim) and category 2 (touching, with the exception of naked genitals) were so seldom the principal sexual acts charged/declared proven that the suspects and perpetrators with these values were classified as 'missing' for statistical reasons. Each of the sexual acts encompasses both acts that were performed by the perpetrator on the victim and acts that were performed by the victim on the perpetrator or on a third party.

43 See, for example, Van Wingerden & Nieuwbeerta 2010; Van Wingerden, Moerings & Van Wilsem 2011; Wermink, De Keijser & Schuyt 2012; Wermink et al. 2015.

44 With the help of a statistical model it is possible to make a prediction about a particular issue. In this case, it is a prediction of which factors influence the sentence. 'Prediction: a statement about what is expected to happen in the future on the basis of past experience or prior observation'. Pearson Education, www.pearsoneducation.nl/burnsbush/Hoofdstuk%2019.ppt (consulted on 22 March 2016). In this case, the prior observations are the values for the perpetrators on each factor. On the basis of these data, one can predict the sentence that will be demanded for and imposed on future suspects/perpetrators of hands-on sexual abuse.

In each model, the suspects and perpetrators of offences other than exclusively hands-on indecent assault were removed from the analysis.

The discussion below starts with the factors that were found to influence the sentences demanded by the PPS, followed by the factors that influence the sentences imposed by the courts. For ease of reference, a table showing the influence of each factor is inserted at the end of the chapter (Table 3.1).

3.3 Type of sentence

This section contains a review of the factors that can predict the type of sentence that will be demanded and imposed. As in Chapter 2, the principal sentences demanded by the PPS and imposed by the courts are classified according to the severity of the type of sentence and divided into the following categories in descending order of severity:[45]

- An unconditional prison sentence (sometimes in combination with community service)
- A partially conditional prison sentence (sometimes in combination with community service)
- An entirely conditional prison sentence (sometimes in combination with community service)
- An unconditional or (partially) conditional sentence of community service[46]

The most severe form of punishment, an entirely unconditional prison sentence, is the reference category, meaning that the other three categories are compared with it. A reference category is chosen on substantive grounds. In this case, an unconditional prison sentence is the most severe type of sentence that the PPS can demand and the court can impose. An unconditional prison sentence of three years is more severe, for example, than a prison sentence of three years, of which two years is conditional, or an entirely conditional prison sentence of three years. However, the fact that an unconditional prison sentence is the most severe type of sentence does not mean that it is also perceived as the heaviest sentence, or that it is, in fact, the heaviest sentence in individual cases. For example, an unconditional prison sentence of two months will be perceived as less severe, and is less severe, than a prison sentence of two years, of which one year is conditional. With the customization that is possible in sentencing, an infinite variety of sentences is possible in terms of the length of the unconditional and conditional parts of a sentence, which makes it difficult to compare one punishment with another. Accordingly, a simplified model was used to compare types of sentence, in which the most severe type of sentence – the unconditional prison sentence – is compared with the three less severe types.

The aim of this section is to identify the factors that influence the type of sentence to such an extent that they increase the chance of an entirely unconditional prison sentence rather than a community service sentence, an entirely conditional prison sentence or a partially conditional prison sentence. For statisti-

45 The suspects/perpetrators for whom an acquittal, a conviction with no punishment or only a TBS/PIJ order was demanded or imposed were excluded from the analysis.

46 With the entry into force of Article 22b DCC, it is no longer possible to impose a sentence of community service as the principal sentence for offences against the articles investigated in this study. This provision applies for offences committed on or after 3 January 2012. Some of the judgments from 2012 and 2013 related to offences committed before that date.

cal reasons, it was only possible to analyse the influence of the factors referred to above on the type of sentence demanded. In short, what factors predict the chance that the PPS will demand the heaviest type of sentence (the reference category) rather than the three 'lighter' types of sentence? In other words, in this section the three 'lighter' types of sentence are compared with the most severe. The lighter types of sentence are therefore not mutually comparable.

3.3.1 Type of sentence demanded

Of the 156 suspects who were tried under adult criminal law, 129 were suspected exclusively of sexual violence against children. The values for 112 suspects were ultimately included in the analysis.[47]

3.3.1.1 The results of the statistical analysis: which factors influence the PPS's decision?

Which of the factors ultimately influence the PPS's decision to demand a particular principal sentence? As explained in §3.2 (Research Method), the factors that had no significant influence on the sentence demanded were automatically removed by a process of elimination in the course of the analysis.[48] This process of elimination produced a model that explains the sentence demanded to a significant extent.[49] The most serious sexual act that was charged,[50] the maximum sentence under the different articles of the law,[51] the grounds for increasing the sentence pursuant to Article 248 DCC[52] and the number of victims specified in the indictment[53] all had a significant main effect on the sentence demanded. These factors influenced the sentence demanded independently of each other. There could also have been a cumulative effect: the chance that the PPS would demand an entirely unconditional prison sentence was greater, for example, when a suspect was charged not only with a specific sexual act, but also under Article 248 DCC. Precisely how these four factors had an effect is discussed in the following subsection.

As explained at the beginning of §3.3, the model compared the fully unconditional prison sentence with the less severe types of sentence. For statistical reasons, the suspects for whom the PPS demanded community service as the principal sentence ($N=4$) were excluded from the analysis. The results of the statistical analysis of the entirely unconditional prison sentence versus (1) the entirely conditional prison sentence and (2) the partially conditional prison sentence are presented in Appendix 2. This chapter is concerned solely with the overarching results – the factors that significantly increase the chance that the PPS will demand an entirely unconditional prison sentence.

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47 The PPS demanded only a TBS order for one suspect and an acquittal for one suspect. These suspects were omitted from the analysis. Suspects were also excluded from the analysis for statistical reasons if they had no value for a predictive factor (for example, the age of the victim was not known). These suspects were automatically excluded by SPSS, the statistical analysis program used for this study.

48 The degree of criminal responsibility was excluded from the analysis for statistical reasons. The PPS only argued diminished responsibility in relation to four suspects.

49 $\chi^2(16)=60.54$; $p<0.001$. This model was produced via a stepwise multinomial logistic regression (backward elimination).

50 $\chi^2(2)=13.27$; $p=0.001$.

51 $\chi^2(4)=19.18$; $p=0.001$.

52 $\chi^2(2)=10.18$; $p=0.006$.

53 $\chi^2(2)=7.66$; $p=0.022$.

3.3.1.2 The results of the statistical analysis in more detail

The figure below shows how the significant factors influence the decision of the PPS (unconsciously or consciously) to demand an entirely unconditional prison sentence .

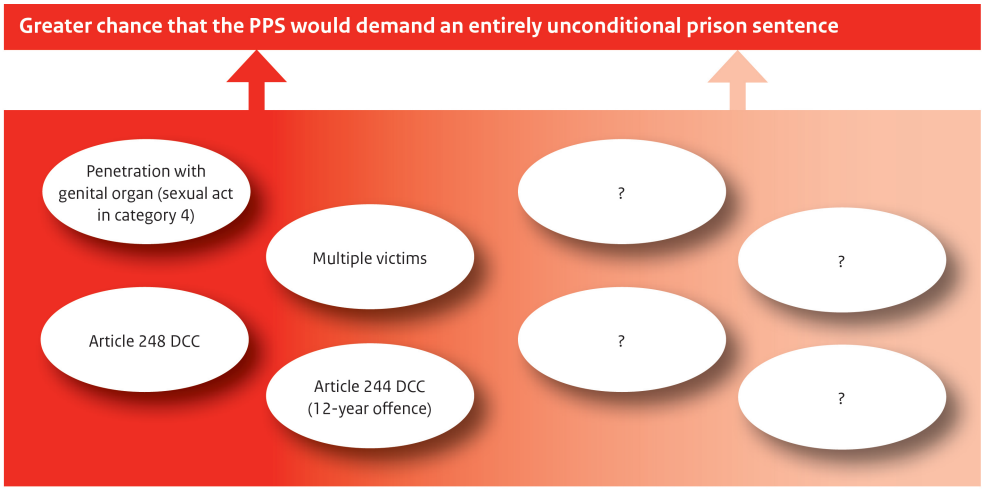

Figure 3.1 Factors[54] that influence the type of sentence demanded (2012-2013).

Two of the three legal aspects that determine the bandwidth of a sentence were found to influence the type of sentence demanded by the PPS: the grounds for increasing the sentence in Article 248 DCC and the offences charged in the indictment that carried the highest maximum sentence. Specifically, if an offence under Article 244 DCC, a twelve-year offence, was charged, there was a greater chance that the PPS would demand an entirely unconditional prison sentence rather than any of the less severe types of sentence.[55] The same effect could also be seen in cases where one of the grounds for increasing the sentence in Article 248 DCC was charged. On the other hand, concurrence of offences (Article 57 DCC) did not influence the type of sentence demanded, which is remarkable, since an offender who is convicted of multiple incidents of sexual abuse should logically be punished more severely than an offender who has committed a single act of abuse.[56]

Furthermore, the characteristics of the offence that were expected to influence the severity of the sentence specifically in cases of hands-on sexual abuse did so. The most serious sexual act charged (catego-

54 The number of victims only plays a role for the PPS in the distinction between a fully conditional prison sentence and an entirely unconditional prison sentence, and not in the distinction between a partially conditional prison sentence and an unconditional one.

55 Articles 247 and 249(1) DCC only made a significant distinction between the chance of a fully conditional prison sentence and a fully unconditional prison sentence being demanded. This distinction was not found with the partially conditional versus fully unconditional prison sentence.

56 See also Van Wingerden & Nieuwbeerta 2010, p. 14.

ry 4, penetration with a genital organ)[57] and the number of victims specified in the indictment both played a role. The more victims a suspect was alleged to have abused, the greater the chance that the PPS would demand an entirely unconditional prison sentence.[58] That the seriousness of the sexual act influenced the severity of the sentence demanded corresponds with the point of departure adopted by the PPS in its Directive on Sentencing for Sexual Abuse of Minors.[59] Those guidelines did not exist at the time of the judgments that were studied, but the analysis shows that the underlying principle of the 2015 directive (that more serious sexual acts should be punished more severely) was already being followed in 2012 and 2013. The analysis shows that the other two characteristics of the offence, the duration of the period for which the abuse continued and the relationship between the offender and the victim, did not have a significant influence on the PPS's decision on the type of sentence it demanded. In other words, the chance that it would demand an unconditional prison sentence did not increase when a suspect had allegedly committed the abuse for years.

As explained in the section on the Research Method (§3.2), there are two offender characteristics that had been found in other studies to influence the sentence: having a relevant criminal record and the degree of criminal responsibility.

The degree of criminal responsibility could not be included in this study because of the small number of suspects found by the PPS to have diminished responsibility.[60] The effect of criminal responsibility could therefore not be analysed. It was noteworthy, however, that the existence of a relevant criminal record did not significantly influence the type of sentence demanded. In the cases studied, the fact that the suspect had a relevant criminal record did not increase the chance that the PPS would demand an unconditional prison sentence, even though that fact has been identified as a relevant factor in the literature.[61] A possible explanation for this is the theory that suspects with a relevant criminal record who are convicted a second time should be monitored more closely in order to prevent them from reoffending again. The idea is that one way of accomplishing that would be to impose a (partially) conditional prison sentence with an order for supervision and treatment during the conditional part of sentence, with a view to preventing further recidivism.

Finally, none of the three procedural aspects or victim characteristics were found to have a significant influence on the decision by the PPS to demand a particular type of principal sentence.

Other factors that were not included in the analysis would logically be expected to influence the PPS's decision as well. Examples might be the offender's ethnicity and whether or not he has a job. As mentioned above, this information was not included in the judgments studied and could therefore not be incorporated as a measurable factor in the model. It is also possible that non-measurable factors, such

57 The sexual acts encompass acts that were performed by the perpetrator on the victim and acts performed by the victim on the perpetrator or a third party.

58 However, this only applies for the choice between a fully conditional or a fully unconditional prison sentence (B=-1.66; $Exp(B)$=0.19; $Wald\ \chi^2(1)$=4.99; p=0.026). The number of victims played no significant role in the choice between a partially conditional or fully unconditional prison sentence.

59 *Government Gazette*. 2015, 4052.

60 The PPS argued that the suspect had diminished responsibility in only four cases.

61 Wermink 2014, p. 65; Wermink, De Keijser & Schuyt 2012; Van Wingerden & Nieuwbeerta 2010, pp. 14-17. The studies referred to did not relate specifically to cases involving sex offences.

as the suspect's personality, influence the PPS in the sentences it demands. Chapter 4 discusses whether such non-measurable factors play a role in the decision of the court to impose a particular sentence in individual cases.

3.3.2 Type of sentence imposed

In §2.2.1 it was shown that there is a correlation between the sentence demanded by the PPS and the sentence imposed by the court.[62] It is therefore likely that the type of sentence demanded influences the type of sentence imposed. In addition to the twelve factors mentioned in the section on the Research Method (§3.2), the sentence demanded was included in the model as an additional factor. The model could not, however, be properly estimated on the basis of the thirteen factors, so the results were not sufficiently reliable.[63] This means that one of the research questions, namely what factors influence the type of sentence imposed, could not be answered.

3.4 Length of sentence

In the previous section, the factors that influenced the type of sentence were discussed. However, the type of sentence does not necessarily say anything about the severity of the sentence; an unconditional prison sentence of several days can be perceived as lighter than a sentence of 240 hours of community service. To learn more about the factors that influence the length of a prison sentence, this section is devoted to the length of the unconditional part of the sentence. This means that only cases in which a partially conditional or entirely unconditional prison sentence was demanded or imposed were included in the model. Where there was a partially conditional prison sentence, only the length of the unconditional part was included in the analysis. This is a common method in similar studies of sentencing.[64]

3.4.1 Length of sentence demanded

The PPS demanded an unconditional or partially conditional prison sentence for 88 adult suspects.[65] The values for 80 of these suspects were included in the analysis.[66]

3.4.1.1 The results of the statistical analysis: which factors influence the PPS's decision?

After the process of elimination of factors, the model that best predicted the length of prison sentence that was demanded consisted of four factors:[67],[68] the highest maximum sentence under the different articles of the law,[69] the number of victims mentioned in the indictment,[70] the length of the period of

62 $r_s(124)= 0.79$; $p<0.001$.
63 For further information, see Explanation of Research Methods A 1.4.1.
64 See, for example, Wermink et al. 2015; Van Wingerden & Nieuwbeerta 2010.
65 These are persons suspected exclusively of hands-on sexual abuse who were tried as adults.
66 Whenever a suspect had no value for a predictive factor (for example, the age of the victim was unknown), the suspect was automatically excluded.
67 The degree of criminal responsibility was excluded for statistical reasons; there were only four suspects who were regarded by the PPS as having diminished responsibility according to the relevant judgments.
68 $F(4.75)=15.16$; $p< 0.001$. This model was produced using a stepwise multiple regression (backward elimination). See the Explanation of Research Methods A.1.4.2 for more information about the model.
69 $B=-294.56$; $\beta = -0.40$; $p<0.001$. The 95% reliability interval is [-426.28;-162.83].
70 $B=128.64$; $\beta = 0.33$; $p<0.001$. The 95% reliability interval is [60.88;196.40].

abuse charged[71] and the gender of the victims[72] were all significant predictors of the length of the prison sentence demanded by the PPS. As with the type of sentence demanded, these four factors have an influence independently of each other and there could be a cumulative effect.

The four factors predicted almost half of the variation in the length of the unconditional prison sentence demanded. In total, they explained 42% of the variation in the length of the sentences demanded.[73]

3.4.1.2 The results of the statistical analysis in more detail

The figure below shows how the significant factors either unconsciously or consciously influence the decision of the PPS to demand a heavier sentence.

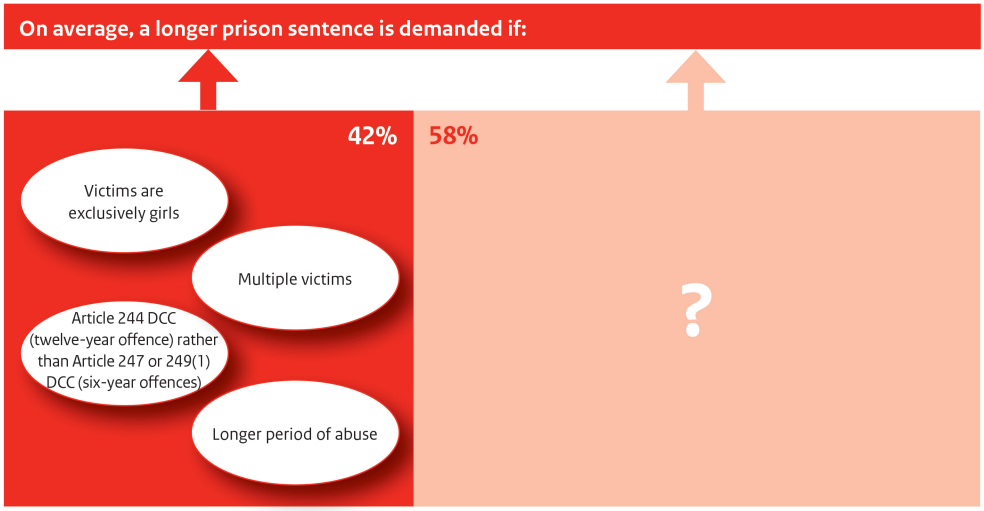

Figure 3.2 The factors that influence the length of the sentence that is demanded (2012-2013)
The darker shaded segment shows that the factors together explain 42% of the variation in the length of sentence demanded.

It was found that only one of the three legal aspects influence the length of prison sentence that is demanded. Only the factor 'article of the law with the highest maximum sentence under which charges were brought' had a significant influence. On average, the length of the sentence demanded was higher if a twelve-year offence (Article 244 DCC) was charged than if a six-year offence was charged (Article 247 or 249(1) DCC), which is a logical outcome. As shown in §3.3.1.2, this factor also influenced the type of sentence demanded, so it appears to be a very important factor in determining the sentence that will be demanded.[74]

71 *B*=0.12; *ß*=0.29; *p*=0.002. The 95% reliability interval is [0.05;0.19].
72 *B*=205.34; *ß*= 0.20; *p*=0.031. The 95% reliability interval is [18.98;391.69].
73 *Adj.* R^2 =0.42.
74 It should be noted here that there are no significant differences for the comparison between a twelve-year offence (Article 244 DCC) and an eight-year offence (Article 245 DCC).

Remarkably, however, neither Article 248 DCC nor Article 57 DCC (concurrence of offences), both of which are grounds for increasing the maximum sentence by a third, appeared to significantly influence the length of the sentence that was demanded. Logically, these factors should have, since, by including the statutory grounds for increasing the sentence in the indictment, the PPS emphasises the suspect's greater criminal liability and, in the event of a conviction on those grounds, the maximum sentence that can be imposed is substantially higher.

A less remarkable finding is that, on average, the longer the abuse continued and/or the larger the number of victims named in the indictment – both factors that are characteristics of the offence – the longer the sentence demanded would be.[75] In other words, a lengthy period of abuse and multiple victims are reasons for the PPS to demand lengthier prison sentences, on average, than if there was a single victim or for abuse that continued for a shorter period. As shown in §3.3.1.2, the factor 'multiple victims' also influenced the type of sentence demanded by the PPS; when there were multiple victims, there was a greater chance that the PPS would demand an unconditional prison sentence, and when a prison sentence was demanded, the length of the sentence would, on average, also be longer than when there was a single victim. That this factor affects both the type of sentence and the length of prison sentence demanded indicates that it plays a prominent role (consciously or unconsciously) in the formulation of the sentence to be demanded.

Another characteristic of the offence, the nature of the sexual act, did play a significant role in the type of sentence demanded, but not in the length of sentence. The guidelines on sentencing for sexual abuse of minors, which took effect in 2015, embody the principle that the more serious the sexual act, the longer the prison sentence that will be demanded.[76] It is likely that, with the entry into force of the directive, the nature of the sexual acts will start to have a significant influence on the length of the term of imprisonment that is demanded.

On closer examination, a notable provision of the directive is the following: 'Specifically, this means that with a victim under the age of twelve, the victim's age is a factor in the sentence, the general rule being the younger the victim, the higher the sentence to be demanded.'[77] However, in the judgments from 2012 and 2013 that were studied, the victim's age had no effect on the length of the prison sentence demanded (see Figure 3.2). As with the nature of the sexual acts, the victim's age is also likely to significantly influence the length of prison sentence demanded in more recent cases.

Another victim-related characteristic, the gender of the victims, did appear to have a significant influence on the length of prison sentence demanded by the PPS. On average, a longer sentence was demanded when a suspect was charged with abusing solely girls than if the indictment included charges

75 The research by Van Wingerden & Nieuwbeerta in 2010 (see p. 19) also showed that, on average, the PPS demanded a longer prison sentence if there was more than one victim.

76 *Government Gazette*. 2015, 4052.

77 *Government Gazette*. 2015, 4052, p. 5.

of abusing at least one boy.[78] There is no legal explanation for this effect, although previous research has shown that a victim's gender does play a role in criminal cases. Research into cases of murder and manslaughter has shown, for example, that the PPS demands a heavier prison sentence if the victim is a woman.[79] This could be a case of stereotyping, with women being regarded as more vulnerable or defenceless than men. It is not known whether, and if so to what extent, there is also stereotyping in cases involving sexual abuse of children. There is therefore no clear explanation for the effect that higher sentences are demanded in cases of hands-on sexual abuse when the victims are girls.

Neither the characteristics of offenders (a relevant criminal record and the degree of criminal responsibility) nor procedural aspects (denial or confession) appeared to have a significant influence on the term of imprisonment demanded by the PPS.

In addition to the four significant predictors, there are other factors that influence the PPS's decision, since this model was unable to explain 58% of the variation in the length of the sentences demanded. The attitude of the suspect, the suspect's personal circumstances, the chance of recidivism, the consequences for the victim, public disquiet and other factors can also play a role in the formulation of the sentence demanded. These factors were not included in this model because they cannot be measured or because it was impossible to tell from the judgments whether they had played a role (see §3.2).

3.4.2 Length of sentence imposed

The courts imposed an unconditional or partially conditional prison sentence on 80 offenders.[80] The values for 74 of these offenders were included in the analysis.[81] Since it was shown in §2.3.1 that there is a close correlation between the sentence demanded by the PPS and the sentence imposed by the court, the length of sentence demanded is also included as a predictive factor. Other research has also shown that the sentence demanded by the public prosecutor is an important anchor point for the courts in their decision on sentencing.[82]

78 There is a legally relevant difference between penetration *of* the victim and penetration *by* the victim. This distinction leads to undesirable differences in the potential sentence for perpetrators, depending on the gender of their victims. On this point, see National Rapporteur 2016, pp. 11-12. Theoretically, the effect of gender might therefore be explained by the article of the law under which the charges are brought (where penetration is an element of the offence under the article) and the sexual acts (penetration with a genital organ or not). This hypothesis was tested by including in the model the interactions between the gender of the victims and (1) the sexual acts and (2) the articles of the law carrying the highest maximum sentence. This showed that the significant effect of the gender of victims on the length of sentence demanded did *not* depend on the sexual acts or the articles under which the charges were brought. It is therefore not known why the PPS demands longer prison sentences when only girls are abused.

79 Van Wingerden & Nieuwbeerta 2010, p. 20.

80 These were perpetrators of exclusively hands-on sexual abuse who were tried as adults.

81 A perpetrator was automatically eliminated if he had no value for a predictive factor (for example, the victim's age was not known).

82 Van Wingerden, Moerings & Van Wilsem 2011, p. 102.

3.4.2.1 The results of the statistical analysis: which factors influence the court's decision?

After the process of elimination of factors, the model that best predicted the length of the prison sentence imposed consists of four factors.[83] The length of the prison sentence demanded (in days),[84] the most serious sexual act declared proven,[85] the age of the victims[86] and the gender of the victims[87] are all significant predictors of the length of the actual prison sentence, with the length of sentence demanded having the greatest influence.

These four factors predicted the length of the prison sentence to a very large extent – together they explained 82% of the variation in the length of sentences.[88] There is therefore a very strong correlation.[89]

3.4.2.2 The results of the statistical analysis in more detail

The figure below shows how the significant factors influence the decision of the court (consciously or unconsciously) to impose a longer prison sentence.

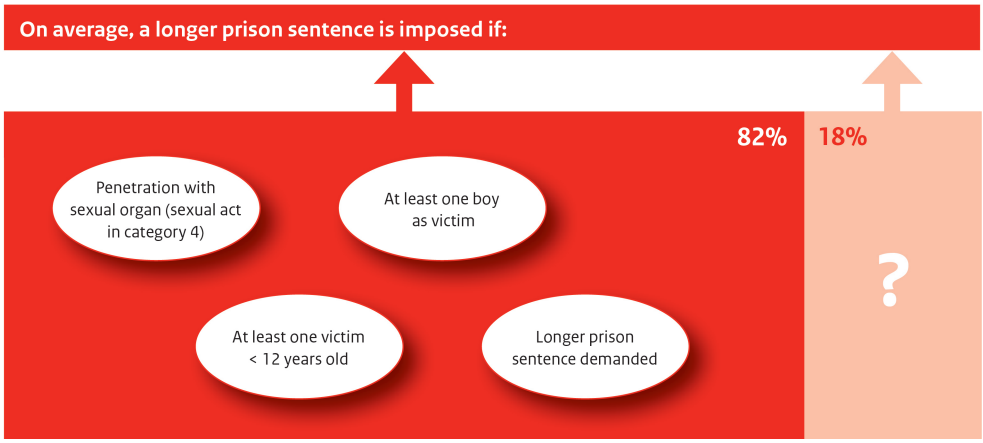

Figure 3.3 Factors that influence the length of the sentence imposed (2012-2013).
The darker shaded area shows that the factors together explained 82% of the variation in the length of the sentences imposed.

The length of sentence demanded by the PPS greatly influences the length of the sentence imposed by the court. The longer the sentence demanded, the longer the average prison sentence imposed by the court.

83 $F(5.68)=66.03$; $p<0.001$. This model was produced with a stepwise multiple regression (backward elimination).
84 $B=0.63$; $\beta=0.81$; $p<0.001$. The 95% reliability interval is [0.55;0.72].
85 $B=134.96$; $\beta=0.17$; $p=0.005$. The 95% reliability interval is [43.11;226.80].
86 $B=-153.94$; $\beta=-0.20$; $p=0.001$. The 95% reliability interval is [-239.59;-69.28].
87 $B=-122.21$; $\beta=-0.10$; $p=0.048$. The 95% reliability interval is [-243.46;-0.97].
88 *Adj.* $R^2=0.82$.
89 University of Leiden, www.let.leidenuniv.nl/history/RES/stat/html/les10.html (consulted on 25 July 2016).

This accords with the finding in §2.3.1 that the existence of a causal relationship between the length of the prison sentence demanded and the length of prison sentence imposed is highly plausible. The literature also confirms that the sentence demanded is an important anchor point for the court in its decision on sentencing.[90] It is therefore no surprise that the sentence demanded had a strong influence on the ultimate punishment.

Because the variation in the length of prison sentence demanded was partially (42%) explained by the victim's gender, the length of the period of abuse, the number of victims and the prescribed maximum sentence (see §3.4.1), these four factors very possibly also have an effect on the term of imprisonment imposed *via the sentence demanded*. However, the fact that three of the four factors in the predictive model[91] did not individually display any significant effects on the sentence that was imposed means that no extra weight was assigned to these factors in determining the term of imprisonment that was imposed. The exception is the gender of the victims. An outcome that initially seems surprising is that, on average, the court imposed heavier sentences in cases where at least one boy had been abused by the offender. But in light of the finding in §3.4.1 that, on average, the PPS demanded a longer prison sentence in cases in which solely girls were victims, it appears that, by imposing heavier sentences when a boy has been abused, the courts neutralize (consciously or unconsciously) the effect of the gender of victims on the length of sentences.

The other victim-related characteristic, the age of the victims, also had a significant influence on the length of the prison sentence imposed. On average, the court pronounced longer sentences if at least one victim was under the age of twelve. Although the legislature reflected the fact that penetration of a child under the age of twelve is more serious than penetration of a child between the ages of twelve and sixteen[92] by stipulating different maximum sentences in Articles 244 and 245 DCC, there is no such distinction between the maximum sentences prescribed in the other two articles that were investigated (Articles 247 and 249(1) DCC). The fact that the age of the youngest child at the time the abuse commenced did make a difference for the length of the prison sentence imposed, quite apart from the article under which the offender was convicted, indicates that age also played a role separately from the prescribed maximum sentence.

The nature of the sexual act committed (a characteristic of the offence) also affected the length of the sentence significantly. On average, the court imposed a longer prison sentence if there was sexual penetration.[93]

Factors that have no significant influence

What is striking is that two of the three legal aspects did not play a significant role in the length of sentence imposed by the courts. Strangely enough, a conviction on the aggravating grounds in Article 248 DCC or for concurrent offences (Article 57 DCC) did not seem to influence the length of a prison sen-

90 Van Wingerden, Moerings & Van Wilsem 2011, p. 102.
91 The model in which the length of sentence demanded was included as a predictive factor.
92 The maximum prison sentence for the sexual penetration of a child under the age of twelve is twelve years (Article 244 DCC), while the maximum sentence for sexual penetration of a child between the ages of twelve and sixteen is eight years (Article 245 DCC).
93 Sexual acts cover acts that are performed by the perpetrator on the victim and acts that are performed by the victim on the perpetrator or on a third party.

tence. The maximum sentence for an offence can be increased by a third on both of those grounds, but the application of those grounds did not have a significant effect on the length of the prison sentence imposed. This is remarkable from a legal perspective and there is no explanation for the absence of this effect.

Characteristics of offenders also did not seem to have any significant influence on the length of a sentence. For example, on average, offenders with diminished responsibility received prison sentences of the same length as offenders who were found fully responsible for the offence.[94] This is a noteworthy result in light of the principle that an offender who is found to be less responsible for an offence bears less guilt, something that should be reflected in the punishment.[95] At group level, it also made no difference for the length of sentence imposed whether or not an offender had previously been convicted of a sex offence. There was no significant difference between the length of sentence imposed on the two groups of offenders,[96] while the expectation was that an offender who had not previously been convicted of a sex offence would receive a lighter sentence than someone who had a previous conviction. No explanation was found for the absence of this effect.

Finally, the four significant predictors explained 82% of the variation in the lengths of the sentences imposed, with the length of the sentence demanded having the greatest influence. The model is therefore a very good predictor of the length of the prison sentence that will be imposed. Less than a fifth of the variation was explained by other factors, which is not a lot. These other factors were not included in the analysis, for example because they could not be measured. Chapter 4 discusses in more detail the factors that the courts themselves mentioned in their grounds for sentencing.

3.5 Conclusion

As was seen in Chapter 2, the sentences imposed on perpetrators of indecent assault vary greatly. What is striking is that relatively few offenders received a custodial sentence (either unconditional or partially conditional) and that the length of those sentences varied greatly, but in most cases was short. To learn more about the variation in sentences, this chapter reviewed factors that might explain why, at group level, some sex offenders received heavier and longer sentences than others. To that end, twelve legal and procedural aspects and characteristics of offenders, victims and offences were selected that might influence what sentence is demanded and imposed. The length of sentence demanded was included as a thirteenth predictor of the length of sentence that will be imposed. These factors were used to investigate what the statistics tell us about sentencing.

Table 3.1 provides a clear overview of the factors that did and did not significantly influence the type of sentences that were demanded and the lengths of sentences that were demanded and imposed. The courts and the PPS are not necessarily conscious of the factors that have been found to have a significant

94 When controlled for the influence of the other predictive factors in the model.
95 Claessen & De Vocht (2012) had earlier concluded that the principle that 'the punishment should fit the degree of guilt' does not necessarily work like that. Schuyt 2010, p. 281, on the other hand, concludes that diminished responsibility does lead to a reduced sentence in many cases.
96 When controlled for the influence of the other predictive factors in the model.

influence. The statistical part of this study into sentencing therefore provides some insight into possibly unconscious thought and decision-making processes

Table 3.1 Overview of factors that had a significant influence on the type of sentence and length of sentence (2012-2013)

	Type of sentence demanded	Length of sentence demanded	Length of sentence imposed
Legal aspects			
Maximum sentence	✓	✓	X
Concurrence of offences (Article 57 DCC)	X	X	X
Grounds for increasing a sentence (Article 248 DCC)	✓	X	X
Procedural aspects			
Confession/denial of offence	X	X	X
Length of sentence demanded	n.v.t.	n.v.t.	✓
Characteristics of offender			
Relevant criminal record	X	X	X
Criminal responsibility	n.v.t.	n.v.t.	X
Characteristics of victim			
Age of victims	X	X	✓
Gender of victims	X	✓	✓
Characteristics of offence			
Length of period of abuse	X	✓	X
Victim-offender relationship	X	X	X
Number of victims	✓	✓	X
Nature of sexual act	✓	X	✓

✓: the factor has a significant influence
X: the factor does not have a significant influence
n.a.: the factor could not be included in the calculations

Factors that significantly influence the length of sentence imposed

The statistical analysis showed that four factors significantly influence the length of the sentence imposed by the court and that together they explained 82% of the variation in the length of sentences. Why one offender might be sentenced to one month in prison and another receive a sentence of three years is largely explained by the length of sentence demanded by the PPS, the nature of the sexual act and the gender and age of the victims. On average, the courts imposed longer sentences if the offender had abused at least one victim under the age of twelve. The courts also imposed longer sentences if the abuse involved one of the most serious categories of sexual act: penetration with a genital organ. The sentence demanded carries the heaviest weight in terms of influencing the prison sentence imposed by the court. It is not surprising that the sentence demanded by the PPS has such a great influence, given the finding in the previous chapter that there is a close correlation between the sentence demanded and the sentence imposed by the court and fact that the literature also refers to the importance of the sentence demanded as an anchor point for the court in its decision on sentencing. That the gender of the victims

was found to significantly influence the sentences pronounced by the courts seems remarkable, but it appears that the courts attach (unconsciously?) extra weight to cases in which the offender abused at least one boy. By doing so, the court is neutralizing the effect of the sentence demanded by the PPS when the victims are girls.

Factors that have no significant influence

No less remarkable is the fact that a number of factors, which might be expected to influence the length of a sentence, were found to have no significant impact. For example, neither the statutory grounds for increasing a sentence (Article 248 DCC) nor concurrence of offences (Article 57 DCC) had a significant influence on the length of prison sentences. The same applied for the offender characteristics that were investigated. It made no difference for the length of a sentence whether or not the perpetrator had been previously convicted of a sex offence. At group level, there were also no significant differences in the lengths of sentences between offenders with diminished responsibility and offenders who were found to be fully responsible for the crime. It also made no difference for the length of the sentence whether the offender confessed or denied the offence.[97]

A look ahead

The quantitative study in this chapter has provided an insight into the factors that significantly influence the length of the sentence demanded by the PPS and the length of the prison sentence imposed by the court. The PPS and the courts are not necessarily aware of the influence of the factors that emerged from the model as significant predictors. The next chapter analyses what the courts actually say in their grounds for sentencing. What factors do they mention and what weight do they assign to them? Do the factors mentioned by the courts in their judgments correspond with the factors that emerged as influential from the analysis in this chapter? Or do the courts mention entirely different factors in their judgments? These and other questions will be answered in the next chapter and in the concluding Chapter 5.

97 When controlled for the influence of the other predictive factors in the model.

4 What do the courts tell us about the sentences?

4.1 Introduction

The previous chapter contained an analysis of the factors that objectively appear to influence the sentences imposed by the courts. The sentences demanded by the PPS, the nature of the sexual acts and the gender and age of the victim were found to be predictors of the variation in the length of prison sentences. However, these are not necessarily factors that the court has consciously or demonstrably considered and mentioned as influencing the sentence in its judgment. After all, the judgment can be seen as a rationalized reconstruction, which does not necessarily correspond entirely with the grounds on which the court has based its sentence.[1] In other words, factors that the court has unconsciously considered are not mentioned in the grounds for sentencing, and factors that the court does mention in its judgment might not be the same as its actual reasons for imposing a particular sentence.

This chapter examines the judgments in more detail. In its grounds for sentencing, the court explains which factors played a role in its decision on the sentence, and how. In other words, in this chapter we hear what the courts themselves had to say about the reasons for the sentences they imposed – the factors they mentioned in the judgments that were studied, how often a particular factor was mentioned, the value that was attached to each factor and, finally, the relative weight they assigned to the various factors.[2] Whereas the previous chapter provided an insight into the factors that influence sentencing at group level, this chapter looks at the courts' considerations in individual cases. The influence of factors on the sentence demanded (as discussed in Chapter 3) is not covered in this chapter, since the public prosecutor's reasons for demanding a particular sentence are seldom mentioned in the judgment.

Grounds for sentencing

Article 359(5) of the Dutch Code of Criminal Procedure (DCCP) provides that the court must give reasons for its sentence: 'The judgment shall state the particular reasons that determined the sentence or that led to the measure.'

Subsections 6 and 7 of Article 359 DCCP stipulate an additional requirement to give reasons for imposing a prison sentence or a TBS order (a hospital order). If the court diverges from a 'particularly reasoned

1 Van Wingerden & Wermink 2015, p. 8; Gommer 2007, p. 132.

2 For this classification, see also Abbink 2016, pp. 16-17.

point of view' put forward by the public prosecutor for the sentence he has demanded, it must also further explain its reasons (Article 359(2) DCCP).[3]

The courts are therefore legally obliged to give reasons for their sentences. However, there are few strict rules about how they should do so; the courts have wide discretion in formulating their reasons.[4] As early as 1929, the Supreme Court ruled that the duty to state reasons is already met simply by referring to the seriousness of the offence, the circumstances in which it was committed and the personality of the suspect.[5] In the so-called Goldflake case, the additional requirement was stipulated that, in cases where the court imposes a draconian sentence for a minor offence,[6] it must give further reasons.[7]

The wide discretion in stating the reasons for a sentence permits a tailored approach. Every case is different, and the courts can emphasize the differences between cases and offenders by explaining the specific reasons for the sentences they impose. At the same time, this wide discretion brings with it the risk of arbitrariness and inconsistency.[8] Accordingly, a drawback of this discretion is that it facilitates differences in sentencing that do not necessarily correspond with variations in the substance of the criminal cases decided by the courts.[9] The unique nature of each sentence can therefore conflict with the principle of equality before the law.[10]

PROMIS procedure

To improve the presentation of the findings on the evidence and the grounds for sentencing, in 2008 it was decided to introduce the so-called PROMIS procedure[11] in the administration of justice. PROMIS has three objectives: (1) to improve the quality of the substantiation of the findings on the evidence and the grounds for sentencing in criminal judgments, thereby (2) improving the communication between the judge, counsel, other parties concerned and the public, thus (3) making the court's thought processes more transparent.[12] In 2014, the effect of the new procedure was evaluated at the request of the Council for the Judiciary. One of the conclusions of the study was that the professionals that were interviewed regarded the considerations relating to the sentence as fairly weak aspects of judgments. 'The most likely reason for the modest and mixed effect of the PROMIS judgment is that even in PROMIS judgments relatively little attention is devoted to providing justification for the sentence. The court's reasoning on the sentence (the type and severity) is dealt with relatively summarily in the judgments.'[13]

3 For a further explanation, see Cleiren, Crijns & Verpalen 2015, Article 359 DCC, note 8.
4 De Keijser, Weerman & Huisman 2015.
5 Supreme Court 11 February 1929, NJ 1929/503.
6 In such cases, the 'unfair surprise criterion' is applicable. For further examples of the unfair surprise criterion, see Cleiren, Crijns & Verpalen 2015, Article 359, note 8 under c.
7 Supreme Court 25 February 1947, NJ 1947/161.
8 Schoep & Schuyt 2005, p. 1.
9 See, among others, De Keijser, Weerman & Huisman 2015, p. 1 and Van Wingerden & Wermink 2015, p. 7.
10 Van Wingerden, Moerings & Van Wilsem 2011, p. 106.
11 PROMIS stands for *Project Motiveringsverbetering in Strafvonnissen* (Project to Improve the Substantiation of Criminal Judgments).
12 De Groot-Van Leeuwen, Laemers & Sportel 2015, p. 8.
13 De Groot-Van Leeuwen, Laemers & Sportel 2015, p. 120.

The analysis

The wide variation in the reasons given for a sentence as a result of this large discretion makes it difficult, if not impossible, to study and compare judgments with one another. To produce a structured analysis, the grounds for sentencing in the 182 judgments that were examined were subjected to a qualitative analysis on the basis of the factors specified by the courts. Every factor mentioned by a court in its grounds for sentencing was labelled so that each factor could be analysed individually. The factors were arranged according to Schuyt's[14] classification, which divides factors that influence sentencing into five categories:

- The nature of the offence: the 'what' question
- The personality of the perpetrator: the 'who' question
- The way in which the offence was committed: the 'how' question
- The consequences of the offence: the 'effect' question
- The circumstances in which the offence was committed: the 'context' question

The factors falling into each of these five categories are discussed in separate sections of this chapter. In each case, it is also reported how the court took each factor into account in determining the severity of the sentence and in the type of sentence it imposed. As this chapter will show, it is often not really possible to determine from the judgment whether the factors that the court mentioned actually influenced the sentence. For example, if the court said that it took into account the fact that the suspect had no previous record, it is not clear whether that fact affected the sentence. Did the court mention the absence of a criminal record to indicate that the offender would receive a less severe sentence for that reason? If so, how much milder was the sentence because of the absence of a criminal record? Or should this factor be interpreted to mean that the absence of a criminal record is the point of departure in sentencing and that the sentence will only be increased if the perpetrator has a (relevant) criminal record?

Even when it is possible to conclude from what the court says in its judgment that a particular factor was an aggravating or mitigating factor, it is often unclear how much influence that factor had on the sentence. For example, when the court says in its judgment that the suspect's negative conduct during the proceedings worked to his detriment and then imposes a prison sentence of six months, it is not clear precisely what effect the suspect's negative conduct had on the sentence. Would the sentence have been four months if his behaviour had been better? Or three months? Or would he, for example, have received a partially conditional sentence or a sentence of community service? In other words, the influence of a particular factor on the type of sentence and the severity of the sentence is very seldom clear from the grounds for sentencing.

Structure of the chapter

This chapter first reviews the findings of the courts in their judgments with regard to the first category of factors, i.e., the nature of the offence (§4.2). In §4.3, there is a detailed analysis of the various factors connected with the personality of the offender, including recidivism, criminal responsibility and conduct during the proceedings. Each subsection discusses one of the nine personal factors connected with the offender. Factors relating to how the offence was committed are examined in §4.4, including aspects such as multiple perpetrators, coercion and who took the initiative for the acts. In §4.5, the conse-

14 Schuyt 2010.

quences of the offence for the victim, the offender and society are discussed. In addition to obvious consequences, this section also assesses how the courts deal with an issue such as a pregnancy ensuing from sexual abuse. Finally, the context of the offence is discussed in §4.6. The chapter ends with a concluding section that draws together the main strands to emerge from the analysis of the judgments and examines a number of issues raised by that analysis.

4.2 What: The nature of the offence

Most judgments open with a concise summary of the nature of the offence: what precisely did the perpetrator do? The court's considerations with regard to the 'what' question are mainly intended to highlight the criminal nature of the offence and indicate how it relates to other criminal offences.[15] It is usually a description of the facts that have been proved, without at this point attaching any consequences in terms of their influence on the sentence. The considerations about the nature of the offence presented in many judgments are also almost identical. In that sense, it is difficult to differentiate between individual cases on the basis of those considerations as they have little distinctiveness.[16]

Most of the 182 judgments that were analysed referred to the following aspects in relation to the nature of the offence: the violation of the victim's physical, mental or sexual integrity, the consequences of the sex offence in general, and the seriousness of the offence.

In 70% (*N*=128) of the judgments, the court considered the possible consequences of the sexual abuse for the victim – not specific consequences that had actually occurred (for a discussion of these, see §4.5.1), but consequences that could theoretically occur. The following passage is typical of the wording of findings of this type: 'Experience has shown that as a rule events of this type have lengthy and serious psychological consequences for the victim and that they can in particular disrupt the emotional and psychosexual development of the victim.'[17] The principal consequences mentioned by the courts are damage to physical and mental health, irreparable suffering, long-term emotional and sexual complaints, and impairment of a normal and healthy sexual development. What stands out is that in some judgments the court found that these consequences are particularly severe when the victims are (very) young children,[18] while in another case the court argued that the harm is particularly great for victims in puberty.[19]

15 Schuyt 2010, p. 280.
16 Schuyt 2010, p. 278.
17 Alkmaar District Court 29 February 2012, 14-701715-10 (not published).
18 See, for example, 's-Hertogenbosch District Court 6 November 2012, 01-840538-11 (not published); Rotterdam District Court 11 April 2012, 10-712490-11 (not published); Rotterdam District Court 15 February 2012, ECLI:NL:RBROT:2012:9091; Zutphen District Court 30 November 2012, 06-850156-12 (not published); Leeuwarden District Court 18 December 2012, 17-885099-12 (not published); Rotterdam District Court 16 February 2012, 10-712338-11 (not published); Oost-Nederland District Court 25 January 2013, ECLI:NL:RBONE:2013:BY9608; Gelderland District Court 29 November 2013, 05-820969-13 (not published).
19 Zutphen District Court 11 July 2012, 06-940325-11 (not published).

Age-specific consequences of sexual violence
Scientific research has shown that the age of a child victim at the time of the sexual abuse plays an important role in the nature of the potential consequences for the victim.[20] For example, sexual violence against babies, infants and toddlers can cause stress and even have a negative effect on the development of their brain, while children of primary-school age often suffer from problems with concentration and feelings of guilt. The stress reactions that adolescents can suffer are very similar to those suffered by adults and involve nightmares, fear, avoidance and feelings of guilt. It follows from this that some of the consequences that victims of sexual violence can experience are age-dependent. However, this does not mean that the consequences for young children are more severe than for older children, or vice versa. A finding in the grounds for sentencing that the consequences are particularly great for children in puberty or when they are still very young is therefore true to the extent that the consequences can be severe for every victim – young or old – but not in the sense that the consequences are more serious for victims in a particular age group than for other age groups.

Another recurring element in most judgments is the finding that the actions of the perpetrator have violated the victim's physical and mental (and in some cases, sexual) integrity. References to this element were made in judgments both in cases in which there was sexual penetration[21] (74%, *N*=80) and in cases in which there was not[22] (81%, *N*=60).

In half (*N*=92) of the judgments, the courts referred to the seriousness of the offence, but in some cases in a manner that treated them as less serious. For example, in a case in which the perpetrator had kissed his daughter's 8-year-old girlfriend on the mouth and touched her buttocks while she was lying in bed with him, the court took into account in the perpetrator's favour that it was 'a relatively mild form of abuse'.[23]

The courts' findings in their judgments regarding the nature of the offence are often general in nature and not very distinctive. Further exploration of the other four categories of factors is therefore necessary to provide an adequate explanation of a sentence. Those factors are discussed in the following subsections.

4.3 Who: The personality of the perpetrator

In their judgments the courts devoted a relatively great deal of attention to the personality of the offender and that person's personal circumstances. This section discusses how the courts addressed the following factors in their grounds for sentencing: a prior criminal record (§4.3.1), the age of the offender (§4.3.2), the degree of criminal responsibility (§4.3.3), the risk of recidivism (§4.3.4), intellectual impairment (§4.3.5), physical and mental state (§4.3.6), other personal circumstances (§4.3.7) and, finally, the perpetrator's conduct during the proceedings (§4.3.8).

20 Lindauer & Boer 2012, p. 13. For a detailed description of age-specific consequences of sexual abuse, see National Rapporteur 2014, pp. 50-54.
21 Sexual penetration as referred to in Articles 244 and 245 DCC.
22 Articles 247 and 249(1) DCC.
23 Rotterdam District Court 16 March 2012, 10-713075-08 (not published).

4.3.1 Criminal record

An example of an objective personal circumstance is a relevant prior criminal record. This is a generally applicable determinant of sentencing in the sense that it can be applied to all offences rather than to a specific crime.[24] However, as already shown in Chapter 3, statistically speaking, the existence of a relevant criminal record does not influence the severity of the sentence.

Nevertheless, in some individual cases the courts did consider this factor in their reasoning. Of the convicted perpetrators of sexual abuse in the study, 12% (*N*=21) had been previously convicted of a similar offence.[25] By virtue of Article 43a DCC, the prescribed prison sentence for an offence can be increased by up to a third if the perpetrator had committed the offence within five years of being sentenced to a term of imprisonment for a similar offence.[26] The increase in the maximum sentence can only be applied if the public prosecutor refers to the previous conviction in the indictment. Article 43a DCC was not referred to in the indictment in any of the 21[27] cases in which, according to the court's judgment, there had been a relevant prior offence.[28] The judgments did not contain enough information about the prior offence to determine whether the prior offence fell within the scope of Article 43a DCC and whether that article could therefore have been included in the indictment.[29]

Even without the application of Article 43a DCC, a prior offence can lead to a higher sentence, but the sentence cannot exceed the maximum sentence for the basic offence. In two-thirds (*N*=14) of the judgments in which there was evidence of a relevant prior offence, it was found that the court had explicitly taken this factor[30] into account to the detriment of the offender. In some cases, the offences concerned had been committed even further in the past than five years.[31] This is illustrated by the following finding:

'In its decision, the court further explicitly takes into account that the suspect was convicted in 1999 of sexually abusing his own underage daughter and that this conviction has not deterred him from again abusing a young girl entrusted to his care.'[32]

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24 Schuyt 2010, p. 141 and pp. 94-95.

25 In addition, two cases involved a situation as provided for in Article 63 DCC (concurrence of offences). These two cases were not counted as instances of prior offences, since the second conviction related to an offence that was committed before the earlier conviction.

26 The period of five years is extended by the period for which the convicted person was deprived of his liberty.

27 In 19 of the 21 cases in which, according to the information in the judgment, there was a relevant prior offence the suspect was an adult and in two the suspect was a minor. Article 43a DCC does not apply to suspects who are minors; see Article 77a DCC.

28 The date of the earlier conviction and whether or not it fell within the five-year deadline was in fact impossible to determine from most judgments.

29 Most of the 21 judgments said that the suspect had been convicted previously for a similar offence. There was usually no further information, so it was impossible to discover whether the perpetrator was given a prison sentence at the time, and whether the earlier conviction was within the five-year deadline, both of which are criteria for the application of Article 43a DCC.

30 The wording ranges from 'has taken particular account of', 'blames the suspect for', 'considers as an aggravating circumstance', 'has found that [...] which has apparently not deterred him from committing these offences' to 'has taken account of'.

31 For example, there was a period of twelve years between the earlier conviction and the commission of the offences in a case in 2012 (Assen District Court 27 November 2012, ECLI:NL:RBASS:2012:BZ4135) and a period of eleven years in a case in 2013 (Oost-Nederland District Court 12 February 2013, ECLI:NL:RBONE:2013:BZ2920).

32 Oost-Brabant District Court 7 August 2013, ECLI:NL:RBOBR:2013:4345.

Specific recidivism

Whereas most of the 21 judgments state that the prior conviction was for a similar offence, in some cases there was a reference to a very specific previous offence,[33] as illustrated in the following judgment: 'Furthermore, the court finds it particularly grave that the suspect has committed the offence for the second time; according to his record the suspect was already convicted of an identical offence, perpetrated against the same victim, in 2006. That conviction has apparently not deterred the suspect from sexually abusing his step-daughter again.'[34]

In three cases in which there was a relevant prior offence, the court explicitly did *not* take that factor into account to the detriment of the perpetrator. In all three cases the argument given was that the earlier offences had been committed so long ago that they did not warrant imposing a higher sentence.[35]

Finally, in four judgments it was impossible to determine whether the relevant prior conviction influenced the sentence. In these four judgments, the courts confined themselves to the factual observation that the offender had been previously convicted for similar offences, without making it clear whether they had taken this factor into consideration to the detriment of the offender.[36]

Does no prior criminal record lead to a lighter sentence?

The vast majority (86%) of the judgments that were studied contained information about the offender's criminal record. It is not always possible to distinguish in the judgments between a clean record and a criminal record in which the offender has been convicted of other types of offences. For example, it is frequently mentioned that the suspect had not been convicted of similar offences. Does that mean he had been convicted of other offences? Or did the court mean that the suspect had no previous convictions at all? In 82 (45%) of the 182 judgments, the courts explicitly stated in the grounds for sentencing that the suspect had a clean record. Many of these judgments say that 'it will be taken into account in favour of the suspect' or that 'it is taken account that' the suspect has no criminal record. In those cases, this was found to be a mitigating factor. However, in a number of judgments there was no such formulation. There was only the factual observation that the suspect had no previous record. This neutral formulation, without explicitly attaching any consequence to it in terms of a lighter sentence, appears to be particularly common in The Hague District Court: in seven of the eight judgments in which the suspect had a clean record, the court merely observed that it had seen his criminal record and that it showed that the suspect had not previously been in trouble with the police and PPS.[37] It cannot be ascertained

33 For definitions of different types of recidivism, see Wartna, Blom & Tollenaar 2011, p. 12.

34 Amsterdam District Court 27 June 2012, ECLI:NL:RBAMS:2012:BX4865.

35 See, for example, Gelderland District Court 1 November 2013, 06-850865-12 (not published): 'In the (distant) past (1992) the suspect was convicted of a sex offence, but that is so long ago that the court has not taken it into account in the sense of increasing the sentence.' In two other cases there had been earlier convictions 21 and 15 years previously.

36 For example, Gelderland District Court 10 December 2013, ECLI:NL:RBGEL:2013:5375: 'According to his record, the suspect was previously convicted of sexual abuse of an underage girl.'

37 The Hague District Court 15 March 2013, 09-665176-12 (not published);The Hague District Court 31 July 2013, 09-665398-12 (not published); The Hague District Court 7 November 2013, 09-715845-12 (not published); The Hague District Court 24 June 2013, ECLI:NL:RBDHA:2013:10625; The Hague District Court 5 July 2012, 09-900220-12 (not published); The Hague District Court 25 October 2012, 09-655346-10 (not published); The Hague District Court 20 August 2012, 09-900015-12 (not published).

from the wording of these judgments whether the absence of a previous conviction was taken into account in the suspect's favour in those cases.

4.3.2 Age of the offender

'As a mitigating factor the court takes into account that the suspect has now reached the respectable age of 73.'[38] That even older persons commit acts of indecency was shown earlier in the study, where it was found that 4% of the sex offenders were the victim's grandfather.[39] The age of the offender can have the effect of leading to a lighter sentence in the case of both young and older offenders. In ten judgments the court took the offender's advanced age into account in his favour.[40] That older offenders are punished less severely than younger adult offenders corresponds with what is known from what the literature says on the subject. For example, American research has shown that the correlation between age and sentence is curvilinear with respect to adult offenders: young offenders are punished relatively lightly, offenders between the ages of 21 and 30 receive the heaviest sentences in relative terms, while the sentences decline again for offenders over the age of 30, with the lightest sentences being imposed on offenders aged 50 and older.[41]

A possible reason why the oldest suspects receive the lightest sentences is that they are, or are perceived to be, less of a threat to society.[42] Various scientific studies have found that the risk of recidivism declines with age.[43] From the perspective of specific deterrence, it could therefore be defensible to impose a lighter sentence on an older offender than on a younger one. Naturally, at an individual level, the risk of recidivism can differ, and a punishment can have other objectives apart from specific deterrence. It is therefore not strange that the advanced age of an offender is not regarded as a significant factor in every case. In four of the nine cases in which the perpetrator was aged 65 or older, the court did not mention his age at the time of the commission of the offence in the grounds for sentencing.

Like the older age of an offender, a perpetrator's youth can also have a mitigating influence on the sentence. Furthermore, as a rule, the lower maximum sentences under juvenile criminal law apply for minors.[44] In those cases, the perpetrator's young age determines the system of criminal sanctions under which he will be tried (see also §2.1). Within those parameters, the young age of an offender can have a particular influence on the sentence. It was referred to as a mitigating factor in a number of judgments. For example, in one judgment the Utrecht District Court ruled: 'The court holds the suspect accountable for all this, but on the other hand also takes account of the fact that the suspect was only thirteen years of age.'[45]

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38 's-Hertogenbosch District Court 27 March 2012, 01-821025-11 (not published).

39 'Dader seksueel misbruik vaak familielid' [Perpetrator of sexual abuse often a family member], National Rapporteur 20 August 2015. www.nationaalrapporteur.nl/actueel/nieuws/Archief2015/dader-seksueel-misbruik-vaak-familielid.aspx?cp=63&cs=59417.

40 In five cases the suspect was aged 65 or older at the time of the offence. In the other cases, the suspect was aged 65 or older at the time of the judgment.

41 Steffensmeier, Ulmer & Kramer 1998, p. 765.

42 Van Wingerden & Nieuwbeerta 2010, p. 14.

43 See, for example, Helmus & Thornton 2016, p. 161; Barbaree et al. 2008, p. 61.

44 See National Rapporteur 2016, p. 14, which shows that one in six offenders (*N*=28) in the cases that were studied were minors when the offence was committed. Of the 28 offenders who were minors, 25 were tried under juvenile criminal law (see §2.1).

45 Utrecht District Court 10 July 2012, ECLI:NL:RBUTR:2012:BX1307.

In practice, therefore, both the youth and advanced age of an offender can have a mitigating influence on the sentence, but this factor was not mentioned in every case in which there was a young or elderly perpetrator, and it is therefore not known whether the courts considered it as a mitigating factor in those cases where it was not mentioned.

4.3.3 Criminal responsibility

Another personal factor connected with the offender is the degree of criminal responsibility. In three out of ten judgments (*N*=55; 30%), the court found that the offender had somewhat to greatly diminished responsibility.[46] An offender with diminished responsibility bears less guilt than a perpetrator with full criminal responsibility.[47] In her thesis, Schuyt concluded that in many cases a finding of diminished responsibility leads to a lighter sentence or is a reason for imposing a measure, sometimes in combination with a punishment.[48] It follows from the statistical analysis in Chapter 3 that the criminal responsibility of perpetrators does not influence the length of the sentence that is imposed, since no significant differences were found between those with full responsibility and diminished responsibility. At group level, it therefore makes no difference for the length of sentence whether or not the court finds that a perpetrator has diminished responsibility.[49] Nevertheless, an individual offender with diminished responsibility might receive a lighter sentence.

In the judgments that were studied, however, only in a minority of the cases (*N*=22; 40%) in which the offender was found to have diminished responsibility did the court explicitly reach the conclusion that the diminished responsibility should lead to a lighter sentence. And in some of these cases, the court assigned greater weight to other factors, so that the mitigating effect of diminished responsibility for the sentence was ultimately negated. For example, in a case in which the perpetrator had abused his daughter and four of his brother's grandchildren, Maastricht District Court found as follows: 'In its sentencing the court has taken account of the suspect's clean criminal record and the findings of the psychologist and the psychiatrist that the suspect must be declared to have (somewhat) diminished responsibility. In view of the seriousness of the offences, the court finds that these circumstances are not sufficiently weighty to impose a lighter sentence.'[50] The offender in this case was sentenced to four years in prison, as demanded by the public prosecutor, with one year suspended and a probationary period of three years and with special conditions.

In the other 33 (60%) judgments in which the courts found that the offender had diminished responsibility, they confined themselves to a finding of fact without apparently concluding that the offender should receive a lighter or alternative sentence by reason of it. The lack of consistency and inadequate reasoning on this point were also highlighted earlier by Claessen & De Vocht.[51]

46 In this study no distinction is made between the various degrees of responsibility. None of the perpetrators were found by the courts to be fully non-responsible.
47 For an explanation of the degree of guilt and the sentence in cases involving diminished responsibility, see Claessen & De Vocht2012.
48 Schuyt 2010, p. 281.
49 Controlled for the other predictive factors.
50 Maastricht District Court 28 March 2012, ECLI:NL:RBMAA:2012:BW0370.
51 Claessen & De Vocht 2012, p. 21.

In other words, in 40% of the judgments in which an offender was found to have diminished responsibility the court explicitly considered this circumstance as a mitigating factor. In the other 60% of cases, it is impossible to determine from the grounds for sentencing whether or not the diminished responsibility influenced the sentence, and if so, how and to what extent.

4.3.4 Risk of recidivism

Ideally, the court will consider the risk of recidivism when imposing an order to receive treatment. In line with the 'What Works' principles,[52] the treatment should match the level of risk posed by the offender. In practical terms, this means that offenders with a low risk of recidivism should receive little or no treatment and that offenders with a high risk of recidivism need intensive treatment to reduce the risk of a repetition of the offence. Providing the correct intervention for those offenders who need it prevents overtreatment and undertreatment. The judgments were studied to discover to what extent the risk of recidivism had been considered and what form of supervision and treatment the relevant offenders were ordered to undergo.[53]

It was found from the judgments that the probation service, the Child Care and Protection Board and/or the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP) submitted an advisory report on four out of five offenders[54]. Most judgments contained very little information about the findings and recommendations in these reports. For example, fewer than half (*N*=71) of the judgments for which a report was prepared (*N*=145) contained information about the risk of recidivism. Furthermore, in one case the court found the risk of recidivism to be great, but no report was produced on that suspect.[55] In a third (*N*=24) of the 72 judgments that contained findings about the risk of recidivism, the court estimated the risk as high or high average. In all of these cases, the offender was ordered to undergo some form of supervision. Most of the high-risk offenders were also ordered to receive treatment (*N*=21):[56] twelve on an out-patient basis and nine in a clinic, which also includes hospital orders (TBS orders) with mandatory treatment (*N*=2) and unconditional treatment programmes (PIJ orders) for youth offenders (*N*=2). It is noteworthy that the courts did not impose orders to receive treatment on one in eight of the high-risk offenders (*N*=3).[57] The

52 For a detailed description, see National Rapporteur 2014, pp. 250-260.

53 The National Rapporteur is currently conducting a detailed study into the method of risk assessment of sex offenders by the NIFP and the probation service, and the application of these bodies' recommendations by the courts. The results of this study are expected to be published at the beginning of 2017.

54 *N*=145 (80%). These reports were issued by the following agencies: Probation Service *N*=57; NIFP *N*=16; Child Care and Protection Board *N*=4; NIFP and Probation Service *N*=55; and NIFP and Child Care and Protection Board *N*=13.

55 The Hague District Court 11 September 2013, 09-852130-13 (not published). The grounds for sentencing state: 'Since it finds that serious account must be taken of the risk that the suspect will commit another offence against or cause danger to the physical integrity of one or more persons. The court draws this conclusion from the, in its opinion, disturbing nature of the statements that the suspect made during the preliminary investigation, which lacked any sense of awareness or insight into the offence committed by him.'

56 Offenders ordered to receive treatment are also taken to include the offenders against whom the court ordered supervision by the probation service with the addition 'even if this also involves the suspect having to undergo treatment'. It is therefore possible that the offender did not ultimately receive treatment in these cases.

57 Smid also found in her thesis that not all high-risk sex offenders receive treatment after being convicted. Smid 2014, pp. 33-48.

obvious risk of undertreatment of high-risk offenders is that the threat of recidivism will not be reduced sufficiently.[58]

High risk of recidivism, no treatment

In three cases the court found the risk of recidivism to be great, but nevertheless did not order the offender to receive treatment.[59] For example, the 's-Hertogenbosch District Court[60] convicted a father of abusing his son. The abuse continued for a year. The probation service estimated the risk of recidivism by the intellectually impaired as 'high average'. The court did not order treatment, but did issue an immediately enforceable protection order in the form of a location ban: '[...] in light of the report by the probation service that there is a serious possibility that the suspect will again commit an offence against or cause danger to the physical integrity of one or more persons [...]the court finds that the safety of the victim and other members of the family is adequately safeguarded by imposing a location ban on the suspect.' The risk of recidivism here seems to be linked to the specific victim and members of the family, but recidivism relates not to the same victim but to the repeated commission of the offence, regardless of who the victim is.[61] The court therefore gives a very narrow interpretation to the term recidivism here.

Also noteworthy is the fact that the public prosecutor did not demand an order for treatment, although this had been recommended in the Pro Justitia report. The probation service's report was less clear cut: 'Like the psychologist, the probation service does not rule out the importance of treatment.'

It was impossible to discern what reasons the public prosecutor or the court had for not demanding or ordering treatment for this offender with a 'high average' risk of recidivism.

With 47% of the offenders (*N*=34), the risk of recidivism was assessed as low or low average. Despite that, the court placed 23 (68%) of them under supervision, in every case in combination with out-patient treatment.[62] In her thesis, Smid also observed that there is regular overtreatment of child abusers.[63] A potential risk of (over)treatment of low-risk offenders is that it will actually increase the risk of their repeating the offence.[64]

58 National Rapporteur 2014, pp. 250-251.

59 's-Hertogenbosch District Court 17 August 2012, 01-845359-11 (not published); The Hague District Court 11 September 2013, 09-852130-13 (not published); and Rotterdam District Court 16 November 2012, 10-811197-11 (not published).

60 's-Hertogenbosch District Court 17 August 2012, 01-845359-11 (not published).

61 Wartna, Blom & Tollenaar 2011, p. 12 describe six forms of recidivism, from general to specific. The most specific form involves the repeated commission of the same offence (an offence under the same article of the law).

62 Offenders ordered to receive treatment are also taken to include the offenders against whom the court ordered supervision by the probation service with the addition 'even if this also involves the suspect having to undergo treatment'. It is therefore possible that the offender did not ultimately receive treatment in these cases.

63 Smid 2014, pp. 33-48.

64 Smid 2014, p. 44.

No risk of recidivism because the victim is now aged sixteen
The reasoning on the risk of recidivism in one case can only be described as remarkable. The Zeeland-West-Brabant District Court found as follows: 'Since [name of victim, NR] has now reached the age of sixteen, there is no apparent risk of recidivism and the court does not see the need or usefulness of also imposing a conditional sentence.'[65]

This reasoning is based on a very narrow interpretation of the risk of recidivism – since the victim has reached the age of consent, in legal terms sexual acts with her are in principle no longer against the law. However, the risk of recidivism is not confined to a specific victim, so this reasoning reflects a very restrictive interpretation of the term, and one that is contrary to what is generally understood by recidivism.[66]

Another noteworthy finding is that in fourteen judgments the court considered the risk of recidivism, but it was impossible to ascertain from the judgments whether the court assessed the risk as high or low.[67] In some judgments, for example, the court said that the risk of recidivism 'exists'. However, it is inherent to a risk that there is a chance of the situation occurring; there is therefore always a risk. Reasoning along the following lines therefore provides no factual information about the level of this risk: 'The estimate of the risk with the combination of pathological disorders and impaired development concerns both the behavioural experts and the court. [...] The behavioural experts consider the risk of a repetition of a sex offence to be present.'[68] A number of judgments also contain a finding of a 'higher' risk of recidivism. For example, 'In the areas of housing, family, thought patterns, behaviour and skills there is a higher risk of recidivism.'[69] It is unclear what the court meant by this: the risk is higher than what? For example, is the risk higher than that of the average sex offender? Or is it higher than that of a non-offender?

In most (*N*=12) of the fourteen judgments that do say something about the risk of recidivism but in which it is not clear whether the risk is regarded as low or high, the court ordered supervision. As shown in the figure below, most of the perpetrators had to receive some form of treatment.

65 Zeeland-West-Brabant District Court 8 May 2013, 02-666958-12 (not published). This case is also discussed in §4.3.7.
66 For definitions of recidivism, see Wartna, Blom & Tollenaar 2011, pp. 11-12.
67 The National Rapporteur is currently conducting a study into how Pro Justitia rapporteurs and courts define and interpret the risk of recidivism. The results of this study are expected to be published at the beginning of 2017.
68 's-Hertogenbosch District Court 2 July 2012, 01-833023-12 (not published).
69 Alkmaar District Court 29 November 2012, 14-810293-12 (not published).

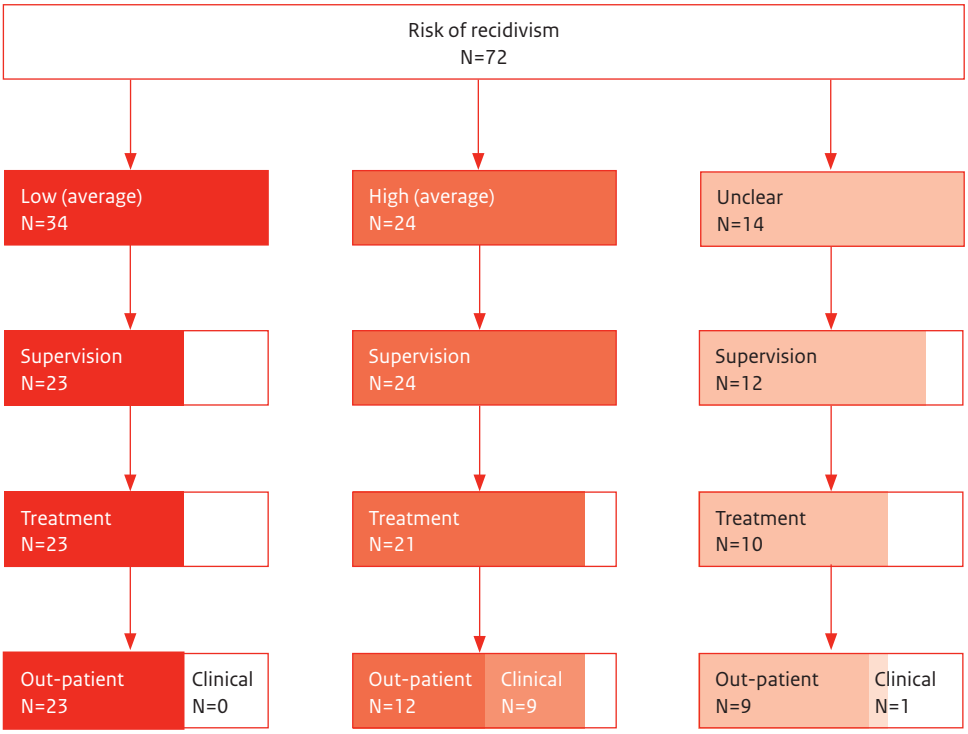

Figure 4.1 Flowchart of supervision and treatment of offenders in cases where the judgment referred to the risk of recidivism (*N*=72) (2012-2013).
Source: *Convictions for indecent assault 2012-2013.*

In conclusion, the level of the risk of recidivism frequently did not correspond with the choice for supervision or treatment: perpetrators with a low risk of reoffending were ordered to receive a form of supervision relatively often and all low-risk offenders who were placed under supervision were also ordered to receive treatment. On the other hand, high-risk offenders were placed under some form of supervision in every case, but in contrast to the low-risk offenders, they did not always receive treatment. However, most of the high-risk offenders who did receive treatment were ordered to undergo clinical treatment. Finally, there is a group of offenders for whom the risk of recidivism is not clearly defined. Most of the offenders in this group were ordered to receive supervision and treatment, usually on an out-patient basis.

Motivation to receive treatment

As shown above and in §2.5, the courts imposed special conditions, in the form of receiving treatment, on a large proportion of the convicted perpetrators, but offenders are not always motivated to undergo treatment. In nine cases, the court found in its grounds for sentencing that the offender was not motivated to receive treatment. What stands out is the significant discrepancy in the consequences the courts

attached to this absence of motivation. In five cases, it led to the offender not being ordered to receive treatment, while in four cases, the court nevertheless ordered the offender to receive treatment.[70]

> *Recidivism, therefore no treatment*
> The following case illustrates the considerations of a court in not ordering an offender to receive treatment. The Rotterdam District Court[71] convicted a man – the father of three daughters and a son – for fondling his eldest daughter and a girlfriend of the same age. According to the judgment, the abuse occurred while the offender was still on probation following an earlier sex offence. The psychologist estimated the risk of recidivism as 'at least moderate'. The father had undergone treatment after his previous conviction. The court found: 'In the opinion of the court, the mandatory supervision by the probation service and treatment at [name of institution A, NR], as recommended by the probation service and the psychologist, have no added value. The suspect has undergone treatment in the past at [name of institution B, NR] but, in light of the conviction for these offences, that has not produced any improvement in his conduct/insight. The court is therefore of the opinion that the (economically) scarce resources for supervision by the probation service and treatment by [name of institution A, NR] can better be used for other suspects, who do have a chance of being helped by those resources.'
>
> The court sentenced the perpetrator in this case to six months in prison, with three months suspended and two years' probation.[72] It was impossible to tell from the judgment whether the children were still living at home with him.

In other words, the offender in this case was not ordered to undergo treatment because he had committed an offence after receiving treatment previously. According to the court, treatment would have no added value for the offender, in whom the risk of recidivism was estimated by the psychologist to be 'at least moderate'. It could also be argued, however, that the fact that the offender had committed an offence despite receiving treatment earlier was a reason to order more intensive treatment (clinical or otherwise) this time in order to prevent him from committing the offence again. The fact that the first treatment was apparently inadequate should not be a reason not to order any treatment at all.

4.3.5 Intellectual impairment

In 20 (11%) judgments, the courts referred to the perpetrator's limited intelligence, ranging from a mild to a severe mental disability. In a number of cases, the mental disability was regarded as a mitigating factor, although it was often not clear what weight the court attached to it. For example, in a number of judgments the mental disability was just one of many factors mentioned, leaving the reader uncertain as to precisely what weight it had been given. However, in one case, in which an intellectually impaired offender had touched the buttocks of a 12-year-old girl and kissed her, the court found as follows: 'In principle, the court finds that in view of the nature of the indecent acts a sentence of 80 hours of community service would be appropriate. However, the case file and the proceedings at the hearing show

70 The finding by Smid 2014, pp. 44-45 is interesting in this respect: 'Aside from the fact that an initial lack of motivation does not make an offender unfit for treatment, it certainly does not make intervention less necessary for high-risk sex offenders.'

71 Rotterdam District Court 8 October 2013, 10-711131-12 (not published).

72 The suspended sentence from his earlier conviction was also carried out. This was a prison sentence of two months.

that the suspect has a mental disability and needs structure and supervision. The court considers that fact to be grounds for somewhat mitigating the sentence of community service.'[73] The court then imposed a sentence of 60 hours of community service.

The grounds for sentencing seldom refer so specifically to the point of departure (80 hours of community service), the value (mitigating) and the weight attached to the mitigating factor (a reduction of 20 hours of community service). This method makes the court's considerations transparent and understandable to the reader.[74]

4.3.6 Physical and mental state

Another objective personal circumstance is the offender's physical and mental state. Earlier publications have shown that people with problems with their emotional well-being are less likely to receive an unconditional prison sentence.[75] In some cases, the courts referred to this factor in pronouncing the type of sentence, for example to explain why a community service sentence was inappropriate: 'In view of the court's finding on this point, as well as the suspect's physical limitations, the court also feels that a sentence of community service is inappropriate.'[76] Similar reasoning was sometimes used to explain the unsuitability of a custodial sentence[77] for the offender: 'The court also takes into account that the suspect is unfit for detention and that this lack of fitness is unlikely to end within the probationary period. It is therefore unlikely that a conditional sentence of youth detention can be carried out. The court considers it undesirable and wrong to impose a conditional sentence that cannot be carried out. All things considered, the court therefore arrives at a sentence of community service for a period of 120 hours.'[78] The offender in this case was a 13-year-old boy with the cognitive and emotional capacity of a 7-year-old. The court imposed an entirely conditional sentence of community service with special conditions in the form of supervision and treatment, as well as an order prohibiting him from having contact with the victim.

4.3.7 Other personal circumstances

Personal circumstances other than those covered in the previous subsections can also play a role in the choice of a particular type of sentence. Some judgments merely referred to 'personal circumstances', without making it clear to the reader precisely what they were. In other cases, the court did discuss the specific circumstances in detail, as in the following case.

> *Care of child conceived by victim*
> In one judgment, the Zeeland-West-Brabant District Court[79] convicted the 30-year-old perpetrator of repeated acts of indecency with his 13-year-old 'girlfriend' over a period of a year. The victim had made a complaint to the police because, she said, in addition to voluntary sex, she had

73 Maastricht District Court 3 December 2012, 03-700444-12 (not published).
74 See also Schuyt 2010, p. 331 for a 'checklist' for the grounds for sentencing.
75 Van Wingerden & Wermink 2015, p. 11; Van Wingerden, Van Wilsem & Johnson 2014.
76 Midden-Nederland District Court 31 May 2013, ECLI:NL:RBMNE:2013:CA1661.
77 In Supreme Court 7 November 1995, NJ 1996/166, it was determined that when imposing a prison sentence attention should also be devoted to the offender's 'fitness for detention'. See Cleiren, Crijns & Verpalen 2015, Article 359 DCC Note 8 under e.
78 Utrecht District Court 10 July 2012, ECLI:NL:RBUTR:2012:BX1307.
79 Zeeland-West-Brabant District Court 8 May 2013, 02-666958-12 (not published). This case is also discussed in §4.3.4.

> also been forced to have sex. The victim later withdrew her statement about the forced sex. The suspect admitted having sex with her, but denied that his penis had entered her vagina. The court acquitted the suspect on that charge. The court did convict for penetration with his fingers, as well as with his penis in her mouth and French kissing.
>
> The public prosecutor demanded a sentence of 240 hours of community service. Although the court found that prison sentences were regularly imposed in similar cases, in this particular case it 'took strongly into account the suspect's personal circumstances'. The court even imposed a lighter community service sentence than demanded: 'The court takes into account that the suspect wishes to play an important role in the care of [name of victim, NR] and their joint child, for which retaining his job and the income generated by it is very important. A sentence of 240 hours of community service as demanded by the public prosecutor would, in the opinion of the court, form too great a burden in that context. In that light, a sentence of 160 hours of community service, or 80 days' imprisonment in lieu if the offender fails to carry out his community service, is appropriate and necessary. Since [name of victim, NR] has now reached the age of sixteen, there is no apparent risk of recidivism and the court does not see the need for or usefulness of also imposing a conditional sentence.'

This ruling illustrates the dilemma the courts sometimes face in cases of sexual abuse: punishing the offender can have a negative effect on a victim who is to any extent dependent on the offender. For example, the victim may temporarily lose a source of income and the offender might be temporarily unable to perform the role of parent or partner. Paradoxically, it might then actually be in the victim's interests to impose a lighter sentence. In the judgment cited above, the court also appears to have attached great weight to the victim's interest in being cared for and having income. That this case involved a relationship between a girl just sixteen years of age and a man who was twice her age and with whom she was having or already had a child, does raise the question of whether a lighter sentence was genuinely in her interest.

4.3.8 Conduct during the proceedings

In a third (*N*=60) of the judgments, the courts referred to the offender's conduct during the proceedings. In 24 of these cases, the court described the offender's conduct as negative, for example in terms of not displaying any insight into his own actions, not accepting responsibility and continuing to deny the offences. As shown in Chapter 3, at group level, whether offenders admit or deny the offences has no statistical influence on the length of the prison sentence. Nevertheless, the court did take it into account in some individual cases. In fifteen of the judgments in which the court mentioned the perpetrator's negative conduct, it said it had taken into account to the detriment of the suspect in determining the sentence.[80] An example of this is a judgment of the Zeeland-West-Brabant District Court. In this case, the court found that the offender, who had acted as a parental figure to the 12-year-old victim following the death of her father, had abused the girl. The offender denied the crime. The court found in its grounds for sentencing: 'The court also finds it extremely blameworthy of the suspect that he has displayed no insight into his conduct and does not accept responsibility for his actions. That will therefore

80 For example, with phrases such as 'the court severely blames the suspect for this', 'the court finds to the detriment of the suspect that', 'the court is very critical of the suspect for' or 'the court holds the suspect accountable for'.

also be considered to the suspect's detriment in the sentence.'[81] It is not always clear from the grounds for sentencing whether the perpetrator's negative conduct had caused the sentence to be increased. In nine judgments it was impossible to determine whether that factor had been considered to his detriment because the court confined itself to a factual observation.

Whereas negative conduct during the proceedings can have a negative impact on the sentence for the offender, a positive attitude during the trial can have the opposite effect. It is clear from a number of judgments (*N*=30; 16%)[82] that the court took into account in the suspects' favour their regret or remorse,[83] admission of the offence, cooperative attitude, insight into their own actions, or the fact that they recognized the seriousness and consequences of their actions. The following case illustrates that a remorseful attitude and the perpetrator's insight into his conduct are factors that can contribute to a lighter sentence.

> *A case of remorse and a lighter sentence*
> The Midden-Nederland District Court convicted the elderly perpetrator of abusing a 15-year-old girl with a low IQ, who was doing an internship with him, for more than six months.[84] The public prosecutor demanded a prison sentence of 182 days, with 180 days suspended with three years' probation and special conditions, and 180 hours of community service. The court followed the demand with regard to the prison sentence, but ruled differently on the probationary period with special conditions and the community service sentence: 'However, the court sees no reason to attach special conditions to the aforementioned conditional sentence. There is nothing to show that the suspect suffers from paedophilia or that there are other factors relating to the suspect that give rise to the need for special conditions. The fact that the suspect has displayed little insight into his motives with respect to the offence does not alter that. The suspect is a 79-year-old man who leads a "normal" and practically "problem-free" life. He crossed a moral boundary out of lust and, it became clear during the hearing, is fully aware of that. Furthermore, he has expressed his sincere remorse. In view of the court's earlier findings, as well as the suspect's physical limitations, the court does not consider a community service sentence to be appropriate.'[85]

In this case, the court placed great emphasis on factors that it weighed in favour of the offender, including his 'sincere remorse' and the fact that he was aware of the boundaries he had crossed. The court devoted relatively little attention to the offender's culpable action in the remainder of the judgment.

81 Zeeland-West-Brabant District Court 29 October 2013, 02-810002-13 (not published).
82 In a total of 36 judgments, the court referred to the perpetrator's positive conduct during the proceedings. In 30 cases, this was explicitly mentioned as a mitigating factor, in six cases it was unclear whether the factor was taken into account in the offender's favour because it was only mentioned as a factual observation.
83 For a discussion of remorse, shame, a sense of guilt and regret in criminal proceedings, see Malsen 2015. See also Lensing 2015 p. 51, who calls for a general orientation point on the issue of remorse.
84 Midden-Nederland District Court 31 May 2013, ECLI:NL:RBMNE:2013:CA1661.
85 Midden-Nederland District Court 31 May 2013, ECLI:NL:RBMNE:2013:CA1661.

4.3.9 Conclusion: the personality of the offender

The preceding subsections have shown that the courts consider personal factors connected with the offender in relatively great detail. The study covered 182 judgments involving 182 individual offenders. The personality of the offender is different in each case, so it is not surprising that the extent to which factors connected with the offender's personality differ from one offender to another and from one case to another. What is noteworthy is the fact that in cases in which the same factor, for example the absence of a prior criminal record, was considered, it was interpreted differently in the grounds for sentencing. Whereas in some cases a clean record was explicitly mentioned as a mitigating factor, in other judgments it was described in more neutral terms, which meant it was unclear whether that factor had an influence in terms of a lighter sentence. Another factor that the courts took into account in favour of the offender in some cases but not in others is the offender's advanced age or youth.

Intellectual impairment, physical and mental health problems and other personal circumstances almost always had the effect of leading to a reduced sentence. The same applies for offenders who displayed a positive attitude during the proceedings, while in most cases a negative attitude led to a higher sentence.

Although one would expect diminished responsibility on the part of the offender to lead to a lighter sentence – since the degree of guilt is less serious than in the case of an offender who is fully responsible – it was only found to have had a mitigating effect in a minority of judgments (40%). As discussed in Chapter 3, no statistical correlation was found between diminished responsibility and a shorter average prison sentence.

Another remarkable result is that the risk of recidivism ascribed to the offender often fails to correspond with the decision on supervision and treatment: whereas all low-risk offenders who are ordered to undergo a form of supervision are also ordered to receive treatment, the court did not always order high-risk offenders to receive treatment.[86] On the other hand, the high-risk offenders who were ordered to receive treatment were most likely to receive an order for clinical treatment.

Finally, the same factor led to opposite results in different cases. For example, in some cases the court interpreted a lack of motivation to undergo treatment as a reason not to order the suspect to receive treatment, while in other cases the lack of motivation was at least part of the reason for mandating treatment.

4.4 How: the way in which the offence was committed

This section focuses on the elements in the grounds for sentencing relating to the way in which the offence was committed, or the 'how' question, the *modus operandi*.[87] Because the type of action can distinguish a particular case from others, this factor can go a long way towards explaining the sentence,[88] but for that to be the case the 'how' question has to be answered as specifically as possible.

86 See also Smid 2014, pp. 33-48.
87 See also Schuyt 2010, pp. 179-206.
88 Schuyt 2010, p. 286.

This section discusses the following topics: plurality of offenders, the method by which the victim was brought into the situation of abuse, coercion and initiative, and the duration of the abuse.

4.4.1 Plurality of offenders

Although most of the offenders in the judgments examined committed the sex offence alone, in some cases there was more than one perpetrator. The fact that there is a plurality of offenders can have consequences for the maximum sentence: if the sex offence is committed by two or more persons acting in concert, the statutory aggravating ground in Article 248(1) DCC can be charged. In the event of a conviction on this ground, the maximum sentence for the basic offence can be increased by a third. Although it is for the public prosecutor to decide whether or not a higher maximum sentence should apply, the court can also apply the aggravating ground *ex officio* and decide whether to increase the sentence within the bandwidth indicated for the basic offence.[89] In that case, however, the court is bound by the maximum sentence for the basic offence, which it may not exceed in its sentence.

What do the courts say about this aggravating ground in their grounds for sentencing in individual cases? In eight judgments (4%) there was more than one offender. Charges were only brought under Article 248(1) DCC in one case, and this was a case heard under juvenile criminal law. Gelderland District Court convicted a 13-year-old offender of abusing a 13-year-old girl in a school toilet together and in concert with an accomplice.[90] The boy was given a partially conditional sentence of community service. Although he was convicted under the aggravating circumstance in Article 248 DCC, that factor does not appear to have played any significant role in the severity of the sentence, since it was not mentioned in the grounds for sentencing.[91]

In three cases involving more than one offender, the factor was characterized as co-participation in a criminal offence (Article 47 DCC). Co-participation is not a ground for increasing a sentence. While the criteria for co-participation are close to those for the aggravating circumstance in Article 248(1) DCC[92] there is a presumption that a stronger form of cooperation is required for the offence of co-participation than for complicity as an aggravating circumstance.[93]

Finally, in four cases there was more than one offender, but this was not expressly reflected in the description of the offence or the applicable statutory provisions; neither co-participation nor Article 248(1) DCC were declared applicable in these judgments. For example, Arnhem District Court ruled as follows in a case in which a man was convicted of sexually abusing a 15-year-old girl: 'What makes the abuse particularly abhorrent is the apparent joint participation of the suspect and his brother. They both, shortly after each other, abused [name of victim, NR].'[94] Despite this 'collusion', the situation was not described as co-participation (Article 47 DCC) or commission in concert (Article 248(1) DCC). However,

89 Schuyt 2010, p. 482.
90 Gelderland District Court 17 September 2013, 05-740065-13 (not published).
91 In this case, juvenile criminal law applied, so the maximum prison sentence pursuant to Article 77i DCC was one year. It was therefore not possible to exceed the maximum sentence for the basic offence.
92 For a brief discussion, see 2015, pp. 477-483.
93 Remmelink 1996, p. 444.
94 Arnhem District Court 30 March 2012, 05-901182-10 (not published). There is nothing in the judgment about the role of the suspect's brother, beyond the fact that he was near the check-out when the suspect was abusing the victim elsewhere in the shop. The judgment in the brother's case was not in the sample.

it is clear from the terms used by the court that it regarded the collusion between the suspect and his brother as particularly serious. With the words 'particularly abhorrent' the court probably wanted to express the fact that it had taken this collusion into consideration to the detriment of the suspect.

It can therefore be concluded that, in cases involving multiple offenders, charges based on the aggravating ground in Article 248(1) DCC are brought relatively infrequently. It is not in fact possible to determine whether such charges could have been proved in the seven cases in which there were multiple offenders, since the judgments contained too little information to reach such a conclusion. The fact is, however, that if no charges are brought under Article 248(1) DCC, the sentence cannot be higher than the maximum sentence for the basic offence. This limits the bandwidth of the sentence that the court can impose. On the other hand, it emerged in Chapter 2 that the maximum sentence was not imposed in a single case and in Chapter 3 that even when charges under Article 248(1) or (2) DCC are proved it has no significant influence on the sentence imposed by the court. By making only sparing use of that article, and then not attaching the consequence of a higher sentence, the added value of the provision is lost. That represents a missed opportunity, partly in view of the fact that the article was introduced to comply with international treaty obligations.[95]

4.4.2 How the victim was brought into the situation of abuse

A question that often arises in cases of sexual abuse is how the situation could have reached that point. In roughly half of the judgments, the court addressed that question to some extent in its grounds for sentencing. This question is often closely connected with the description of the relationship between the victim and the perpetrator.[96] The description of the origin of the abuse is often presented summarily in the judgment, as in the following example: 'The suspect performed sexual acts with minors who had been entrusted to his care. He was a masseur in a football club and performed sexual acts while treating injuries.'[97] In other cases, the courts discussed the grooming process in more detail, as illustrated by the following judgment: 'The suspect worked as a teaching assistant at [name of school, NR]. He felt, as he said himself, more comfortable with the pupils than with the teachers at the school. The suspect was open to the pupils. Some pupils discussed their problems with him. The suspect showed particular concern for [name of victim, NR], a vulnerable 14-year-old girl. Over several years, starting in her first year in secondary school, he built up a friendship with her. They saw each other in the school team [...] and also often outside it. They gradually had more contact, not only in person, but also on the messaging service WhatsApp. After some time, these messages assumed a more sexual tone. When on one occasion the suspect and [name of victim, NR] found themselves in the school's technical room there was sexual contact between them.'[98]

95 Subsections 1 and 2 of Article 248 DCC were adopted in implementation of Article 28 of the Lanzarote Convention (*Bulletin of Treaties*. 2008, 58).

96 Of the 241 victims abused by the 182 perpetrators, 36% were abused by a relative, 10% by offenders who had access to them through the place or agency where they worked, 4% by a person who became acquainted with the victim via the Internet, 3% within an affective relationship, 32% by other acquaintances and 7% by strangers. For 9% of the victims it was not known how the perpetrator and victims came to know one another. See National Rapporteur 2016, p. 20.

97 Gelderland District Court 3 May 2013, ECLI:NL:RBGEL:2013:BZ9363.

98 Zeeland-West-Brabant District Court 2 December 2013, 02-666507-12 (not published).

In most judgments, the way in which the contact between the offender and the victim was established takes the form of a factual observation about the situation of abuse. In that sense, it is scarcely ever linked to the severity of the sentence. Consequently, in most cases this factor seems to have little unique value in terms of influencing the sentence.

The following cases illustrate the fact that the court's characterization of the criminal acts sometimes trivializes them, to the surprise of the reader. In these cases, the courts described the sexual abuse as a form of sex education.

Sex education

The Gelderland District Court convicted a grandfather of sexually abusing his 10-year-old grandson.[99] The man had masturbated his grandson on two different occasions. In its judgment the court found as follows: 'From the documents and the proceedings at the hearing, the court has formed the impression that the suspect was not so much intent on satisfying his own feelings of lust, but operated clumsily in more or less giving sex education to his (step-)grandson.' To dismiss sexual abuse as 'sex education' is quite remarkable, to put it mildly. Also in light of the sentence that followed: 'The suspect was previously convicted of a sex offence in the distant past (1992) [...].' This was therefore a perpetrator who was being tried for a sex offence for the second time, and who had committed the offences for which he was currently being tried on two separate occasions. Describing this as 'operating clumsily in more or less giving sex education' is to wrongly trivialize the offender's conduct.

The same court also ruled that the actions constituted sex education in another case: 'The suspect performed sexual acts with two young girls who had at that time been entrusted to his care and vigilance. He went along with their natural sexual curiosity. The girls were at a very vulnerable stage of their sexual development. It was sex education that had got out of hand.'[100] The offender had touched the two girls aged eleven and twelve on their vaginas and breasts. By describing the sexual abuse as 'sex education that had got out of hand' the court trivialized the seriousness of the criminal acts. The offender in this case was perfectly aware of the culpability of his actions, as is clear from the fact that the judgment states that he said during the hearing that he had told the girls that they had to keep the incident secret.

The possibility of taking a different approach is shown by a ruling of the Midden-Nederland District Court. In this case a man was convicted of sexually abusing a 15-year-old neighbour. In the judgment, the court said as follows: 'The suspect has said that he wanted to teach the victim how to establish her boundaries. He was trying in his way to give her sex education. The way he did it was extremely inappropriate and unwise. He was guilty of committing indecent acts with an underage neighbour who regularly stayed with him.'[101]

99 Gelderland District Court 1 November 2013, 06-850865-12 (not published).
100 Gelderland District Court 16 July 2013, ECLI:NL:RBGEL:2013:1752.
101 Midden-Nederland District Court 13 August 2013, ECLI:NL:RBMNE:2013:3479.

4.4.3 Coercion and initiative

In principle, having sex with children under the age of sixteen constitutes abuse because they have not reached the age of consent. For criminal liability there is no requirement for the offender to have exerted physical or emotional coercion on the child and whether or not the victim agreed to the sexual acts is irrelevant. Who took the initiative for the acts is also irrelevant: even if the minor took the initiative, the offender is not discharged from criminal liability. It therefore seems logical that this factor will not play a significant role in most judgments, and indeed the courts only mentioned the fact that the offender did not coerce the victim in a minority of the judgments (*N*=28; 15%). What stands out is that the courts considered this factor in two distinct – and opposite – ways.

Absence of force and consent of victim

On the one hand, in sixteen cases the court ruled that the fact that the offender had not used force did not affect his criminal liability. An example of the reasoning given is as follows: 'It is a criminal offence to have sex with persons who have reached the age of twelve but not yet reached the age of sixteen. In that context, the (presumed) consent of the victim is totally irrelevant.'[102]

Totally contradictory to that reasoning is the idea that the absence of coercion, or the consent of the victim, should lead to a lighter sentence, a conclusion reached by the courts in 11 of the 28 cases.[103] For example, in a case in which a 20-year-old man was convicted of indecently assaulting three girls aged fourteen and fifteen, Dordrecht District Court found as follows: 'There was also an unwritten rule between the suspect and his friends that they would share the girls they were going out with at that time. This is how it came about that a girl first had sex with the suspect in the car, and then later with one of the suspect's friends. One of the girls was in love, but the motives of two other girls have not become clear. All three have in any case declared that the sex was voluntary. The court will take account of the willingness of the girls, bearing in mind their vulnerability, in favour of the suspect in determining the sentence.'[104]

It is remarkable that the court considered the 'willingness' of the underage victims as a mitigating factor. Coercion is not an element of the offence under Article 245 DCC for which the suspect was convicted. It is therefore strange that the absence of an element that is not part of the definition of the offence was taken into account in the perpetrator's favour in the sentencing. It is like taking the absence of premeditation into account in favour of an offender convicted of manslaughter. Furthermore, it is needlessly hurtful to the underage victims to speak of their 'willingness' to have sex with the offender and his accomplices, particularly in light of what the court went on to say later in the judgment: 'At the time the suspect saw no harm in his conduct and was, he claims, unaware that his behaviour was criminal. The court considers this very serious, especially since the MSN messages and tapped phone conversations in the file portray a suspect who, driven by lust, was able to seduce underage girls with his charm and persuasiveness. Despite their willingness, in light of his own age and the vulnerability of the girls the suspect should have known better.'

102 Arnhem District Court 24 January 2012, 05-701255-11 (not published).
103 In another judgment it was not clear whether the court interpreted the absence of violence as a mitigating factor (Zwolle-Lelystad District Court 20 November 2012, 07-690326-11 (not published)).
104 Dordrecht District Court 13 December 2012, 11-870020-10 (not published).

Absence of force

In some judgments, the absence of the use of force was also considered a mitigating factor. Almelo District Court, for example, took into account in the perpetrator's favour 'the fact that the suspect did not use any force in performing the sexual acts with the minors' in sentencing him.[105] In this case, a 20-year-old man was convicted of vaginal penetration of three girls aged five, seven and fourteen. The mitigating influence on the sentence arising from the absence of force in this case is remarkable, since it is not an element of the offence, as it is in rape, for example. Furthermore, the victims in this case were very young children who were physically dominated by the adult offender, which meant the use of force in the commission of the abuse was unlikely to be necessary in any case.

Initiative taken by the victim

In addition to the absence of coercion or the use of force on the part of the offender or the consent of the victim, in seven cases the courts found that the initiative for the sexual acts had (according to the perpetrator and/or the victim) been taken by the victim. In contrast to the factors discussed above, this factor is dealt with uniformly and in a manner illustrated by the following consideration of Zwolle-Lelystad District Court: 'The legislature wanted to protect young people up to the age of sixteen from being subjected to sexual acts. Insofar as the suspect has argued that the sexual contact was voluntary or even took place on the initiative of the victims, that does not affect the criminal nature of the suspect's actions.'[106]

4.4.4 Duration of the abuse

A person who abuses a child repeatedly over a longer period of time should obviously be punished more severely than an offender who commits abuse once. The analysis in Chapter 3 showed that the duration of the abuse for which a suspect is charged does influence the length of the sentence demanded by the PPS: the longer the period of abuse covered by the charges, the longer the unconditional term of imprisonment the PPS demands. This could also affect the sentence imposed, because, as the quantitative analysis showed, the sentence demanded by the PPS heavily influences the court's decision on sentencing.

However, the qualitative examination of the grounds for sentencing creates the impression that the duration of the abuse did not influence the sentence in most cases. The court considered the duration of the abuse in only 30 (16%) of the 182 judgments. In most of those cases (N=26), the relevant passage referred to the lengthy duration of the abuse. In sixteen cases, the court referred to this factor in neutral terms, with the factual observation that the duration continued for a long time but without seemingly attaching any consequences to the finding in terms of increasing the perpetrator's sentence. In these cases, the courts used terms such as 'The suspect was guilty of abusing his underage niece for a lengthy period.'[107]

In five judgments, the fact that the offender had abused the victim for a lengthy period was found to be an aggravating circumstance: 'In its sentence the court will take particular account of the following circumstances that emerged during the examination at the hearing to the detriment of the suspect: [...]

105 Almelo District Court 2 October 2012, 08-710873-10 (not published).
106 Zwolle-Lelystad District Court 28 June 2012, 07-653423-11 (not published).
107 The Hague District Court 15 March 2013, 09-665176-12 (not published).

the suspect repeatedly seriously abused his daughter on numerous occasions over a lengthy period, i.e., from the beginning of August 2004 until the end of December 2007.'[108] According to the grounds for sentencing in five other judgments, the lengthy period of abuse had contributed to the finding that a prison sentence was appropriate. In these cases, therefore, the duration of the abuse influenced the type of sentence. This conclusion was expressed in terms such as 'In the view of the court, given the seriousness and duration of the offences, the only appropriate punishment is in principle an unconditional prison sentence.'[109]

In four cases, the court referred in its judgment to the short period of abuse, which had a mitigating effect on the sentence, as expressed in this judgment: 'The court has also taken account of the fact that this was not a case of lengthy and systematic sexual abuse, but a single incident. The court is therefore confident that the pressure of the conditional prison sentence will be sufficient motivation to deter the suspect from transgressing again.'[110]

To sum up, in most judgments the courts devoted no attention to the duration of the period of abuse. On the basis of the qualitative analysis of the judgments, therefore, whether a victim was abused on a single occasion or repeatedly over a lengthy period seems to have no influence on the type or length of sentence in most cases.

4.5 Effect: The consequences of the offence

The courts usually addressed the 'effect' question in their judgments: what were the consequences of the offence? Title XIV of the Dutch Criminal Code (Serious Offences against Public Morals) specifies two consequences that constitute aggravating circumstances. They are set out in the last two subsections of Article 248 DCC and are serious bodily harm and death. These circumstances did not occur in any of the 182 judgments that were studied. However, the courts did frequently consider other non-statutory consequences that could influence the sentence. The following subsections review the consequences of the offences for the victim and the offender, as well as the courts' considerations regarding the often more abstract social consequences.

4.5.1 Consequences for the victim

Sexual abuse of children is seldom without consequences for the victim. It is therefore not surprising that the courts regularly addressed that aspect in their judgments. In 82 (45%) of the 182 judgments that were studied, the court considered the consequences of the sexual abuse for the victim in their grounds for sentencing. In describing the negative consequences for the victim, the courts frequently referred to the information contained in the victim's statement or in the substantiation of the injured-party claim. The consequences described in the judgments were often severe. Considerable emphasis was placed on psychological problems, examples of which mentioned in the judgments included trauma, anxiety, post-traumatic stress disorder, no longer feeling safe, fits of anger, being confused, self-mutilation, suicidal thoughts, loss of concentration, tiredness, difficulty in trusting people, feelings of uncertainty,

108 Oost-Brabant District Court 22 January 2013, ECLI:NL:RBOBR:2013:BY8911.
109 Noord-Holland District Court 28 March 2013, 14-701279-12 (not published).
110 Zeeland-West-Brabant District Court 2 December 2013, 02-666507-12 (not published).

difficulty with physical contact, feelings of guilt, shame, changes in behaviour, mood swings, uncertainty about one's own (sexual) identity, and difficulty sleeping and eating. In some cases, the courts also referred to the negative impact of the abuse on the victim's ability to form social and sexual relationships.

The consequences were not always psychological in nature. For example, some judgments reported that the victim had been removed from the home as a result of the abuse. In a case in which a father was convicted of abusing his daughter from the age of five until she was fifteen, the court found as follows: 'The consequences for the victim are also severe in this case. She is confused and angry. The sexual abuse has led to her being removed from her home. She sees this as a punishment, especially because the placement in care has been extended because of the fear that she might still encounter her father in the home situation.'[111]

Deterioration of the victim's performance at school, and sometimes the victim's having to transfer to a different school, were also mentioned in some judgments. In sentencing one of the perpetrators in a case in which a girl had to fellate four boys one after another the court stated: 'She was transferred to another school almost immediately after the incident in order to prevent stories circulating about her. She was subsequently transferred several more times, so that she repeatedly had to make new friends, which made her angry and sad. She also suffered from fits of anger.'[112]

A few judgments also referred to physical consequences, usually without further specification. One judgment was more specific, stating that the victim had stated 'that the penetration of his anus with the suspect's penis had caused a lot of pain and he had been unable to sit for a number of days.'[113]

It is also noteworthy that in some judgments the consequences were not specified. In these cases, phrases were used such as 'the enormous impact', 'the serious consequences', 'psychological damage', 'the victim's life has been disrupted' or 'the victim still suffers greatly from what happened'. The courts also regularly referred to the fact that the suspect had prevented or impaired the victim's normal and healthy sexual development.

It is not only the direct victim of the abuse who suffers the consequences. In fourteen cases, the courts also noted the consequences of the abuse for the victim's family as in the following judgment: 'The family of [name of victim, NR] was also severely disrupted by the abuse. The court finds the suspect to be responsible for that and is severely critical of him for it.'[114]

In many judgments, the suspect was explicitly blamed for the negative consequences suffered by the victim, in terms such as 'the court is severely critical of the suspect for this' or 'the court has in particular considered [the consequences]'. In these cases, the consequences are often only one of a list of factors that the court has taken into account in determining the sentence, but in only a few cases did the courts explicitly state that they had taken the negative consequences into account to the detriment of the per-

111 Zeeland-West-Brabant District Court 25 November 2013, 12-705952-12 (not published).
112 Rotterdam District Court 11 April 2013, 10-652688-11 (not published).
113 Breda District Court 5 September 2012, 02-665327-11 (not published).
114 Utrecht District Court 30 October 2012, ECLI:NL:RBUTR:2012:BY2966.

petrator. In many other cases, the court confined itself to the factual observation that the victim had suffered negative consequences from the abuse, so it is unclear whether they had also had negative consequences for the abuser in terms of the sentence.

One consequence that was considered particularly blameworthy of the perpetrator in every case in which it arose (*N*=5; 3%) was a victim's becoming pregnant as a result of sexual abuse.

> *Pregnancy as a result of abuse*
> A less common consequence, but one that has a huge impact on the underage victim, is becoming pregnant as a result of sexual abuse.[115] The judgments show this to have happened in five cases. In two instances, the pregnancy led to an abortion. That the courts acknowledge the seriousness of this consequence and take it into account in sentencing is illustrated by the following case, in which a step-father was convicted of 'systematically' sexually abusing his step-daughter for almost two years: 'Because of the suspect's intercourse with the victim, [name of victim, NR] became pregnant. This pregnancy was identified at a late stage and was terminated with an abortion in the 23rd week. An abortion is an extremely traumatic event, particularly for the victim who was aged fourteen at the time. The court will attach great weight to this circumstance in determining the sentence to be imposed.'[116]
>
> In two cases, the pregnancy was carried to full term,[117] and the victim became a mother at a young age. The enormous impact this has, not only on the victim but also on her baby and on society, is nicely illustrated by the following finding: 'The fact that a child was born from this sexual relationship has caused a major shock in society, but of course mainly in the life of [name of victim, NR]. She was only twelve years of age when the baby was born. The court is severely critical of the suspect for depriving his daughter of adequate medical care during the pregnancy and the birth, partly in view of the very young age of [name of victim, NR] and in light of the fact that it was a breech birth. The suspect's actions will not only have major consequences for the further life of [name of victim, NR], but also for the baby that the suspect fathered with her. Because of their special familial relationship to the suspect, they will be reminded of the suspect's criminal acts for the rest of their lives.'[118]

Looking at the eight statutory aggravating circumstances in Article 248 DCC, it is noteworthy that a pregnancy is not covered by any of them. Although a pregnancy ensuing from the abuse occurred was found in only 3% of the convictions, that is still a relatively large proportion compared with some of the other aggravating factors in Article 248 DCC.[119] In practice, this ground is already considered at length as an aggravating circumstance in judgments, and consequently there does not seem to be any need to create a separate statutory ground for increasing the sentence in this situation.

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115 On the consequences of unwanted teen pregnancies, see, among others, Cense & Dalmijn 2016.

116 Oost-Brabant District Court 5 March 2013, ECLI:NL:RBOBR:2013:BZ3191.

117 In addition, in one case it was impossible to discover from the judgment whether or not the pregnancy was carried to term.

118 Groningen District Court 27 April 2012, ECLI:NL:RBGRO:2012:BW4225.

119 Article 248 DCC was amended by a law of 12 February 2014, which added four new clauses. The judgments on which this study is based date from 2012 and 2013, years in which the former version of Article 248 DCC with four clauses (subsections 1, 2 and the current subsections 7 and 8) applied.

4.5.2 Negative consequences for the offender

It is not only the consequences for the victim that are considered in judgments. In one in ten of the judgments studied (*N*=18), the court also referred to the negative consequences for the perpetrator. In six cases, the court referred in its judgment to the negative consequences for the perpetrator's job: '[...] an unconditional prison sentence could have serious consequences for the suspect's personal circumstances, including the loss of his job.'[120] In five of the six cases in which the court mentioned the perpetrator's loss of his job, he was given an entirely conditional prison sentence and/or sentenced to community service.

The courts also mentioned the impact on family life in six judgments. For example, in a case in which a grandfather was convicted of repeatedly molesting his seven-year-old granddaughter, the court found as follows: '[...]because of these acts he has lost contact with his wife, his daughter (the mother of [name of victim, NR]) and her family. The court will therefore impose a lighter sentence than was demanded by the public prosecutor.'[121]

Other negative consequences for the offender mentioned by the courts in their judgments are the impact of the case (*N*=4), threats by the victim's family (*N*=1), the public reaction (*N*=1) and media attention (*N*=1).

Although one or more of these consequences will undoubtedly have arisen in more cases, in the other 164 judgments the courts did not consider the negative consequences for the offender. Correctly, attention was devoted mainly to the consequences for the victim.

4.5.3 Social impact

The social impact of the case was cited by the court in 21 (12%) judgments, usually in relatively unspecific terms like the following: 'Offences such as these also cause a strong sense of outrage in society'. This general formulation does not make it clear whether the specific case concerned actually led to public uproar. In four judgments, the courts did make the direct link between the criminal offences and the social impact: 'Furthermore, with his conduct the suspect also created feelings of disquiet and insecurity in the community (particularly in the swimming club and the municipality of [...]).'[122]

4.6 The context

The last of the five elements discussed in the judgments is the 'context' question. The context can influence the sentence on three levels.[123] The first is the substantive context: the circumstances under which the offence was committed. A statutory aggravating ground that applies in this context is abuse of a victim who has been entrusted to the perpetrator's care. This and other contexts are discussed in subsections §4.6.1 to §4.6.4. A second context is the formal context, which relates to special circumstances that arise in the course of the criminal proceedings in a specific case. An example is the failure to bring a case

120 The Hague District Court 25 October 2012, 09-655346-10 (not published).
121 Gelderland District Court 29 November 2013, 05-820969-13 (not published).
122 Oost-Brabant District Court 7 August 2013, ECLI:NL:RBOBR:2013:4345.
123 Schuyt 2010, pp. 219-220.

to trial within a reasonable period (§4.6.5). The third level is the social context, which has already been discussed in §4.5.3.

4.6.1 Abuse of a minor entrusted to the perpetrator's care

'The terms of imprisonment prescribed in Articles 240b, 242 to 247 inclusive and 248a to 248f may be increased by one-third if the offender commits the offence against his child, a child over whom he exercises parental authority, a child whom he cares for or is raising as part of his family, his ward, a minor with whose care, education or supervision he is entrusted or his employee or subordinate who is a minor.'[124]

As was shown in Chapter 3, bringing charges under Article 248 DCC has a significant effect on the sentence that is demanded; the chance that the PPS will demand an unconditional prison sentence is greater when charges are brought under any of the aggravating circumstances set out in that article.[125] However, Article 248 DCC has no effect on the length of prison sentence that is demanded and imposed; in other words, the courts do not impose a longer prison sentence if the aggravating grounds in Article 248 DCC are declared applicable.[126] This subsection reviews how the courts dealt with this factor in their grounds for sentencing.

The first part of this study revealed that 21% of the victims were abused by a relative in the first degree, often a father or step-father, and that one in ten victims was abused by a person who worked with children, such as a sports coach, a teacher or a babysitter.[127] These cases will usually involve the aggravating circumstance specified in Article 248(2) DCC – abuse of the offender's own child or a minor who has been entrusted to the care or guardianship of the offender. If this circumstance is charged and proved, a sentence equal to the maximum sentence for the basic offence plus a third can be imposed. In many judgments, the courts addressed the fact that the victim had been entrusted to the offender's care, but remarkably the aggravating circumstance in Article 248(2) DCC was only charged sporadically. When no charges are brought under Article 248(2) DCC, but the court finds that the article applies, the court may consider this ground as a reason to increase the sentence, but may not impose a sentence that exceeds the maximum sentence for the basic offence.[128]

The aggravating ground in Article 248(2) DCC took effect on 1 January 2010. This ground will therefore not have applied to all the cases in the study in which there was a position of dependence, since it only applies for offences committed after that date. A further nuance is that the aggravating ground in Article 248(2) DCC corresponds to a large extent with the definition of the offence under Article 249(1) DCC.[129] Where charges are only brought under Article 249(1) DCC, charges cannot also be brought under the aggravating ground in Article 248(2) DCC.

124 Article 248(2) DCC.
125 For a further explanation, see §3.3.1.2.
126 When controlled for the influence of the other predictive factors in the model.
127 National Rapporteur 2016, pp. 20-22.
128 See also Lindenberg & Van Dijk 2016, pp. 260-262.
129 For an explanation of the differences and similarities between Articles 248(2) and 249(1) DCC, see Lindenberg & Van Dijk 2016, pp. 245-248.

This notwithstanding, it is still remarkable that the aggravating ground in Article 248(2) DCC was charged in only fourteen cases. The decision on whether or not to bring charges under Article 248(2) DCC is apparently arbitrary. For example, in a case in which a football coach abused pupils while giving them sports massages this ground was charged,[130] while in a case in which a swimming coach abused pupils while giving them sports massages it was not.[131] A similar finding emerged from cases in which a father abused his own child. However, it is not always clear whether or not the indictment did implicitly include the aggravating circumstance under Article 248(2) DCC. For example, the indictment in a case before Zutphen District Court read: 'In the period [dates] in [place] he committed indecent acts with [name of victim] *being the suspect's daughter* [italics NR], out of wedlock, […] Article 247 DCC'.[132] The fact that the words 'being the suspect's daughter' were used in the indictment, and in the judgment, could imply that the intention was to declare the aggravating ground under Article 248(2) DCC applicable. However, that article was not mentioned in the indictment or in the description of the offence[133] or the applicable statutory provisions.

On a few occasions, the courts explicitly mentioned in their judgments that the aggravating ground, although not included in the charges, did apply: 'Although the public prosecutor has not explicitly charged the aggravating circumstance of Article 248 DCC, it was found at the hearing that the suspect committed the sexual abuse against his child. That fact shall weigh heavily with the court.'[134] The finding was in fact noteworthy in this particular case, since only a small part of the period covered by the conviction (September 2004 to August 2010) fell within the period for which Article 248(2) DCC applied.

To sum up, the examination of the cases shows that the aggravating ground in Article 248(2) DCC is seldom charged, although a substantial proportion of the cases did involve abuse of a child who was entrusted to the care of the offender. When the aggravating ground is not charged, the court cannot impose a sentence that exceeds the maximum for the basic offence.

4.6.2 Putting one's own needs first

A common finding in the grounds for sentencing was that the offender was driven by his own lust (*N*=89; 49%). This finding is often accompanied by the observation that the offender paid no attention to the feelings of the victim, since his priority was to satisfy his own needs. Notably, however, in many cases this factor apparently had no influence on the sentence. Although a consideration such as 'Suspect obviously never considered any of this, since his priority was to satisfy his own needs'[135] can be seen as a criticism of the perpetrator by the court, in most judgments it was not formulated as an aggravating factor. This factor only seems to have led to a heavier sentence in a few cases: 'Suspect obviously never considered any of this, since his priority was to satisfy his own needs. The court finds this extremely blameworthy of the suspect.'[136]

130 Gelderland District Court 3 May 2013, ECLI:NL:RBGEL:2013:BZ9363.
131 Oost-Brabant District Court 7 August 2013, ECLI:NL:RBOBR:2013:4345.
132 Zutphen District Court 30 November 2012, 06-850156-12 (not published).
133 The definition reads: 'committing indecent acts with a person below the age of sixteen out of wedlock, committed repeatedly.
134 Groningen District Court 27 April 2012, ECLI:NL:RBGRO:2012:BW4225.
135 Zeeland-West-Brabant District Court 8 May 2013, 02-666958-12 (not published).
136 Zeeland-West-Brabant District Court 3 December 2013, 02-666148-12 (not published).

4.6.3 Age difference

In many of the cases that were investigated there was a considerable age difference between the offender and the victim. As was shown in part 1 of this study, the average age gap was 24 years (SD =16.6).[137] The courts considered the age difference or the age of the victim in thirty judgments (16%). They usually did so in neutral terms, in other words without attaching any conclusions about the influence this factor had on the sentence. In five cases, the court explicitly increased the sentence because of the age factor, and in three cases the factor actually caused the sentence to be reduced.

Age difference as a factor influencing the sentence

In a case before Zwolle-Lelystad District Court, the court convicted the offender of having sex with two girls aged twelve and thirteen: 'The court takes into account as an aggravating circumstance the young age of the victims and the large difference between the ages of the suspect and the victims.'[138] The age gap in this case was more than twenty years. It is noteworthy that this factor was often not mentioned in the grounds for sentencing in cases in which the age difference was even greater.[139]

A smaller age gap can sometimes also work in the offender's favour. For example, in a case in which a 21-year-old man was convicted of abusing a 14-year-old girl, Arnhem District court found as follows: 'The court finds in the suspect's favour that the age difference was not very great.'[140] One could question the view that the 'age difference was not very great' in this case, since the offender was one-and-a-half times the age of the victim.

In other cases, the court mentioned the age difference in the judgment, but only in neutral terms. It was therefore impossible to deduce whether the age difference influenced the sentence from the formulation that was used. One example of this is a judgment of Arnhem District Court: 'With his actions the suspect showed no regard for the large age difference [...].'[141]

The fact that the age difference was large or small was explicitly mentioned in some judgments, but in most judgments this factor was not considered. In the judgments in which the factor was mentioned, there was also no uniformity in the weight the courts attached to it: a large age difference was regarded as an aggravating circumstance in some cases, while in others it was presented neutrally. The same applied for the mitigating effect of a relatively small age difference between the offender and the victim.

4.6.4 Location of the abuse

'The acts took place mainly in the suspect's home when his daughter was staying with him, an environment in which a child should actually feel sheltered and safe. The court is particularly critical of the

137 National Rapporteur 2016, p. 15.
138 Zwolle-Lelystad District Court 28 June 2012, 07-653423-11 (not published).
139 See, for example, Gelderland District Court 1 November 2013, 06-850865-12 (not published): age difference of 48 years; 's- Hertogenbosch District Court 5 January 2012, ECLI:NL:RBSHE:2012:BV0146: age difference with the youngest of the three victims of 65 years. In both cases, the wide difference in ages between the perpetrator and the victim was not mentioned in the judgment.
140 Arnhem District Court 24 January 2012, 05-701255-11 (not published).
141 Arnhem District Court 30 January 2012, ECLI:NL:RBARN:2012:BV2147. The age difference was 24 years.

suspect's grave abuse, within that environment, of the trust that his daughter was entitled to have in her father.'[142]

In a few judgments the courts considered the location where the abuse took place to be an aggravating factor. Those cases all involved abuse that took place in the victim's home (*N*=9) or in the home of the victim's grandparents (*N*=2). In a number of other cases, the courts also explicitly mentioned the location where the abuse took place, but drew no conclusions from it in terms of the sentence. The location of the abuse did not serve as a mitigating factor in any judgment.

4.6.5 Lengthy period between the offence and the hearing of the case by the court

A factor that played a role in more than one in five cases (*N*=39; 21%) was the lengthy period of time that elapsed between the commission of the offence and the trial. In almost every case, the lengthy passage of time led to the offender being given a lighter sentence (*N*=35; 19%).

In more than half of the cases (*N*=22; 56%), it was impossible to infer from the judgment what caused the delay.[143] Did the offences only come to light at a late stage because the victim had waited a long time before making a complaint? Was the case not handled expeditiously by the police or the PPS? Or did it take a long time before the case was scheduled for hearing by the court?

In seventeen cases, it was clear from the judgment that the lengthy period that elapsed was due to sluggishness on the part of actors in the criminal-law chain: the PPS, the police or the court dealt too slowly with the case. It was not always clear precisely who the target of the court's criticism was. For example, Assen District Court ruled: 'The court also takes into account that the suspect regards the period that has elapsed between the commission of the offences becoming known and the trial as very long.'[144]

In nine cases, the court criticized the PPS for not handling the case expeditiously. In three of those cases, the courts also referred to a violation of the 'within a reasonable time' criterion laid down in Article 6 of the European Convention on Human Rights. The following judgment illustrates that: 'However, the court arrives at a different sentence on the basis of the finding that the "reasonable time" as referred to in Article 6 of the European Convention on Human Rights was exceeded. The suspect was first interviewed on [date, NR] April 2010, while judgment is now being rendered on [date, NR] December 2012. The nature of the case does not justify a period of two years and eight months for hearing the case in first instance. The public prosecutor admitted at the hearing that a reasonable time has been exceeded and that the Public Prosecution Service had been far from expeditious in bringing the case to court. The court is of the opinion that the public prosecutor has not adequately reflected this violation of the reasonable time in her demand. For this reason, the court will impose a lighter sentence than was demanded.'[145]

142 Rotterdam District Court 15 February 2012, ECLI:NL:RBROT:2012:9091.
143 It will then say, for example: 'The court also takes into account the fact that the offence occurred a long time ago.'. Overijssel District Court 17 September 2013, 08-720327-12 (not published).
144 Assen District Court 16 May 2012, 19-700006-12 (not published).
145 Dordrecht District Court 13 December 2012, 11-870020-10 (not published).

Failing to deal with a case for a long time creates an undesirable situation for both the suspect and the victim. It can be difficult to get closure about the incident, while both the suspect and victim remain in uncertainty about the outcome until the case has been heard. In almost half of the cases in which a lengthy period elapsed before a case came to trial, the delay was clearly the fault of organizations in the criminal-law chain, which means that this mitigating factor for the sentence could have been avoided and should be avoided.

Long delay before a complaint is made by the victim

Finally, in two cases it was clear that the reason the suspect appeared in court a long time after the offence was committed was a late complaint by the victim. The judgments in these two cases illustrate how differently this factor can be treated. In one, the court said: 'Given the nature, seriousness and frequency of the proven offence, the court finds that – particularly from the perspective of retribution – a prison sentence of the length specified below must be imposed. That the proven offence occurred a long time ago cannot lead to a different decision, since it is known, and the legislation is designed to reflect that fact, that offences like this sometimes only come to light after many years, because the victims do not dare and are unable to talk about it sooner.'[146]

The length of time that elapsed had no effect on the severity of the sentence in that case. That was different in another case in which the PPS was partly to blame for the interval: 'Although the seriousness of the offences as described above would in itself justify imposing a (partially) unconditional prison sentence of some length, as has been demanded, the court will not do so for the following reasons. For a long time – approximately seventeen years – the suspect has lived under the assumption that his impermissible acts would not have any repercussions in criminal law. A complaint was only made at a late stage and it was then almost a year before a writ was issued – a week before the case would have lapsed under the statute of limitations. [...]'[147]

The fact that the victim's waiting a long time before making a complaint led to a lighter sentence being imposed on the perpetrator in this case is remarkable. It is known from the literature that sexual violence is often only disclosed years after the event, if ever.[148] Only a small minority of victims of sexual violence ultimately go to the police.[149] Research by the National Rapporteur in one police region has also shown that 17% of those victims who do report an offence wait for longer than a year before going to the police.[150] Since it is more the rule than the exception that victims of sexual violence wait a long time before disclosing it (if they ever do), it is strange for it to be taken into account in the suspect's favour in determining the type of sentence. The fact that a complaint has been made a long time after the abuse occurred should not be considered in the suspect's favour.

146 Haarlem District Court 20 August 2012, 15-710689-10 (not published).
147 Rotterdam District Court 8 February 2012, 10-702134-11 (not published).
148 London, et al. 2005, p. 203; Alaggia 2004, p. 1214; Crisma, et al. 2004, p. 1036.
149 For example, according to Statistics Netherlands (Centraal Bureau voor de Statistiek) only 9% of all sexual offences are reported to the police. Centraal Bureau voor de Statistiek 2012, p. 83.
150 National Rapporteur 2014, p. 128.

4.7 Conclusion

This chapter focused on what the courts tell us about the sentence. The criminal courts have wide discretion in sentencing, which enables them to judge each case individually.[151] A drawback of this discretion is that it leads to considerable variation in sentencing that does not necessarily correspond with the variation in the nature of the cases that were studied. The individualization of sentencing is clearly evident in the judgments that were studied: in every case the courts mentioned a different combination of factors that influenced the sentence, and the influence of a particular factor on the sentence may have differed greatly from one case to another. It is, moreover, often impossible to ascertain from the judgments precisely what influence a factor mentioned by the court had on the sentence.

Considerable emphasis on the person of the offender

Although the statistical model in Chapter 3 showed that the offender-related characteristics included in that model (a prior criminal record and degree of criminal responsibility) do not significantly influence the severity of the sentence, in their judgments the courts devoted a lot of attention to these and other (measurable and non-measurable) characteristics of the offender. Because it is often unclear from the judgment what value and weight the court assigned to these factors, it remains unclear precisely what effect they had on the sentence.

Statutory aggravating grounds seldom applied

The two statutory aggravating grounds in Article 248 DCC – committed by two or more persons in concert (subsection 1) and abuse committed by the perpetrator against his own child (subsection 2) – seldom seem to be charged or applied *ex officio*. The decision on whether or not to apply Article 248(1) and (2) DCC appears to be arbitrary. For example, the first ground was charged in a case in which a sports coach abused pupils, but in a similar case it was not. The same discrepancy applied in cases in which fathers had abused their own children. The involvement of multiple offenders was sometimes not explicitly mentioned in the indictment or the verdict, while in other cases it was described as co-participation, and in one case it was charged as the aggravating ground under Article 248(1) DCC. Why this aggravating circumstance was not applied more often was not clear from the judgments that were studied.

When the aggravating grounds in Article 248 DCC are not charged or applied *ex officio*, the sentence cannot exceed the maximum sentence for the basic offence. This limits the bandwidth of the sentence the court can impose. The added value of the article is lost because it is only used sparingly and no consequences in terms of increasing the sentence are attached to it in practice. That is a missed opportunity, partly in view of the fact that the statutory aggravating grounds are the result of international treaty obligations.

Coercion irrelevant with sexual assault

In a minority of the judgments (15%), the courts referred in their grounds for sentencing to the fact that the offender did not use coercion against the victim. That the court mentioned this fact is in itself remarkable, since coercion is not an element of the offence of indecent assault and whether or not force was used against the underage victim is legally irrelevant for a conviction. Another notable aspect is that the courts considered this factor in two different – and opposite – ways. On the one hand, in some

151 Van Wingerden and Wermink 2015, p. 7.

cases the courts decided that the fact that the offender did not use force did not detract from his criminal liability. Diametrically opposed to that reasoning was the argument that the absence of force, or the consent of the victim, should lead to a lower sentence. Coercion is not an element of the offence of sexual abuse of minors as defined in Articles 244, 245, 247 and 249(1) DCC. It is therefore strange that the courts used the absence of an element that is not part of the definition of the offence in the perpetrator's favour in determining the sentence.

A lengthy legal process often means a lower sentence

In more than one in five cases, the courts referred to the length of time that had elapsed between the commission of the offence and the trial. The lengthy interval almost always led to the offender receiving a lighter sentence. Leaving a case in abeyance for a long time creates an undesirable situation for both the suspect and the victim. It is difficult to get closure until the case has been heard and both the suspect and victim remain in uncertainty about the outcome for a long time. The fact that in almost half of the cases in which a lengthy period of time elapsed it was clear that organizations in the criminal-law chain were to blame for the delay means that this mitigating factor could in principle have been avoided, and it should be avoided.

Differences at three levels

Summing up, the analysis of the judgments exposed differences at three levels.[152] First, there is little consistency to be found in whether or not a particular factor was considered in the judgments. For example, the advanced age of the offender played a role in some judgments (in the sense of mitigating the sentence), while in others the offender's age was not even addressed. The same applies for other factors, such as the duration of the abuse, the age gap between the offender and the victim and the consequences of the abuse.

The second level at which there are differences is the value assigned to a particular factor by the courts. For example, the courts sometimes considered the fact that the offender had no criminal record as a mitigating factor, while in other judgments they merely mentioned this factor without attaching any value judgment to it. The absence of motivation on the part of the suspect was in some cases a reason not to impose an order to receive treatment, while in other cases the courts ordered treatment despite the suspect' lack of motivation.

A third and final level on which there are differences is the relative weight assigned to particular factors. Which factors are given the greatest weight? When the court takes the suspect's remorse into account in his favour, how much weight does the court attach to it? Does it then impose a community service sentence rather than a prison sentence? Or a shorter sentence? And how much shorter is the sentence in that case? And how does this factor relate to others? Which factor is most important? The courts seldom explicitly stated what effect a particular factor had had on the sentence.

Little guidance

The judgments provided little clear guidance for the reader, and hence for the offender, the victim and the public. This finding corresponds with earlier research into the reasoning in PROMIS judgments that was carried out for the Council for the Judiciary. One of the findings of the researchers was that the

152 For a description of the three levels, see Abbink 2016, pp. 16-17.

professionals they interviewed regarded the reasons given by the courts for the sentences they imposed as fairly weak aspects of their judgments.[153]

The absence of judicial orientation points for cases of sexual abuse seems to promote the variations in focus and the lack of manifest consideration of factors that should influence sentencing in judgments. This is not beneficial for the transparency and comprehensibility of sentences and also undermines the principle of equality before the law.

153 De Groot-van Leeuwen, Laemers & Sportel 2015, p. 6.

5 Conclusion & recommendations

In her report entitled On solid ground, the National Rapporteur observed that only a very small percentage of offenders who are convicted of hands-on sexual abuse receive a prison sentence. In light of the statutory maximum sentences for those offences, one would expect that the courts would impose a prison sentence on a substantially larger number of these perpetrators. To discover the information on which the PPS bases its demand for a particular type and length of sentence and on which the courts base the sentences they impose, the National Rapporteur examined the case law. This study was based on a quantitative and qualitative analysis of a representative sample of 182 judgments rendered in 2012 and 2013.

The answers to the six research questions presented in the introductory chapter are given in §5.1 and recommendations are made in §5.2.

5.1 The answers to the research questions

1. *What sentences and measures do the courts impose on perpetrators of hands-on sexual abuse of children?*

Although there are many similarities between the sex offences that were committed in terms of the nature of the sexual acts performed, the sentences varied greatly. The maximum term of imprisonment for acts of indecency ranges from six to twelve years. Nevertheless, only 57% of the adult offenders who were convicted received a prison sentence, and those sentences were often at least partially conditional. In two-thirds of the cases in which a conditional or partially conditional prison sentence was imposed, the courts attached special conditions, such as an order to receive treatment or for supervision by the probation service. The courts issued a TBS order against 4% of the adult offenders.

The courts can also impose an additional sentence on sex offenders in the form of a ban on practising their profession if the offence was committed in the course of their professional activities. Although the first part of this study showed that one in ten victims was abused by a person who worked with children, the courts only imposed a professional ban on two offenders.

One in six offenders (*N*=28) of hands-on sexual abuse were minors at the time the offence was committed, and most of them (*N*=25) were tried under juvenile criminal law. These offenders received a lighter type of sentence significantly more often than offenders tried under adult law. For example, the courts did not impose a custodial sentence or a measure on 84% of the underage offenders. Most offenders tried under juvenile criminal law were given entirely conditional sentences of youth detention (44%) or community service (40%). The fact that custodial sentences are the exception for underage offenders can

be explained by the different objectives of sentencing for minors compared to those for offenders who are tried under adult criminal law, and by the difference in the maximum sentences that can be imposed on minors.[1] Finally, the courts imposed a PIJ measure ('youth TBS') on two underage offenders (8%).

2. To what extent is there a discrepancy between the sentences demanded and the sentences imposed?

The sentences demanded by the PPS and imposed by the courts were compared in two respects: to what extent is the type of sentence[2] different and to what extent are there differences between the length of the term of imprisonment demanded and imposed? This was assessed for the group of suspects and offenders as a whole.

The research showed that the more severe the type of sentence demanded by the PPS, the more severe the sentence imposed by the court. At the same time, there were significant differences between the types of sentence demanded and imposed for offenders who were tried under adult criminal law. However, the differences were not particularly great: in three-quarters of the cases, the court imposed the *same* type of sentence as the PPS had demanded. In one in five cases, the courts chose a less severe type of sentence. This applied mainly in cases where the PPS had demanded a partially conditional prison sentence and the court imposed an entirely conditional sentence.

Again, while there was a correlation between the length of the term of imprisonment demanded by the PPS and that imposed by the courts, the actual length of the sentences demanded by the PPS and imposed by the court differed significantly. The PPS demanded substantially longer terms of imprisonment than the courts imposed. In three-quarters of the cases, the courts imposed a shorter prison sentence than the PPS had demanded or no prison sentence at all. Even when the PPS demanded a heavy sentence, the sentence demanded was itself far lower than the maximum sentence of six to twelve years' imprisonment for offences under the articles relating to hands-on sexual abuse that were investigated. The median length of the sentences that were demanded was slightly more than ten months (302 days).[3]

3. If perpetrators receive a prison sentence (partially conditional or unconditional), what is the length of the sentence?

Depending on the article of the law under which the offender is convicted, a perpetrator can in principle be sentenced to between six and twelve years' imprisonment for sexual abuse of a child. The sentence can also be increased by a third if any of the statutory aggravating grounds (Article 248 DCC) or the provisions on concurrent offences (Article 57 DCC) apply. Only one in five adults convicted of sexually abusing a child was given a prison sentence of a year or longer. Prison sentences of four years or longer come closer to the statutory maximum sentences, but are rarely imposed; only 3% (*N*=4) of the adult offenders were given a prison sentence of more than four years. In practice, therefore, the large majority of offenders received no prison sentence (*N*=60; 43%) or a prison sentence of less than a year (*N*=52; 37%).

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1 Although the maximum sentence under the relevant article is the same for minors and adult offenders (six to twelve years' imprisonment for indecent assault), under juvenile criminal law there is a general maximum sentence of one (for 12- to 16-year-olds) and two years (for 16- and 17-year-olds).

2 The principal types of sentence were divided into four categories for this study. In descending order of severity, these are (1) an unconditional custodial sentence, (2) a partially conditional custodial sentence, (3) an entirely conditional custodial sentence and (4) an unconditional or partially conditional sentence of community service.

3 This means that if the PPS demanded a prison sentence, for 50% of the suspects the sentence demanded was shorter than 302 days and for 50% of the suspects it was longer.

4. Statistically, what factors influence the type of sentence that is demanded and imposed?

The statistical analyses examined the influence of twelve measurable legal and procedural aspects and characteristics of offenders, victims and offences on the types of sentences that were demanded and imposed at group level. The legal aspects and the characteristics of the offence, in particular, had a significant influence on the PPS's decision to demand a particular type of sentence. Specifically, there was a greater chance that the PPS would demand an unconditional prison sentence over any of the less severe types of punishment under the following conditions: (1) when the suspect was charged with the 12-year offence (Article 244 DCC), (2) when there were grounds for increasing the sentence (Article 248 DCC), (3) when the sexual acts involved penetration with a genital organ and (4) when there was more than one victim. In addition to these four significant factors, it is entirely possible that other, non-measurable factors played a role in the type of sentence that was demanded, but it was impossible to discover what these factors might have been from the information in the judgments.

Notable findings are that the sentence demanded by the PPS was not significantly influenced by the concurrence of offences (Article 57 DCC) and that the procedural aspects and offender characteristics that were studied played no significant role whatsoever.

The original intention was to perform a statistical analysis of the influence of various factors on the type of sentence imposed by the court. Unfortunately, for statistical reasons it was impossible to investigate which factors significantly increased the likelihood of the court imposing an unconditional prison sentence rather than a partially or entirely conditional sentence. That part of the research question could therefore not be answered.

5. Statistically, what factors influence the length of the prison sentence (partially conditional or unconditional) that is demanded and imposed?

As with the previous research question, the influence of the measurable legal and procedural aspects and characteristics of offenders, victims and offences was analysed at group level. On average, the PPS demanded a longer prison sentence if the suspect was charged with (1) committing a 12-year offence (Article 244 DCC, sexual penetration of a child under the age of twelve), (2) abuse of multiple victims, (3) long-term abuse, (4) abuse of exclusively girls. These four variables together accounted for 42% of the variation in the length of prison sentence demanded. There are of course other non-measurable factors that will have influenced the sentences demanded, but they could not be ascertained on the basis of the judgments that were studied.

Some of the factors that played a role in determining the severity of the sentence imposed differed from those that influenced the sentence demanded. On average, the courts imposed a longer prison sentence when (1) the PPS had demanded a longer prison sentence, (2) at least one of the victims was below the age of twelve, (3) there was penetration with a genital organ and (4) at least one boy had been abused. Given the strong influence of the PPS's demand on the sentences that were imposed, it is plausible that the same factors that influence the PPS in the sentence it demands also affect the decision of the court. That might possibly explain why, on average, the courts imposed a heavier sentence when the offender had abused at least one boy. It seems that in this way the courts (unconsciously) neutralize the weight the PPS assigns to girls as victims in ultimately determining the sentence.

These four significant factors together account for no less than 82% of the variation in the length of the sentences that were imposed. That is a very strong correlation, but it does not exclude the possibility that other factors also had an influence, since 18% of the variation in the sentences imposed is still not explained.

The most remarkable conclusion that can be drawn from the answer to this research question is that there are many factors that *did not* play any *significant* role in sentencing. For example, two of the three legal aspects (the statutory aggravating grounds in Article 248 DCC and concurrence of offences in Article 57 DCC) were found to have no significant influence on the length of sentence, although both are grounds for increasing the maximum sentence by a third. From a legal perspective, their lack of influence is highly remarkable. Offender characteristics were also unexpectedly found to have no significant influence. It appears from the model that the existence of a relevant criminal record does not play a role, while the expectation was that offenders who had never previously been convicted of a sexual offence would receive lighter sentences than perpetrators who had been convicted of earlier sexual offences. Another conclusion was that a finding of diminished responsibility on the part of the offender had no significant effect on the severity of the sentence. This is remarkable in light of the principle that an offender who is found to be less responsible also bears less guilt, which one would expect to be reflected in the sentence.

6. *What factors do the courts[4] take into account in determining the sentence according to the grounds for sentencing given in the judgments?*

This is not an easy question to answer, since, as the analysis in Chapter 4 showed, the courts referred to a wide variety of factors in the judgments in individual cases. These factors related to the nature of the offence, the personality of the offender, the way in which the offence was committed, the consequences of the offence and the circumstances under which it was committed. A different combination of factors was mentioned in every case. The predominant feature of the judgments was in fact the many differences between them, which manifested themselves on three levels.

First, there was little consistency in whether or not a particular factor was considered in the grounds for sentencing. For example, the length of time the abuse continued or the advanced age of the offender played a role in some judgments (as a mitigating or an aggravating factor), while the courts did not even mention these factors in other cases that were similar in those respects.

Second, there were differences in the value attached by the courts to a particular factor. One example is that the courts sometimes regarded the absence of a previous conviction as a mitigating factor, while in other cases they referred to the offender's clean record in neutral terms. Furthermore, in 15% of the judgments the courts referred to the fact that the offender had not used force against the victim. In a number of these cases the courts rightly concluded that the absence of force did not affect the perpetrator's criminal liability. But this reasoning was diametrically contradicted in other judgments, in which the courts reasoned that the absence of the use of force or the consent of the victim should lead to a lighter sentence. It is strange that in some cases the courts took this factor into account in the offender's favour, since the use of force is not an element of the legal definition of sexual abuse of children.

Third, the relative weight attached to the various factors was unclear from the court's reasoning in most cases. For example, it was usually impossible to tell what weight the court had assigned to each factor and which factors weighed more heavily than others. Only occasionally did the court specifically mention what effect a particular factor had had on the sentence.

4 The factors mentioned by the public prosecutor in the indictment were not investigated, since only the judgments were studied.

Finally, it is notable that in more than one in five of the judgments that were studied there was a reference to the length of time that had elapsed between the commission of the offence and the trial. In most cases, a lengthy interval led to a reduction of the sentence. In almost half of those cases, the reduction of the sentence could have been avoided, since it was clear from the court's reasoning that the length of time that elapsed was due to delays in the criminal-law chain.

5.1.1 What the statistics tell us versus what the courts tell us

As shown in Chapter 2, there were large differences in the sentences imposed on perpetrators of hands-on sexual abuse. The sentences ranged from a conditional sentence of community service to a lengthy unconditional term of imprisonment. For offenders who received a prison sentence (partially conditional or unconditional), the length of the sentence varied greatly and ranged from one day to ten years.

How can these differences be explained? The statistical analysis in Chapter 3 leads to the conclusion that, at group level, the term of imprisonment demanded, the nature of the sexual acts committed, the age of the victims and their gender influenced the length of prison sentence that was imposed.

These four factors together explained 82% of the variation in the length of the sentence imposed. However, the courts do not cognizably take these factors into account in their grounds for sentencing, since, as shown in Chapter 4, they were seldom if ever mentioned in individual judgments. For example, in practically no case did the court say in its judgment that the victim's young age or the fact that there was sexual penetration would lead to an increase in the sentence. The conclusion to be drawn from this is that the courts either did not consciously consider these factors in determining the sentence, or they did consciously consider them but had not referred to them in the grounds for sentencing, thus making it impossible to know what role those factors had played. The discrepancy between the statistical findings and the explicit considerations of the courts is remarkable. The findings in this study could help to create greater awareness regarding the sentencing process within the judiciary.

5.2 Recommendations

The findings from this study lead to four recommendations.

Greater uniformity and transparency in stating the reasons for a sentence

It follows from Chapter 4 that the courts sometimes did and sometimes did not take particular factors into account in determining a sentence and also treated identical factors differently, without any discernible pattern. For example, it is often not clear whether a factor mentioned in the court's reasoning was considered to be an aggravating or mitigating circumstance or was presented as a neutral observation. Furthermore, in most judgments, the courts did not disclose the relative weight they attached to different factors. It is also apparent from the statistical analysis in Chapter 3 that some factors that should logically influence the sentence did not do so. This is not helpful for the transparency and comprehensibility of the sentence. The National Rapporteur makes the following recommendations for creating more uniformity and transparency in the reasons given for sentences in sexual abuse cases:

RECOMMENDATION 1 ***A framework is needed for sentencing in sexual abuse cases.***

- The statutory maximum sentences should obviously be taken into account in establishing this framework, since those sentences express the views of the legislature and thus provide an

insight into how society, through its public representatives, views these offences. Insights derived from scientific research should also be considered in drafting this framework. In light of the diversity of sentences that emerged from this study, 'the sentences in similar cases' is not a criterion that can be used in drafting such a framework.

- When formulating factors that should have an aggravating or mitigating influence in sentencing, it is important that they do not include any factors that assign blame for the offence to the victims ('victim blaming'). For example, the absence of the use of force in sexual abuse cases involving underage victims should not be a mitigating factor, and a previous voluntary sexual relationship between the underage victim and the offender (as included in the orientation points for underage offenders) is equally irrelevant for the perpetrator's criminal liability.

RECOMMENDATION 2 ***As a minimum, specify the value assigned to the factors that have led to the sentence and explain the relative weight attached to each of them in the grounds for sentencing.***

Are underage victims of sex offences as deserving of having the case dealt with quickly as underage offenders?

The analysis of the judgments has shown that one in five cases took so long to come to court that it led to a reduced sentence. As long as the case has not been dealt with, it can be difficult for both the victim and the suspect to get closure. Both remain in uncertainty for a long time about the outcome of the case.

In half of the cases in which a lengthy period had elapsed between the commission of the offence and the trial, the court blamed it on delays in the criminal-law chain. Those instances are in principle avoidable. The time taken to bring cases of sexual abuse to court has been receiving attention from the PPS for several years, while measures are currently being explored to accelerate the process of scheduling cases before the courts.

Cases (regardless of the offence) involving *suspects* who are minors are already dealt with more quickly than those involving adults. With that in mind, the National Rapporteur makes the following recommendation with regard to the ongoing process of accelerating the handling of cases of sexual abuse:

RECOMMENDATION 3 ***Take the fact that the victim is a child into account as a factor in the expeditious handling of cases of sexual abuse.***

Making use of the statutory possibilities in imposing a sentence

Chapters 2, 3 and 4 have shown that both the PPS and the courts almost never make use of some statutory possibilities with regard to sentencing. For example, the statutory aggravating grounds that apply specifically for sexual offences (Article 248 DCC), which ensue from international treaty obligations, are seldom used, and the aggravating ground of a relevant previous offence (Article 43a DCC) was not applied in a single case. This leads to the following recommendation:

RECOMMENDATION 4 ***Make use of the statutory possibilities for increasing sentences in determining the sentence demanded and imposed in cases of sexual abuse.***

A1 Explanation of research methods

A1.1 Objective

Of all forms of sexual violence against children, most perpetrators are convicted of hands-on indecent assault. In Part 1 of 'Child Sexual Abuse on Trial', the focus was on the nature of the cases in which offenders were convicted. The aim of this second part of the study was to gain an insight into the sentences that were imposed and the reasons given for those sentences in the cases that were studied. This study provides answers to the following questions:

1. What sentences and measures do the courts impose on perpetrators of hands-on sexual abuse of children? (Chapter 2)
2. To what extent is there a discrepancy between the sentences demanded and the sentences imposed? (Chapter 2)
3. If perpetrators receive a prison sentence (partially conditional or unconditional), what is the length of the sentence? (Chapter 2)
4. Statistically, what factors influence the type of sentence that is demanded and imposed? (Chapter 3)
5. Statistically, what factors influence the length of the prison sentence (partially conditional or unconditional) that is demanded and imposed? (Chapter 3)
6. What factors do the courts take into account in determining the sentence according to the grounds for sentencing given in the judgments? (Chapter 4)

A1.2 Data collection

The results of this study are, like those in the first part of 'Child Sexual Abuse on Trial', based on a random representative sample of 200 convictions for hands-on indecent assault of an underage victim in 2012 and 2013. The sample was taken from the Public Prosecution Service's database (reference date 4 July 2014) and encompassed 34% of the total population – all the convictions in those two years that met the relevant criteria.

The sample comprises 100 cases in each year in which there was a conviction in first instance for hands-on indecent assault under Articles 244, 245, 247 and/or 249(1) DCC. It does not contain any cases in which offenders were convicted of sex offences other than hands-on indecent assault.[1] Some of the cases might have included a combination of sex offences and other offences.

The judgments in the sample were requested from the relevant courts.

A1.3 Research method

Eighteen of the 200 judgments were disregarded. In two cases because the relevant judgments could not be found, and in four cases the judgments were rendered by the police magistrate.[2] In twelve cases, it was found when studying the judgments that the convictions did not actually meet the criteria: the underage victim was found to be an adult (six times), what was thought to be a conviction for hands-on indecent assault proved to be an acquittal (five times) or there was no question of hands-on abuse in the case (once).

The 182 remaining cases were all coded, and all the necessary variables were operationalized in advance, with changes being made during the coding process if necessary. If there were doubts about the correct classification of specific variables, such as the categorization of the sexual acts committed, two coders conferred to reach a joint decision. Every decision made by the coders during the study was documented in a code book.

All of the quantifiable data from the judgments, as presented in Chapters 2 and 3, were analysed using SPSS 21. The qualitative analysis of the courts' grounds for sentencing, as presented in Chapter 4, was performed using MAXQDA 12.

A1.4 Quantitative data analysis

In Chapter 3, the factors connected with the type and severity of the sentences were examined. Regression analyses were carried out in SPSS 21 for this purpose.

For the analysis of the length of sentence demanded by the PPS and imposed by the courts (§3.4.2), the suspects and offenders who were suspected or convicted of other offences in addition to hands-on abuse (N=23) were excluded. Suspects against whom the principal charges also included offences other than

1 Such as Articles 242 and/or 246 DCC (hands-on forcible) and/or Articles 239, 240, 240a, 240b, 248c, 248d and/or 248e DCC (hands-off).

2 There were only the notes for the verbal judgment, which did not contain the reasoning and therefore did not provide the information needed for this study.

hands-on sexual offences were also excluded,[3] since those other offences could also have influenced the sentence that was demanded and imposed.

The predictive variables

As shown in the Research method in Chapter 3 (see §3.2), twelve factors were selected that might have influenced the type of sentence demanded and the length of sentence that was demanded and imposed. As a thirteenth factor, the length of sentence demanded was included as a predictor of the length of sentence that would be imposed. The number of predictors included in the regression analyses was too great in relation to the number of suspects/offenders, since the rule of thumb is that the ratio between the number of observations (in this case, the suspects/offenders) and the number of predictors should be between ten and twenty to one.[4] The number of predictors could not be reduced on the basis of theoretical and substantive arguments, so it was decided to perform each of the regression analyses according to the 'stepwise method' (backward elimination).[5] With this method, the number of predictors is automatically reduced, ultimately leaving the best model with variables that are significant predictors of the type and severity of a sentence.

A1.4.1 Type of sentence

The dependent variable 'type of sentence' consists of four categories: (1) the entirely unconditional prison sentence, (2) the partially conditional prison sentence, (3) the entirely conditional prison sentence and (4) a sentence of community service. Given the ordinal outcome measure, the ordinal logistic regression would be the most logical analysis. However, it was found to be impossible to apply the 'backward elimination method' with this analysis. As an alternative, a multinomial logistic regression was performed to discover the factors that influenced the type of sentence demanded. This analysis is used to analyse the effect of predictors on a dependent variable consisting of more than two categories. As with a standard logistic regression, the multinomial logistic regression is based on a probability distribution. For the analysis, one of the categories of the dependent variable has to be selected (preferably on substantive grounds) as the reference category, with which the results in the model are compared. In this study, the 'unconditional prison sentence' is the reference category.

As with the dependent variable, a reference category had to be chosen for the interpretation of the influence of independent categorical variables on the dependent variable. Of the twelve factors that were included in the model (see §3.2), there were two that consisted of more than two categories: the articles of the law and confession of the offence. In the case of the articles of the law, Article 244 DCC (the 12-year offence) was the reference category; for the confession of the offence, the category 'confession' was the reference category.

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3 The other (sex) offences related to the following articles of the law: Articles 141(1) DCC, 2 in conjunction with 10 Opium Act (OW), 273f DCC, 285 DCC, 285a DCC, 285b DCC, 285(1) DCC, 279 DCC, 300 DCC, 311 DCC, 350 DCC, 26 in conjunction with 55 Weapons and Ammunition Act (WWM), 27 in conjunction with 54 WWM, 246 DCC, 242 DCC, 248a DCC.

4 Field 2009, p. 222.

5 The stepwise regression can be carried out using two different methods: the 'forward selection' and the 'backward elimination' method. Performing the regression via the 'forward' method produces a greater chance that a predictor will not be included in the model than with the 'backward' method, but does predict a dependent variable (a type II error). To reduce the presence of such an error the 'backward elimination' method was chosen. Step-by-step the variables that are not significant are removed from the model, until the most suitable model remains.

A1.4.1.1 Type of sentence demanded

During the performance of the multinomial logistic regression on the basis of the eleven selected factors,[6] the following warning appeared: 'Unexpected singularities in the Hessian matrix are encountered. This indicates that either some predictor variables should be excluded or some categories should be merged'. SPSS issues this warning to indicate that the specified model cannot be properly estimated.[7] There were too few suspects for whom the PPS had demanded community service as the principal sentence (N=4). The category 'community service sentence' as the type of sentence demanded was therefore excluded from the analysis.

The model

The eleven predictors were reduced to five using the 'backward elimination method'.[8] The significant variables are explained in §3.3.1. The same subsection also describes the cases in which there was a greater chance that the PPS would demand an entirely unconditional prison sentence than one of the less severe types of sentence. The specific relationship between the entirely conditional, partially conditional and entirely unconditional prison sentence is shown in Appendix 2.

The reliability of the model

The model includes two continuous predictors (the duration of the abuse and the number of victims mentioned in the indictment) and nine dichotomous or categorical variables, thus creating a large number of sub-populations. This resulted in a large number of empty cells in the model (183 cells; 64%). The Goodness-of-fit and the Pseudo R-square could therefore not be interpreted, which meant that no judgments could be expressed about what percentage of the heaviest type of sentence imposed could be explained by the predictors.[9]

To demonstrate that a model is useful, for the multinomial logistic regression it is possible to investigate how well the independent variables can predict the distribution of the categories of the dependent variable, compared with the distribution based on coincidence. In short, can the significant model actually predict the chance that the PPS will demand an entirely unconditional prison sentence, or is there a greater chance that the model is based on coincidence? A rule of thumb is that the classification of the predicted values on the basis of the model must be 25% higher than the predicted distribution of the suspects among the types of sentence on the basis of coincidence.[10] That was the case with this analysis (66% versus 44%). In short, this model is sufficiently accurate.

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6 As shown in §3.3.1 the variable 'the degree of criminal responsibility' was excluded from the analysis, since it was only possible to tell from four judgments that the PPS considered the suspect to have diminished responsibility.

7 For more information about the Hessian Matrix, see 'When the Hessian Matrix goes wacky', *The Analysis Factor*, www.theanalysisfactor.com/wacky-hessian-matrix/ (consulted on 28 Augustus 2015).

8 $\chi^2(16)=60.54$; $p<0.001$. The values for 112 suspects were included in the analysis. This means that the ratio between the number of observations and the number of predictors is 22:1 (it thus complies with the rule of thumb). Four of the five factors have a significant main effect. The confession or denial by the suspect was included in the final (most suitable) model, but did not have a significant influence on the type of sentence demanded. $\chi^2(6)=11.32$; $p=0.079$.

9 Chan 2005, p. 262; Field 2009, p. 307.

10 Slides 10 to 13, 46 and 47 of the PowerPoint presentation 'Multinomial Logistic Regression – Basic Relationships' of the University of Texas at Austin, consulted on 26 August 2015.

A1.4.1.2 Type of sentence imposed

Since there is a strong correlation between the sentence demanded and the sentence imposed, it is plausible that the type of sentence demanded influences the type of sentence imposed. The sentence demanded was therefore included as an extra variable in the model. During the performance of the multinomial logistic regression on the basis of the thirteen factors, the following warning appeared: 'Unexpected singularities in the Hessian matrix are encountered. This indicates that either some predictor variables should be excluded or some categories should be merged'. In other words, the model could not be properly estimated on the basis of the thirteen factors, so the results were not sufficiently reliable. To be able to estimate the model anyway, it was necessary to remove (1) the offenders whose heaviest sentence was a sentence of community service and (2) the factor 'heaviest type of sentence demanded'. However, results based on a model that does not include the sentence demanded are less accurate in view of the strong correlation between the sentence demanded and the sentence imposed (see §2.2.1). This is because it is not known whether and how the effect of the factors that are included would have changed if the sentence demanded could have been included in the statistical analysis. For example, a factor that significantly influences the type of sentence imposed might, after the addition of the type of sentence demanded, no longer have a significant influence, while another factor might initially not be significant but might later have a significant influence. This analysis was therefore not carried out. It is therefore not known what factors played a role in the decision of the courts to impose a particular type of sentence.

A1.4.2 Length of sentence

For the length of sentence, the length (in days) of the partially conditional and unconditional prison sentence was analysed. For the analyses of the length of sentence demanded and imposed, a stepwise multiple regression was used (backward elimination). This analysis investigates the correlation between a number of independent variables and a single dependent variable.

There are eight conditions that have to be met in order to perform the multiple regression and to generalize the results to the entire population.[11]

1. The dependent variables (the length of sentence demanded and imposed) are of ratio measurement level.
2. The independent variables must be continuous or dichotomous in nature. The variables of ordinal measurement level are made into dummy variable to make them dichotomous.
3. There must be 'Independence of observations'. For this study, there is no reason to assume that the residues are mutually related.
4. There is a linear relationship between the continuous predictors (the number of victims and the maximum length of the period of abuse covered in the charges) and the dependent variables (the length of prison sentence demanded and imposed.
5. There is homoscedasticity of the residues.[12]

11 Website Laerd Statistics, https://statistics.laerd.com/spss-tutorials/multiple-regression-using-spss-statistics.php (consulted on 4 June 2016).

12 The unstandardized estimated values of the length of sentence demanded vary from -13 to over 1,100 days. For the length of sentence imposed, the unstandardized estimated values ranged between -171 and 2,535 days. Theoretically, it is not possible to demand or impose a negative number of days of imprisonment. Since the data meet the condition of homoscedasticity and nothing suggests that a negative estimated value influences the results, the multiple regressions were carried out.

6. There is no (strong) multicollinearity. There is multicollinearity when the value of the Variance Inflation Factor (VIF) is higher than ten. There are then independent variables that explain almost the same variation in the dependent variables. The highest VIF value is 4.85 in the model with all eleven predictors and 1.09 in the final model for the length of sentence demanded. For the length of sentence imposed, the highest VIF value is 4.56 in the model with thirteen predictors and 1.37 in the final model.
7. There must not be any significant outliers in the data. For the length of sentence demanded, four outliers were removed (3,650 days, 2,555 days and two instances of 2,190 days). When the outliers were removed, there were still four cases with a risky value (between 0.22 and 0.27) as 'leverage value'.[13] Since these cases were not 'high influential points',[14] they were retained in the analysis. For the length of sentence imposed, an outlier with a value of 3,650 days was removed. After it was removed, there were still three cases with a high risk value (all around 0.23) as 'leverage value'. None of these three cases was a 'high influential point' and they were retained in the analysis;
8. The residues are normally distributed.

See Appendix 3 for the standardized regression coefficients of the multiple regression over the length of sentence demanded and imposed.

A1.5 Qualitative data analysis

To gain an insight into the reasons for a sentence, a qualitative analysis of the judgments was performed using the program MAXQDA 12. All 182 judgments containing a conviction for hands-on indecent assault were uploaded into the program, and the elements mentioned by the courts in their reasoning were labelled using this program. The labels were arranged into five main categories according to the classification used by Schuyt in her thesis (see Chapter 4). These categories relate to the nature of the offence (the 'what' question), the personality of the offender (the 'who' question), the way in which the offence was committed (the 'how' question), the consequences of the offence (the 'effect' question) and the circumstances under which the offence was committed (the 'context' question).

A1.6 Reservations

All of the information in this report is based on what was stated in the 182 judgments that were studied. The offences charged by the PPS and the offences declared proven by the courts form the point of departure. It comprises judicial findings, facts established in law. A reservation to be made here is that the judgments were coded manually, which means that a certain degree of subjectivity played a role in the coding. As mentioned earlier, a code book containing the operationalization of variables was used and two coders always made a joint decision in the event of doubt in order to minimize the degree of subjectivity.

13 A value is risky if it is between 0.2 and 0.5.
14 A value above 1 can be interpreted as a 'high influential point'.

No police files or other information about the cases was requested or examined. Because only the judgments were studied, it was not possible to discover all of the necessary information. A limitation of this study therefore is that it was not possible to identify all of the relevant factors that influenced the sentence demanded and imposed. For example, a judgment contains no information about the suspect's ethnicity or whether the suspect appeared bored or aggressive during the proceedings, factors that might have played a role in the considerations of the PPS and/or the court.

A2 Results of analysis of type of sentence demanded

The factors with a significant influence on the chance that the PPS will demand an entirely unconditional prison sentence rather than one of the lighter types of sentence are described in §3.3.1. In §3.3.1 only the overarching results are given. This appendix contains the results of the individual comparisons. There were too few suspects for whom the heaviest principal sentence demanded by the PPS was community service (N=4). The category 'community service'as the type of sentence demanded was therefore excluded from the analysis.

An entirely conditional or entirely unconditional prison sentence?

In the following cases, there was a greater chance that the PPS would demand an entirely conditional sentence than an unconditional prison sentence:

- If the most serious sexual act for which the PPS charged the suspect was an act in category 3 ('touching genital organs and penetration other than with a genital organ') rather than category 4 ('penetration with a genital organ'),[15] and/or
- If the most serious charge brought by the PPS (on the basis of the maximum sentence) was for an offence under Articles 247 DCC/249 DCC (maximum of six years) or Article 245 DCC (a maximum of eight years), rather than Article 244 DCC (maximum of twelve years),[16] and/or
- If the PPS did *not* bring charges under Article 248 DCC, as opposed to doing so,[17] and/or
- The fewer the victims mentioned by the PPS in the indictment.[18]

A partially conditional or entirely unconditional prison sentence?

In the following cases, there was a greater chance that the PPS would demand a partially conditional sentence than an entirely unconditional sentence:

15 B=3.71; $Exp(B)$=40.79; $Wald\ \chi^2(1)$=9.25; p=0.002.

16 Articles 247 DCC and/or 249 DCC: B=3.77; $Exp(B)$=43.39; $Wald\ \chi^2(1)$=6.73; p=0.010.
Article 245 DCC: B=3,39; $Exp(B)$=29,68; $Wald\ \chi^2(1)$=9,58; p=0.020.

17 B=3.75; $Exp(B)$=42.63; $Wald\ \chi^2(1)$=8.69; p=0.003.

18 B=-1.66; $Exp(B)$=0.19; $Wald\ \chi^2(1)$=4.99; p=0.026.

- If the most serious sexual act for which the PPS charged the suspect was an act in category 3 ('touching genital organs and penetration other than with a genital organ') rather than category 4 ('penetration with a genital organ'),[19] and/or
- If the most serious charge brought by the PPS (on the basis of the maximum sentence) was for an offence under Article 245 DCC (maximum of eight years) rather than Article 244 DCC (maximum of twelve years),[20] and/or
- The PPS did not bring charges under Article 248 DCC, as opposed to doing do.[21]

19 B=3.01; $Exp(B)$=20.28; $Wald\ \chi^2(1)$=7.83; p=0.005.
20 B=2.71; $Exp(B)$=15.02; $Wald\ \chi^2(1)$=9.55; p=0.002.
21 B=2.55; $Exp(B)$=12.87; $Wald\ \chi^2(1)$=5.72; p=0.017.

Table A.1 Standardized regression coefficients of the stepwise multiple regression analysis (backward elimination) for the length of sentence demanded[22] (2012-2013)

	Models										
Variables	1	2	3	4	5	6	7	8	9	10	11 (the definitive model)
Article 248 DCC	0,01	–	–	–	–	–	–	–	–	–	–
Confession of offence versus partial confession	-0,02	-0,02	–	–	–	–	–	–	–	–	–
Suspect is family member	0,03	0,03	0,03	–	–	–	–	–	–	–	–
Relevant criminal record	0,06	0,06	0,06	0,05	–	–	–	–	–	–	–
Concurrence of offences (Article 57 DCC)	-0,07	-0,07	-0,07	-0,07	-0,07	–	–	–	–	–	–
Confession of offences versus denial	-0,08	-0,08	-0,07	-0,08	-0,07	-0,06	–	–	–	–	–
Confession of offences versus unknown whether suspect did/did not confess	-0,08	-0,09	-0,08	-0,08	-0,07	-0,07	-0,06	–	–	–	–
Age of victim	0,15	0,15	0,14	0,13	0,12	0,12	0,13	0,13	–	–	–
Sexual act	0,19	0,18	0,19	0,18	0,18	0,18	0,17	0,16	0,15	–	–
Article 244 DCC (twelve-year offence) versus Article 245 DCC (eight-year offence)	-0,33	-0,33	-0,32	-0,31	-0,30	-0,30	-0,30	-0,29	-0,17	-0,12	–
Gender of victim	0,21*	0,21*	0,21*	0,21*	0,21*	0,23*	0,22*	0,22*	0,21*	0,20*	0,20*
Article 244 DCC (twelve-year offence) versus Article 247/249(1) DCC (six-year offence)	-0,44 ***	-0,44 ***	-0,44 ***	-0,44 ***	-0,44 ***	-0,43 ***	-0,43 ***	-0,42 ***	-0,40 ***	-0,46 ***	-0,40 ***
Maximum duration of abuse	0,25	0,25	0,24	0,26*	0,26*	0,23*	0,23*	0,23*	0,22*	0,25*	0,29**
Number of victims	0,36***	0,36***	0,36***	0,36***	0,36***	0,34***	0,34***	0,35***	0,34***	0,33***	0,33***
Adjusted R^2	*0,37*	*0,38*	*0,39*	*0,40*	*0,41*	*0,41*	*0,42*	*0,42*	*0,42*	*0,42*	*0,42*

*$p \leq 0,05$, **$p \leq 0,01$, ***$p \leq 0,001$

22 As with the type of sentence demanded, the 'degree of criminal responsibility' was also excluded from the analysis of the length of sentence demanded. There were therefore eleven variables included in the multiple regression to predict the type of sentence demanded.

Table A.2 Standardized regression coefficients of the stepwise multiple regression analysis (backward elimination) for the length of sentence imposed (2012-2013)

	Models											
Variables	1	2	3	4	5	6	7	8	9	10	11	12 (the definitive model)
Number of victims	0,01	–	–	–	–	–	–	–	–	–	–	–
Article 248 DCC	-0,01	-0,01	–	–	–	–	–	–	–	–	–	–
Maximum duration of abuse	-0,02	-0,02	-0,02	–	–	–	–	–	–	–	–	–
Art 244 DCC (twelve-year offence) versus Art 245 DCC (eight-year offence)	-0,04	-0,04	-0,03	-0,03	–	–	–	–	–	–	–	–
Art 244 DCC (twelve-year offence) versus Art 247/249(1) DCC (six-year offence)	-0,04	-0,04	-0,04	-0,04	-0,03	–	–	–	–	–	–	–
Confession of offences versus partial confession	0,06	0,06	0,06	0,06	0,06	0,06	–	–	–	–	–	–
Confession of offences versus unknown whether perpetrator did /did not confess	0,05	0,05	0,05	0,06	0,06	0,06	0,04	–	–	–	–	–
Criminal responsibility	-0,06	-0,06	-0,06	-0,06	-0,07	-0,07	-0,07	-0,05	–	–	–	–
Perpetrator is family member	0,09	0,08	0,08	0,07	0,08	0,08	0,09	0,08	0,07	–	–	–
Confession of offences versus denial	0,12	0,12	0,12	0,12	0,12	0,12	0,10	0,08	0,07	0,07	–	–
Concurrence of offences (Art 57 DCC)	0,08	0,08	0,08	0,07	0,07	0,08	0,08	0,08	0,09	0,08	0,07	–
Relevant criminal record	0,09	0,09	0,09	0,09	0,09	0,08	0,08	0,09	0,09	0,09	0,09	0,09
Gender of victim	-0,08	-0,08	-0,08	-0,08	-0,08	-0,07	-0,08	-0,08	-0,09	-0,09	-0,09	-0,10*
Age of victim	-0,12	-0,12	-0,13	-0,12	-0,14*	-0,14*	-0,15*	-0,16**	-0,17**	-0,19***	-0,19 ***	-0,20 ***
Sexual act	0,17*	0,17*	0,17*	0,17*	0,17*	0,18**	0,17**	0,18**	0,18**	0,16**	0,16**	0,17**
Length of sentence demanded	0,77***	0,77***	0,77***	0,76***	0,76***	0,77***	0,76***	0,76***	0,78***	0,81***	0,80***	0,81***
Adjusted R^2	*0,80*	*0,81*	*0,81*	*0,81*	*0,82*	*0,82*	*0,82*	*0,82*	*0,82*	*0,82*	*0,82*	*0,82*

** p ≤ 0,05, ** p ≤ 0,01, *** p ≤ 0,001*

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The National Rapporteur reports on the nature and scale of human trafficking and sexual violence against children in the Netherlands.

What does the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children do?

The National Rapporteur reports on the nature and scale of human trafficking and sexual violence against children in the Netherlands. The Rapporteur monitors the effects of policy conducted in these domains, identifies bottlenecks and makes recommendations to improve the measures taken to address these themes. The National Rapporteur has no investigative authority and is not a complaints agency.

Who is the National Rapporteur?

The National Rapporteur is Corinne Dettmeijer-Vermeulen. She is supported by a team of researchers from various disciplines.

What activities does the National Rapporteur carry out?

The National Rapporteur collects quantitative and qualitative data by means of independent research, through intensive contact with other bodies, by organizing and participating at meetings and conferences and by participating in task forces and groups of experts. The Rapporteur publishes the results of her research and the ensuing recommendations in reports, which also contain descriptions of the phenomena of human trafficking and sexual violence against children, relevant legislation and the measures taken in the areas of prevention, investigation and prosecution of perpetrators and help for victims. The Rapporteur monitors the practical implementation of her recommendations. The Rapporteur is also active at international level.

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November 2016