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

FACTSHEET

Weighted risk

Assigning treatment to sex offenders in the Netherlands

About 12% of sex offenders commit a new sex offense at some point. But not every sex offender poses the same risk of recidivism. The Dutch judicial system aims to assign treatment and/or supervision to prevent new offenses by known offenders. A condition for effective treatment is that the level of treatment is proportionate to the level of risk: the higher the risk, the higher the level of treatment should be (Risk-principle). Society should be protected against offenders with a high risk of harming new victims. Treating everyone is not the solution as the risk of recidivism for offenders who already pose a low risk does not further decrease, but may instead even increase.

We do not adequately assess how likely a sex offender is to commit a new offense. This may lead to both too much and too little treatment. Both can lead to otherwise preventable harm being done.

CONCLUSIONS

- In the Netherlands assessing the risk that a sex offender commits a new offense is not done according to *actuarial risk assessment*, the method which has been proven to yield the best prediction of recidivism. Since the best available method is not employed, it is currently difficult to say which sex offenders pose the gravest risk.
- Treatment assigned to sex offenders does not sufficiently correlate with actuarially determined risk. This means that sex offenders are either over- or under-treated compared to what their risk of committing a new offense would warrant. Both prospects are undesirable.

Does the Dutch system lead to the desired outcome?

In the Dutch judicial system one or more psychologists or psychiatrists and also probation services can be asked to provide their assessment of the risk of a new (sex) offense. **Results**:

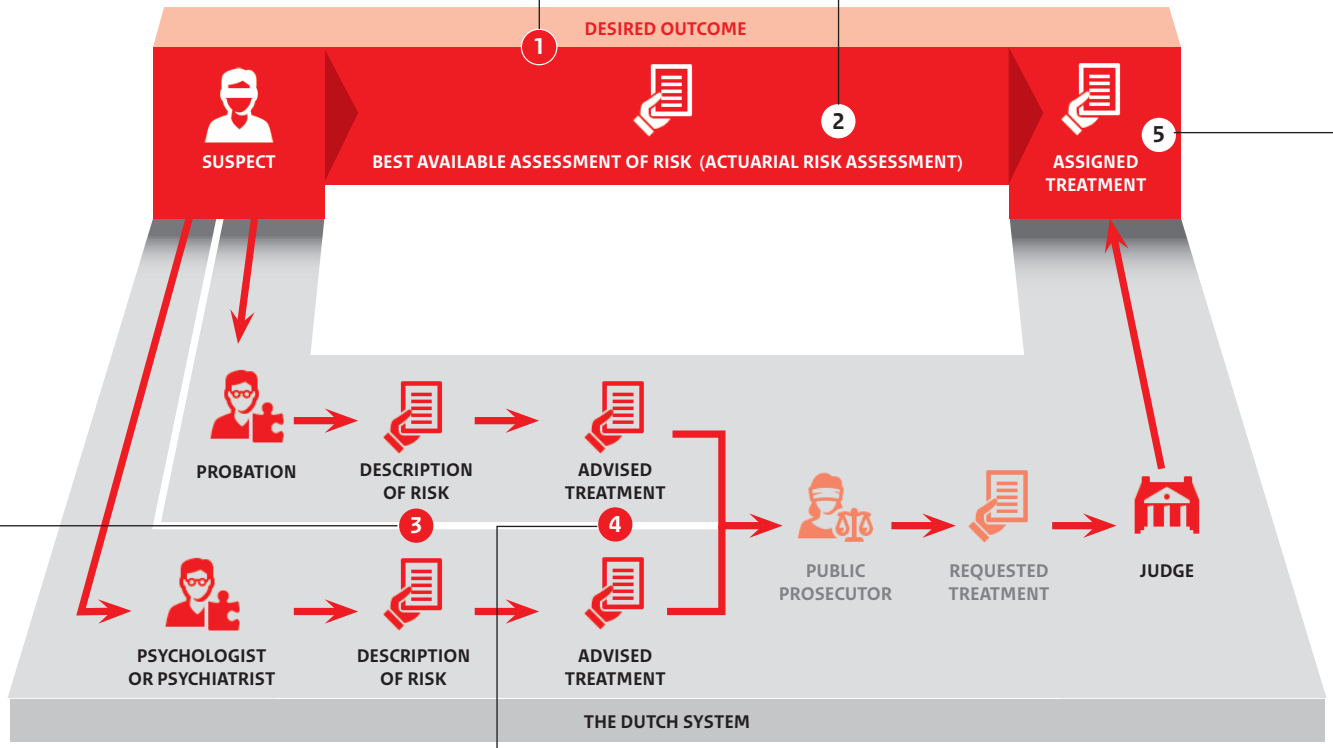
- Both regularly omit any assessment of risk from their reports: probation provides **no description** of the risk level in 23% of cases, the psychologists/psychiatrists omit such a description in 47% of the cases. Actuarial risk assessment would make assessing risk possible in nearly all of these cases.
- Probation services mostly do *structured risk assessment*. This means that despite using an instrument, it is ultimately up to the probation worker to form a conclusion based on both the instrument and other information. This method does have predictive value pertaining to recidivism, but **underperforms** compared to *actuarial risk assessment*.
- Psychologists/psychiatrists perform *unstructured risk assessment* in 22% of the cases, which means that they do not use an instrument but reach their conclusion based on conversations with the subject and their own knowledge. This form of risk assessment is **not predictive** of recidivism. The psychological reports are based on structured risk assessment in 27% of cases.
- The description of risk in probation reports and psychological reports only partially correlates with the actuarially determined risk level. Suspects for whom the risk description is omitted have a high risk of recidivism on average.

→ Neither psychological nor probation reports are based on *actuarial risk assessment*, while this would provide the **best prediction** of later recidivism. Instruments for actuarial risk assessment are available and tested for use in the Netherlands.

Recidivism can be prevented through treatment that matches the risk of a new (sex) offense:

- Intensive (Inpatient) treatment for high risk offenders
- Moderate (Outpatient) treatment for moderate risk offenders
- No treatment for low risk offenders

This requires assessment of the risk of recidivism to be as predictive as possible. *Actuarial risk assessment* provides the most predictive assessment. In actuarial risk assessment, an empirically validated instrument containing proven risk factors is scored and directly determines the assessment of risk.



The **advised treatment** should match the risk of a new offense. **Results**:

- If a suspect is described as high risk in the probation report or the psychological report, then more intensive treatment will be advised. But suspects defined as low risk are not advised lighter treatment on average than, say, subjects described as posing moderate risk.
- Suspects for whom inpatient treatment is advised have a higher actuarial risk level than suspects for whom either no treatment or outpatient treatment is advised. But the actuarial risk level does not differ between the latter two groups.

The treatment that the judge sentences the (convicted) offender to should match the risk of a new offense. **Results**:

- If the suspect is described as **high risk** either in the probation report or in the psychological report then the judge will sentence him to more intensive treatment on average compared to other risk categories. Suspects described as **low risk**, however, are not sentenced to lighter treatment – that is to say, proportionate treatment - compared to suspects described as being at any intermediate risk level. This may lead to **overtreatment**.
- The type of treatment an offender is sentenced to correlates insufficiently with the **actuarial risk**. The different steps in the system of sentencing an offender to treatment, therefore, **do not lead to the desired outcome**: a level of treatment that matches the level of risk of a new (sex) offense.

RESEARCH

1. Is the risk of recidivism of sex offenders adequately assessed in the Dutch judicial system? Tried and tested instruments are available, are they applied?
2. Do the advised and the assigned treatment match the risk of recidivism of sex offenders?

We studied this by analyzing the files of cases against a sample of sex offenders tried in 2012 and 2013. We analyzed psychological reports (N=234), probation reports (N=197) and sentences (N=125). Not all documents were available for all cases.

MAIN FINDINGS

- When experts who advise the judge do not express any assessment of the risk a sex offender poses, the judge assigns a lighter form of treatment on average. But this group of offenders does not have an average (actuarial) risk level lower than that of offenders who are assigned outpatient treatment. This means that any treatment assigned is likely insufficient, which runs the risk of the offender victimizing more individuals. This outcome could be prevented by adequate treatment. In many cases, a description of the risk level could have been provided: actuarial risk assessment, particularly of historic (static) risk factors can usually be performed even if the offender does not cooperate.
- Judges assign treatment in the majority of cases where experts deem an offender as posing a low risk of recidivism. This means that more treatment than necessary is likely being assigned. At best, this is a waste of money but at worst, it can increase the risk of recidivism.

RECOMMENDATIONS

To the Minister and Secretary of Security and Justice: ensure that the risk of recidivism is assessed using the best available method, and is used to appropriately sentence sex offenders to treatment. This recommendation is further elaborated upon through the following recommendations:

1. To the Dutch Institute of Forensic Psychiatry and Psychology and to probation services: let actuarial risk assessment instruments determine the assessment of risk.
2. To the Dutch Institute of Forensic Psychiatry and Psychology and to probation services: base the advised level of treatment on the assessed level of risk.
3. To the public prosecution service and the judiciary: request actuarial risk assessment part and parcel from the advising parties.
4. To the public prosecution service and the judiciary: ensure that public prosecutors are sufficiently equipped to critically evaluate descriptions of risk and the treatment advice that follows.