

 JUST CLOSER 

EXECUTIVE SUMMARY

NATIONAL REPORT ON THE YOUTH JUSTICE
SYSTEM - THE NETHERLANDS



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Introduction

Since its creation, the Dutch juvenile justice system can be characterised by a welfare approach, in which re-integration and re-education of children who have come into conflict with the law are at the forefront.

In this report the implementation of the nine principles distracted from the Council of Europe Guidelines on Child-friendly justice is analysed for the Dutch context. We take a look at the accessibility, age-appropriateness, speed, diligence and adaptability to the rights of the child of the Dutch youth justice system and the way in which there is respect for the right to due process, the right to participate in and understand the proceedings, the right to private and family life and the right to integrity and dignity.

Accessibility

Children in the Netherlands have the right to know the offense they are accused of, the right to remain silent and the right to have a parent or legal guardian present during interrogation. However, improvements are required such as making information more child-friendly and ensuring proper interpretation services, especially for children who are deaf or hard of hearing. Additionally, procedures regarding summoning, notification of rights in detention centres, and access to files are in place. Despite these legal provisions, there are concerns about children not being adequately informed about their rights, with lawyers often being their primary source of information.

In the Netherlands, most children in conflict with the law are entitled to free legal assistance, regardless of their parents' income. This right extends to various stages of legal proceedings, including first instance, appeal, and Supreme Court appearances. Children have the freedom to choose their lawyer, but free legal aid is not provided if the chosen lawyer is not part of the legal aid system. However, certain categories of children, such as those facing minor traffic violations or cases settled by the public prosecutor with limited penalties, are not entitled to free legal aid.

Legal aid lawyers specialising in youth justice typically have expertise in other legal areas such as criminal, family, victim, and child law. They undergo specific training and must meet certain requirements. These lawyers are compensated through a points-based system with fixed rates, primarily funded by the Ministry of Justice. However, concerns have been raised regarding the adequacy of fees, which may not sufficiently compensate for the time spent on cases, leading to difficulties in attracting new lawyers to the legal aid sector.

Age-appropriate

When a child is suspected of a criminal offense in the Netherlands, the police initiate a report and begin a risk assessment using a standardised instrument. This instrument estimates the risk of recidivism based on static factors such as gender and past convictions. If the risk is low, the case may be settled or referred to a multidisciplinary consultation. However, the individual assessment by police officers, particularly regarding personal circumstances, may be less extensive for minor offenses compared to serious ones. During police interrogations, attention is given to personal circumstances, but there is concern that individual assessment has not been fully embraced by the police. Lawyers suggest improving this

assessment process, especially during initial contact with the justice system, to better address vulnerabilities and ensure timely access to legal representation for children. Additionally, there's a call for increased awareness among police custody staff regarding the age and needs of arrested children.

When a child is taken into police custody in the Netherlands, the Child Protection Board is notified by the public prosecutor. The judge considers suspending pre-trial detention under specific conditions, advised by the Child Protection Board, which may include intensive guidance, learning projects, or electronic monitoring. A social worker from the Child Protection Board assesses the child's well-being, often based on limited information. The Child Protection Board also reports on the child's circumstances and advises on appropriate dispositions before hearings, conducting social investigations involving interviews with the child, parents, and relevant individuals. Reports are shared with parents and the child, but their responses may not necessarily influence the Child Protection Board's advice.

The Netherlands Institute for Forensic Psychiatry and Psychology becomes involved when research into a child's mental capabilities is necessary. This can be at the request of the public prosecutor or the Child Protection Board, especially if concerns arise about the child's mental state. A forensic behavioural expert conducts a personality investigation focusing on the child's personality, risk of recidivism, and treatment possibilities, particularly when considering placement in a closed treatment facility. The child may also be placed in a forensic centre for clinical observation. If there's disagreement about the report's conclusions, the lawyer can request a counter-expertise. The NIFP rapporteur is required to discuss the report's findings with the child, who also has the right to correct any inaccuracies.

Speedy procedures

In the Netherlands, processing time limits have been established to ensure prompt handling of cases in the youth justice system, with the goal of addressing 80% of cases within these set timeframes. However, these time limits are often not met. The Dutch Inspection Agency of the Ministry of Justice has identified waiting lists and staff shortages in various stages of the youth justice procedure, contributing to increased overall waiting times.

Diligence

In the Netherlands, young suspects may be heard by either one judge or, in more serious cases, by a panel of three judges, one of whom must be a youth court judge. Legal changes in 1995 altered the role of the youth court judge, who was previously involved in liaising with the public prosecutor and the Child Protection Board but is now excluded from these meetings. Additionally, criminal and civil cases involving a child or family are often handled separately, leading to potential lack of awareness among judges about different legal procedures and measures. Social work professionals are responsible for informing judges about child protection measures or pending criminal cases. Although the law specifies that the pre-trial judge should be a specialised youth court judge, in practice, adult criminal law judges may be appointed as substitutes. After the final judgment, the judge typically no longer has involvement with the young person's case.

After the 1995 revision of child criminal law in the Netherlands, the child judge's role diminished, but new case consultation methods emerged among the police, prosecution service, and Child Protection Board. One such method is the ASAP meeting, where relevant stakeholders convene within 9 hours of arrest to decide on case resolution or trajectory. Decisions are based on case circumstances, including police reports and risk assessments.

Judges presiding over youth justice cases are recommended, but not required, to take a course on communication during youth justice hearings, provided by the training institute for the Dutch judiciary and public prosecution service. However, they are obligated to take a course on the basics of child law, including international children's rights. Judges and clerks must periodically obtain sufficient educational credits, but no specific courses are mandated. Public prosecutors and deputy prosecutors handling youth court cases must undergo a course on youth justice, which includes role plays and focuses on interview techniques and child-friendly language. Lawyers seeking registration for youth justice cases must undergo sufficient training in this area, with no specific requirements for communication with children. They must also obtain educational credits.

Adapted and focused on the rights of children

In the Netherlands, the police possess official powers to handle criminal cases, with a wide range of diversion mechanisms available at their discretion. They may dismiss a case, provide voluntary social support, refer the case to the Child Protection Board, issue an oral warning, or send the child to a community service project called Halt for minor offenses. The public prosecutor holds the legal authority to initiate court proceedings or decide against prosecution based on expediency. They can also conditionally discharge cases involving misdemeanors or lesser offenses, and since 2011, can declare the defendant guilty and impose sanctions through a settlement. The defendant has the right to appeal this decision. The prosecutor can impose community service, fines, or probation on young suspects, with more severe penalties requiring a hearing. Both the police and the public prosecutor play a central role in determining which cases are sent to youth court, with designated youth court prosecutors and public prosecutor's clerks exclusively handling child cases in prosecution offices.

Juvenile criminal law sentences include monetary fines (up to €4,100), community service (up to 240 hours), and youth detention (up to 1 year for 12- to 15-year-olds, and up to 2 years for 16- and 17-year-olds). Common measures include treatment in closed facilities (up to 6 years with 1 year of aftercare), behavioral treatment (6-12 months), restriction of liberty orders (e.g., contact or location bans), and financial compensation. Community service is frequently used. The youth probation service, part of certified youth care organisations, implements these measures and also conducts tailored behavioral interventions, such as family therapy and individual programs for aggression regulation and substance abuse.

Probation supervision for young persons can be imposed in various ways: by the prosecutor as part of diversion, by the investigating judge as part of suspended pre-trial detention, by the judge as part of a conditional sentence, or as aftercare following detention. It can also be accepted voluntarily before trial. Non-compliance with compulsory orders leads to reporting by probation officers to the prosecutor, who decides on further action. After release from detention, the probation service provides aftercare, often

including reintegration programs tailored to the individual's needs. Although probation officers aim to support and positively influence young persons, research indicates that some perceive the interaction as controlling and corrective.

Since 2016, alongside the larger youth detention centres in the Netherlands, five small-scale reception centres have been established to accommodate males aged 14 to 23 on remand. These low-security centres aim to maintain care and education within the young person's community rather than placing them further away from home. However, the centres are not operating at full capacity yet, as individuals require nearby daily activities, which are not always available. On average, youths spend 70 days in detention in 2021.

Respecting the right to a due process

Young suspects have the right to free consultation and interrogation assistance by a lawyer, which cannot be waived. The lawyer can advise the child on whether to speak or remain silent and explain the investigative process. During interrogations, the lawyer can sit next to the child, make comments, and ensure understanding of questions. The presence of a parent or guardian is permitted for emotional support but without interrupting the interrogation. Lawyers typically meet the child multiple times, explaining their role, discussing the offense, and preparing for police interviews and hearings. If a child is held in police custody, the lawyer's role includes preparing for the pre-trial detention hearing and discussing possible suspension conditions.

Respecting the right to participate in and understand the proceedings

There are no specific guidelines for interrogating children, although quality standards have been advised. Young suspects are heard at various stages of criminal proceedings, such as pre-trial detention hearings and court appearances, where they have the right to legal representation and parental presence. The judge interviews the young suspect in closed-door sessions, with opportunities for parents and legal representatives to speak.

Research on young people's experiences in the youth justice process reveals a prevalent perception of tension, hostility, and strictness in the courtroom, particularly towards prosecutors. Nearly half of the participants felt they were not treated fairly, and the majority were dissatisfied with both the conduct of the hearing and its outcome. A significant portion expressed a desire for professionals to listen more attentively to their concerns and take their circumstances into account.

Respecting the right to a private and family life

Youth court hearings in the Netherlands typically occur behind closed doors to protect the child's privacy. However, exceptions can be made if the public interest outweighs the need for privacy. In such cases, certain individuals like social workers, researchers, interns, or members of the press may be granted access. Nonetheless, the court has the authority to exclude individuals during sensitive discussions, such as those concerning the child's personal circumstances. Additionally, when a child is detained, they have

the right to receive and send mail, meet with visitors for at least one hour per week, and make phone calls twice a week for a minimum of two hours.

Respecting the right to integrity and dignity

When a child is detained by the police in the Netherlands, they are usually held in a separate detention centre away from adults. During transport to court and while in court, they are also kept separate from adults. Courtrooms generally do not differ between young suspects and adults, but some courts, like in Amsterdam, have designed "child-friendly courtrooms" for child protection and youth justice cases. These courtrooms are smaller and feature a large round table without computers, where all attendees can sit together. However, not all courts have such specialised facilities, and in some cases, children may be placed in standard or slightly modified cells without specific child-friendly features.

When a young person disagrees with a decision affecting them in youth detention, they can appeal to an impartial body. Initially, they must submit a complaint to the complaints committee of the youth detention centre, explaining their grievance. Mediation is attempted first, and if unsuccessful, the complaint is reviewed by the complaints committee. Both the young person and the director of the centre are heard, and the decision is provided in writing to the child. Appeals against this decision can be made to the Appeals Committee of the Council for the Administration of Criminal Justice and Protection of Juveniles.

Final comments

The analysis indicates that while most child-friendly justice principles are incorporated into Dutch criminal procedural law, challenges persist in their implementation. The European Commission has noted that the Netherlands has not fully transposed certain provisions of Directive 2016/800 on substantive rights, leading to a formal notice. Furthermore, the current focus on procedural adaptations for all children does not adequately address the individual circumstances or vulnerabilities of some young people. Although there is increased attention to children with cognitive disabilities and from ethnic minority backgrounds, more effort is needed to address their specific needs and vulnerabilities in both procedural and substantive aspects of the youth justice system. Enhancing awareness and consideration of individual needs and circumstances among youth justice professionals would improve the effective participation of children in complex procedures.



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