

 JUST CLOSER 

National Report on the youth justice system

THE NETHERLANDS



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Introduction: General characteristics and main legislation of the Dutch youth justice system

The Dutch youth justice system can be characterised as having a pedagogical focus and goal. The system is rooted in a welfare model, whereby the underlying problems of delinquent behaviour form an important motive for intervention, in order to prevent re-offending and foster re-education and protection of the child.¹ Since the 1960s, classical criminal justice notions, such as guilt, proportionality and retribution have become more prominent in the system and attention for due process rights of children increased.²

The specific provisions of child criminal (procedural) law are included in the (general) Dutch Criminal Code (hereinafter: CC) and the Code of Criminal Procedure (hereinafter: CCP). The Dutch youth justice system is very similar to the 'adult', general criminal justice system with many of the same – procedural and substantive – provisions being applicable to both children and adults.³ On the other hand, the Dutch youth justice system has a distinct character with its clear pedagogical approach. The specific character and focus of the youth justice system have various implications, including a separate penal system with different types and less severe sentences⁴ and a number of specific procedural provisions.⁵ Every disposition should have a re-educative aim and should lead to resocialisation of the young person. This has also led to an extensive diversion scheme in the Netherlands, whereby children can be imposed dispositions in every phase of the process (i.e. at the police, prosecutor and court level).⁶

In the Netherlands, children can be prosecuted in the youth court when at the time of the offence the child is 12 years or older.⁷ Below the age of 12 children are not deemed to be criminally responsible, but when the child has certain problems he can be offered supervision and care through voluntary care or the civil child protection system. When a 16- or 17-year-old child is suspected of having committed a serious offence he can be transferred to the adult criminal justice system. This is possible on the basis of either the seriousness of the offence, the personality of the defendant or the circumstances under which the

¹ In the Netherlands a child [*jeugdige*] is a person under the age of 18 (article 1.1 Child law [*Jeugdwet*]).

² WEIJERS I., *Geschiedenis van het jeugdstrafrecht*, in WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 19-38; LAAN VAN DER P.H., *Just desert and welfare: Juvenile justice in the Netherlands*, in JUNGER-TAS J., DECKER S.H. (eds), *International Handbook of Juvenile Justice*, Dordrecht, 2006, pp. 145-172; LIEFAARD T., BRINK VAN DEN Y.N., *Juveniles' Right to Counsel during Police Interrogations: An Interdisciplinary Analysis of a Youth-Specific Approach, with a Particular Focus on the Netherlands*, in *Erasmus Law Review*, 2014, pp. 207.

³ LIEFAARD T., BRINK VAN DEN Y.N., *Juveniles' Right to Counsel during Police Interrogations: An Interdisciplinary Analysis of a Youth-Specific Approach, with a Particular Focus on the Netherlands*, p. 207.

⁴ Articles 77a-77gg CC.

⁵ Articles 486-500 CCP; LIEFAARD T., BRINK VAN DEN Y.N., *Juveniles' Right to Counsel during Police Interrogations: An Interdisciplinary Analysis of a Youth-Specific Approach, with a Particular Focus on the Netherlands*, p. 207.

⁶ WEIJERS, I. RAP, S.E., HEPPING K., *Juvenile justice and juvenile crime: Tradition and topicality of an interdisciplinary approach*, in JONG DE F. (ed), *Overarching views of delinquency and deviancy. Rethinking the legacy of the Utrecht School*, Den Haag, 2015, pp. 367-384; WEIJERS I., LIEFAARD T., *Youngsters*, in BOONE M., MOERINGS, M. (eds), *Dutch Prisons*, Den Haag, 2007, pp. 127-166.

⁷ Article 77 (a) CC; see Articles 486 and 488(2), CCP.

offence has been committed.⁸ However, even if this provision is applied, the case remains in the youth justice system; a youth court judge is part of the bench of three judges who handle the case and youth court procedures are followed during the trial. When the young person is found guilty, the bench can order an adult criminal court sentence. When a young adult between 18- and 23-years-old is suspected of an offence, the prosecutor can order to impose a juvenile criminal law sentence.⁹ The prosecutor is advised on this matter by the adult probation service and the Child Protection Board [*Raad voor de Kinderbescherming*]. These organisations use national guidelines on the application of adolescent criminal law. Criteria that need to be met in order to ask for a juvenile criminal law sentence is that the young adult is still living at home, is going to school, needs support because of mild intellectual disabilities and is open to educational support.¹⁰

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. Since a large body of research and NGO reports exists on these topics, this is used as a basis for this report. In what follows, 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

Justice must be accessible for all children. Any barriers to access to justice must be removed and children shall be provided adequate information about their rights. Justice must be free of charge and legal aid must be guaranteed, and so must be access to support services and remedies.

Information and interpretation

When a child is stopped, arrested or summoned for questioning by the police, he has the right to know what offence he is suspected of.¹¹ Prior to any interrogation, the child must be told that he is not obliged to answer (the right to remain silent).¹² This is closely related to the principle that a suspect does not have to cooperate with his own conviction and that suspects' statements may not have been obtained under pressure. After the arrest, the child must be told that his parents or legal guardian¹³ will be notified and

⁸ Article 77 (b)(1) CC.

⁹ Article 77c CC.

¹⁰ LIEFAARD, T., RAP S.E., *Het adolescentenstrafrecht in Nederland: de stand van zaken 4 jaar na invoering van de Wet Adolescentenstrafrecht*, in *Tijdschrift voor Criminologie*, 2018, pp. 364-375.

¹¹ Article 27c CCP.

¹² Article 29 CCP.

¹³ In the following, when parents are mentioned, also others who have legal guardianship over the child are meant.

that he has the right to have a parent, legal guardian or trusted person present during the interrogation. The parents must also be informed of their child's rights.¹⁴

Government websites and videos exist which provide information to children about their rights and the child criminal procedure. The letter sent to a child suspect who is invited to the police station for an interview includes information on the right to consult a lawyer. The notification by the Public Prosecutor's Service also contains similar information. Police officers provide an information brochure to children upon their arrest which includes information about their right to a lawyer. However, lawyers feel that the information is not adequate and not enough child-friendly. As a result, lawyers have to give additional information to the child. Some professionals working in the area of youth justice have suggested that the government should discuss with the police to send the brochure along with the invitation letter and review the content aiming at making it more child-friendly.¹⁵

In the Netherlands, the right to assistance by an interpreter has been established for all suspects who have no or insufficient command of the Dutch language.¹⁶ This right also encompasses assistance by someone capable of acting as interpreter, for a suspect who cannot, or who can only very poorly, hear or speak.¹⁷ In principle, the police officer who conducts the interrogation decides to call an interpreter, based on the following criteria: the suspect understands the questions or statements that are directed towards him, the suspect is capable of giving his own account of the events for which a statement is required and the suspect is capable of adding nuances to this – for example, if the suspect is only able to answer the questions asked with 'yes' or 'no', he does not have sufficient command of the Dutch language.¹⁸ In case of doubt or disagreement with the suspect regarding the necessity of an interpreter, the police officer will contact the (assistant) public prosecutor who will decide on this matter.¹⁹ In principle, in case of doubt, an interpreter is always contacted.²⁰ Research by Defence for Children also shows that in practice, the police errs on the side of caution when it comes to deciding on calling an interpreter, also to ensure that the judge deciding on the case will not exclude evidence later on.²¹ While the consensus is that assistance by an interpreter is ensured in an appropriate manner for children, interpretation for children who are deaf or hard of hearing might be a different matter: for these children a family member or acquaintance is

¹⁴ Article 488aa(3) CCP; article 488ab(1) CCP; article 488b CCP.

¹⁵ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

¹⁶ Article 27(4) CCP.

¹⁷ Article 131b CCP.

¹⁸ DEFENCE FOR CHILDREN INTERNATIONAL, THE NETHERLANDS, *Procedural Rights of Juveniles Suspected or Accused in the European Union. Nationaal Onderzoeksrapport – Nederland*, Leiden, 2016, p. 22; Article 3.3 Prescription regarding the assistance of interpreters and translators during the investigation and prosecution of criminal offences [*Aanwijzing bijstand van tolken en vertalers bij de opsporing en vervolging van strafbare feiten*].

¹⁹ DEFENCE FOR CHILDREN INTERNATIONAL, THE NETHERLANDS, *Procedural Rights of Juveniles Suspected or Accused in the European Union. Nationaal Onderzoeksrapport – Nederland*, Leiden, 2016, p. 22. The assistant public prosecutor is not a member of the public prosecution service, but a police officer with several special authorisations in the context of the criminal justice system.

²⁰ Article 3.3 Prescription regarding the assistance of interpreters and translators during the investigation and prosecution of criminal offences.

²¹ DEFENCE FOR CHILDREN INTERNATIONAL, THE NETHERLANDS, *Procedural Rights of Juveniles Suspected or Accused in the European Union. Nationaal Onderzoeksrapport – Nederland*, Leiden, 2016, p. 26.

usually engaged, while a qualified and specialised interpreter also has knowledge of the language development of these children – which is different from that of children who can hear.²²

When the public prosecutor decides to prosecute the child then he is summoned. The summons is sent by registered mail to the child's home address or is handed to him in pre-trial detention. The summons also contains the charges.²³ The parents and the lawyer receive a copy of the summons and all other written documents issued to the child.²⁴ The parents are also summoned to appear at the hearing and are obliged to appear.²⁵

When a child is placed in a youth detention centre (in pre-trial detention or a detention sentence) upon entry he must be informed in writing and in a language he understands about his rights and obligations in the centre.²⁶ In particular, children must be informed about the possibilities in terms of lodging a petition, complaint or appeal against a decision made in detention. House or group rules should also be handed out.²⁷ The Youth Custodial Institutions Act does not prescribe the way in which information should be provided. However, written information should always be available in the form of brochures or leaflets. In addition, the Act provides that children must receive information in writing when certain specific decisions are made (e.g. in case of disciplinary measures); this information must include the right to lodge a complaint regarding the decision made.²⁸ In addition, the child has the right to have access to his file created in the youth detention centre.²⁹ The parents are also entitled to have access to these files, unless the interests of the child object to this.³⁰ Research in the Netherlands shows however that children are not always adequately informed about their right to complaint; children indicated that they primarily received information about this from other children.³¹

A study conducted among young people in a youth detention centre shows that they indicate to not receive enough information about the youth justice process and that they did not feel very well-prepared. The lawyer is indicated to be the most important support person and most information is received from the lawyer.³²

Legal aid

²² DEFENCE FOR CHILDREN INTERNATIONAL, THE NETHERLANDS, *Procedural Rights of Juveniles Suspected or Accused in the European Union. Nationaal Onderzoeksrapport – Nederland*, Leiden, 2016, p. 27.

²³ Article 261 CCP.

²⁴ Article 503 CCP.

²⁵ Article 496 CCP.

²⁶ Article 60 Youth Custodial Institutions Act.

²⁷ LIEFAARD, T., BRUNING, M., *De justitiële jeugdinrichting*, in WEIJERS, I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 393-416.

²⁸ Article 62 Youth Custodial Institutions Act.

²⁹ Article 68 Youth Custodial Institutions Regulation.

³⁰ Article 69 Youth Custodial Institutions Regulation.

³¹ BRUNING, M., LIEFAARD, T., VOLF, M., *Jongeren in justitiële jeugdinrichtingen: wat vinden zij van hun rechten?*, in *Proces*, 2005, pp. 114-121.

³² RAP, S.E., *Participatie in het jeugdstrafrecht: in hoeverre ervaren jongeren procedurele rechtvaardigheid?*, in *Tijdschrift voor Criminologie*, 2023, pp. 68-86.

Free legal assistance is granted to most children in conflict with the law in the Netherlands. The right to free legal aid by a lawyer does not depend on the parents' income and it applies in the cases of first instance, appeal and Supreme Court appearances. Children can choose their lawyer if they want to. However, no legal aid is provided when this lawyer is not part of the legal aid system.³³ However, the entitlement to free legal aid by a lawyer does not apply to all children in conflict with the law, in particular children who are: summoned to appear before the sub-district judge, (in case of minor traffic violations); cases dealt with by the public prosecutor where a settlement is imposed of community service of 20 hours or less, or a fine of less than € 115 Euros.³⁴

Legal aid lawyers working in the area of youth justice are usually competent in other areas of law, such as criminal, family, victim and liability or child law. They receive a specific training and a specialisation in youth justice. The requirements to register as a lawyer specialised in youth justice are as follows:

- a minimum of three years of relevant professional experience
- completed the Dutch Bar Association vocational education training with a specialisation in criminal law
- attended a youth justice court hearing three times, accompanying another specialised lawyer who has already been registered for three years
- attended a court hearing on an out-of-home placement in a closed youth care institution one time, accompanying another specialised lawyer in civil child law who has already been registered for three years
- achieved, in the course of the three years prior to their request for registration, a minimum of eight training points in the area of youth justice and a minimum of four training points in the area of civil child law.³⁵

Lawyers are paid by the Legal Aid Board according to a system of points with fixed rates. The legal aid system is financed by the Ministry of Justice, and only for a small part by the income-related contribution of the client. Recently, concerns have been raised that fees are too low and do not compensate the time spent on a case. Another concern is that it is difficult to motivate new lawyers to work in the legal aid sector when there is no perspective of a reasonable income. Lawyers also mentioned that they do not have access to funds to hire contra-expertise or a specialist when necessary for the child. Reform is ongoing, and financial support is being given to pay for the training of lawyers motivated to work in the legal aid sector.³⁶

³³ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

³⁴ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

³⁵ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

³⁶ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

Age-appropriate

At all stages of the proceedings, children must be treated according to their age, their specific needs, their degree of maturity and level of understanding. Everything must be explained in a language they can understand.

Individual assessment by the police

When a child is suspected of a criminal offence, the police writes a report concerning this suspicion and the first part of a risk-assessment instrument [*Landelijk Instrumentarium Jeugdstrafrechtketen (LIJ)*] is automatically filled in based on information in the police systems.³⁷ With this instrument the general risk of recidivism (low, medium or high) is estimated, based on static (i.e. no longer changeable) criminogenic factors such as gender, age at the time of first police contact, and past convictions.³⁸ If a low risk of recidivism is established, no further instruments are used and the police settles the case or refers it to the multidisciplinary consultation. Based on the outcome of the instrument and the report on the alleged crime the police can also make a referral to the Child Protection Board or a voluntary youth care organisation.³⁹ However, the individual assessment by the police – in terms of attention for the personal circumstances – usually is less extensive in cases concerning minor offences (e.g. shoplifting) compared to those concerning more serious offences.⁴⁰

During the police interrogation, attention is devoted to the personal circumstances during the phase of the interrogation that is called the social or person-oriented interrogation. In research conducted by Leiden University one of the respondents stated that the idea of an individual assessment has not yet really landed with the police. According to this person, usually a standardised questionnaire is administered and much depends on specific affinity with this area of work of the police officer involved. Another respondent also indicated that the decreased specialisation in the police and public prosecution service has had a negative impact on awareness of the issues concerning children in the justice system.⁴¹

Lawyers that have been interviewed in this study stated that individual assessment could be improved during this phase of first contact with the justice system. The individual assessment only takes place after certain important decisions have already been taken, such as the decision to arrest the child and to keep

³⁷ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*, Leiden, 2020.

³⁸ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

³⁹ BEIJERSE UIT J., DUBBELMAN L., *De politie en het Openbaar Ministerie in jeugdstrafzaken*, in WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 239-272.

⁴⁰ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

⁴¹ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

him in police custody.⁴² A first assessment or short checklist could point out vulnerabilities and, for instance, ensure that a lawyer – who will often have to see multiple children when on call – could go to the most vulnerable children first. Moreover, the attendants for the arrested persons in police custody should be more aware of the age of the arrestees and the concomitant needs, e.g. by providing the child with the opportunity to telephone a parent.⁴³

Individual assessment by the Child Protection Board

When a child is taken into police custody, the Child Protection Board is notified by the public prosecutor. When the public prosecutor orders pre-trial detention and the court accepts this order, it is prescribed by law for the judge to consider whether the pre-trial detention may be suspended, either immediately or after a specific period of time.⁴⁴ If the order is suspended, this is done under certain general conditions that also apply to adult suspects,⁴⁵ as well as ones specific to the youth justice system (e.g. accepting intensive guidance by the probation service, following a learning project for a maximum of 120 hours, a contact ban, a location ban, a curfew, ban on drugs and/or alcohol, or mandatory blood- or urine-testing).⁴⁶ Electronic monitoring can be attached to these special conditions.⁴⁷ To determine these specific conditions, the judge will obtain advice from the Child Protection Board.⁴⁸ A social worker from the Board conducts a first assessment of the well-being of the young suspect in pre-trial detention, also when the young person is arrested during the weekend.⁴⁹ The prosecutor must consider this advice before ordering a continuation of the pre-trial detention.⁵⁰ In case the prosecutor requests conditional suspension of pre-trial detention the judge should determine which conditions are attached to the suspension, after having sought advice from the Child Protection Board.⁵¹ Therefore, the judge needs information concerning the current situation of the young person the situation at home, his school record, his leisure time, etc. In general, the judge receives a (preliminary) social report, and because of the short timespan the report is mainly based on a short interview with the young person and a phone call with the parents.⁵² The probation service may also be asked to provide advice on the conditions for suspension and the feasibility of certain

⁴² SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁴³ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁴⁴ See Article 493(1) CCP.

⁴⁵ See Article 80 CCP.

⁴⁶ See Article 493(6) CCP and Article 2:6 of the Decree on the enforcement of criminal justice decisions [Besluit tenuitvoerlegging strafrechtelijke beslissingen]. Article 27(1) Decree on the enforcement of juvenile criminal law [Besluit tenuitvoerlegging jeugdstrafrecht]

⁴⁷ Article 27(3) Decree on the enforcement of juvenile criminal law.

⁴⁸ See Article 493(6) CCP. BEIJERSE UIT J., DUBBELMAN L., *De politie en het Openbaar Ministerie in jeugdstrafzaken (Jeugdstrafrecht. In internationaal perspectief).*

⁴⁹ Article 490 CCP; article 494 CCP.

⁵⁰ Article 491(2) CCP; on the other hand, the pre-trial judge can also ask the Child Protection Board to inform him concerning the situation of the young person, for example after the pre-trial detention has been continued for an additional period of time (article 494 (4) CCP).

⁵¹ Article 493(6) CCP.

⁵² The pre-trial detention hearing has to take place within three days and 18 hours from the arrest of the child (article 59a(1) CCP).

interventions.⁵³ Generally, the Child Protection Board will advise to suspend pre-trial detention, unless it is strictly necessary to keep the child detained.⁵⁴ Research has shown that a strong relationship exists between the advice of the Child Protection Board about whether or not to suspend the pre-trial detention order and the decision that is taken by the judge.⁵⁵ The child has to agree to the specific conditions that are established for the suspension of the pre-trial detention.⁵⁶ This agreement has to be demonstrated through a statement that is signed by the child in which the nature and content of the conditions are described, or through the report of the court hearing.⁵⁷

When the child is not in pre-trial detention, the Child Protection Board is informed by the public prosecutor. Prior to the hearing(s), the Board reports to the judge(s) and the public prosecutor about the child's personal circumstances and provides an advice on the most appropriate disposal. The second instrument of the LIJ is used for this purpose. The Child Protection Board undertakes a systematic social investigation with regard to almost every young suspect who has to appear before the prosecutor or judge. Information is gathered through dossier analysis, a structured interview with the young person and with his parents and telephone contact with relevant others such as a school teacher. The report contains social background information concerning the young person and his family and an advice concerning the most appropriate sanction and/or measure. The Board should mention specific vulnerabilities of the child in its advice. The social worker will also ask for the child's opinion on the alleged offence and his personal circumstances. Furthermore, the parents, legal guardian or trusted person must be involved in the drafting of the aforementioned advice.⁵⁸ The opinion of the child and his parents are included in the report. The sources of information – such as the child, the parents, or a teacher at school – are explicitly mentioned. This makes it possible for actors reading the report, such as the judge, to assess the information on objectivity.⁵⁹ When the report is ready, parents and the child receive a copy.⁶⁰ In basically every child criminal case the board prepares a report for the prosecutor (also in case of a conditional dismissal), the pre-trial judge or the judge and gives advice on the most appropriate disposition.

Reports made when the child is in police custody are usually drafted under great time pressure (i.e. shortly before or even during the hearing regarding pre-trial detention), meaning that there will not be a prior opportunity for the child – or his lawyer or parents – to study or respond to the report. This is different for the reports that are prepared prior to the substantive court hearing in a case: these will always be shown

⁵³ BRINK VAN DEN Y.N., *Voorlopige hechtenis in het Nederlandse jeugdstrafrecht: wet en praktijk in het licht van internationale en Europese kinder- en mensenrechten*, Deventer, 2018 (Dissertation Leiden University).

⁵⁴ BRINK VAN DEN Y.N., *Voorlopige hechtenis in het Nederlandse jeugdstrafrecht: wet en praktijk in het licht van internationale en Europese kinder- en mensenrechten*.

⁵⁵ BRINK VAN DEN Y.N., WERMINK H.T., BOLSCHER K.G.A., LEEUWEN VAN C.M.M., BRUNING M.R., LIEFAARD T., *Voorlopige hechtenis van jeugdigen in uitvoering. Een exploratief kwantitatief onderzoek naar rechterlijke beslissingen en kenmerken*, Nijmegen, 2017.

⁵⁶ Article 493(6) CCP.

⁵⁷ Article 2:6(4) of the Decree regarding the enforcement of criminal justice decisions.

⁵⁸ Article 494 CCP; article 494(a) CCP.

⁵⁹ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

⁶⁰ RAAD VOOR DE KINDERBESCHERMING, *Jongere aangehouden*, <https://www.kinderbescherming.nl/voor-kind-en-ouder/jongere-aangehouden>; MINISTERIE VAN JUSTITIE EN VEILIGHEID, *Als uw kind in aanraking komt met de politie*, <https://www.kinderbescherming.nl/voor-kind-en-ouder/documenten/brochures/2022/03/22/als-uw-kind-in-aanraking-komt-met-de-politie>

in advance by the rapporteur of the Child Protection Board and will quite frequently include remarks, e.g. when the parents or child do not agree with the information or advice that is included.⁶¹ Also, factual errors can be corrected after the reading by the parents and child. While the parents and the child can point out that there are errors in the report or that they do not agree with the content thereof, the Child Protection Board will not necessarily change their advice as a result thereof.⁶² It is preferred, but not obligated, for the rapporteur of the Child Protection Board to discuss the report with the parents and the child. Often, this discussion will be done by telephone; however, if there is not sufficient time before the court hearing, the report will be sent and usually five days will be given for them to respond. The Child Protection Board moreover has started to include a 'child letter' with the report, a short summary which is addressed to the child as well as the parents and which is very clearly formulated. Moreover, at the court hearing usually an opportunity is provided to respond to the reports.⁶³

Lawyers that were interviewed as part of a study conducted by Leiden University were generally satisfied with the individual assessment as provided in the reports by the Child Protection Board and stated that the quality of the reports has improved over the last years in terms of structure and standardisation, and by employing more extensive questioning. One of the respondents stated that the Child Protection Board seems to have a more critical approach towards their own investigation. In principle, at least two professionals of the Child Protection Board should have looked at the report before it is sent to the public prosecutor and judge.⁶⁴

Personality assessment

Moreover, when research into the mental capabilities of the child is deemed necessary, the Netherlands Institute for Forensic Psychiatry and Psychology [NIFP] is involved. This is requested by the public prosecutor, at the request of the Child Protection Board – who will then also include the results of this personality investigation in their advice.⁶⁵ More generally speaking, if there are concerns about the mental state of the child, the NIFP will engage a forensic behavioural expert (a psychologist and/or psychiatrist) to provide a report. This is required, for example, when a placement in a closed treatment facility is being considered.⁶⁶ To this end, a child can also be placed in a forensic centre for clinical observation.⁶⁷ The investigation focuses on the personality of the child, the risk of recidivism and the possibilities for

⁶¹ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁶² SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁶³ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁶⁴ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁶⁵ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands.*

⁶⁶ Article 77s(2) of the Criminal Code.

⁶⁷ Article 196; article 317 CCP.

treatment.⁶⁸ Moreover, the lawyer can request a counter-expertise if there is disagreement about the conclusions of this report.⁶⁹

The NIFP rapporteur is obliged to discuss the findings and conclusions of the report with the young person. In addition, the young person also has the right of correction.⁷⁰ This means that the rapporteur must correct data in the report that the child has made plausible that it is incorrect, incomplete or irrelevant. The child's opinion on the report and advice can also be attached to the report. Moreover, the child's overall reaction must be included in the report. Parents do not have the right to inspect and correct, only when the child gives permission. The final version of the report is added to the judicial file and can be requested by the child through his lawyer.⁷¹

Speedy procedures

The principle of urgency must be applied in order to provide a quick response, in the light of the child's best interest. Preliminary decisions must be reviewed.

In the Netherlands, processing time limits haven been set in policy, to ensure the speedy handling of cases. The aim is to deal with 80% of the cases within the set time limits. The following time limits exist:

- Between first interrogation by police and diversion to Halt: 7 days
- Between first interrogation by police and receipt of report by prosecutor: 30 days
- Between first interrogation by police and diversion by prosecutor: 3 months
- Between first interrogation by police and report by Child Care and Protection Board: 42 days
- Between first interrogation by police and judgment by first instance court: 180 days
- Between appeal and judgment by appeal court: 105 days⁷²

The time limits are generally not met however. In 2022, in 45% of the cases the police report was received by the prosecutor within 30 days and in 43% of the cases a judgment was issued by the judge within 180

⁶⁸ CARDOL, G. *Raad voor de Kinderbescherming, NIFP en jeugdreclassering*, in WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 273-290.

⁶⁹ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

⁷⁰ Laid down in the NIP code (Dutch Institute of Psychologists) and the NVvP directive (Dutch Association of Psychiatrists).

⁷¹ EMMEN, M. ROETERS, C. *De pro Justitia-rapportage in strafzaken, juridische aspecten. Een praktische handreiking*, Den Haag, 2022.

⁷² Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt [*Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2020R006)*].

days. In 2018 this was respectively 61% and 51% ⁷³ The Dutch Inspection Agency of the ministry of Justice has identified waiting lists in several stages of the youth justice procedure, such as waiting for probation to start. The Inspection reports that organisations have staff shortages, that cases have become more complex and that children have to wait during each step in the procedure, increasing the overall waiting time.

Several studies show however that organisations in the youth justice system are devising alternatives to ensure that, despite waiting lists, children do feel the consequences of the offence and learn from it. For example, pre-trial detention appears to be used in part to pre-empt sentencing. At the time a child is sentenced, the time spent in pre-trial detention is deducted from the final sentence. This done in the pedagogical interest of the child, as this allows the child to directly experience a response. It should be noted however that it has not yet been established that the child is guilty of a criminal offence. In addition, pre-trial detention lacks, whereas during a detention sentence treatment is provided to children.⁷⁴

Diligence

Diligence is the quality in which commitment, care, thoroughness and converge. Juvenile-friendly justice must encompass all of these qualities, respecting the rights of children and always acting in their best interests.

Role of the different youth justice professionals

In the Netherlands, young suspects can be heard by one judge⁷⁵ or in more serious cases by a panel of three judges, one of whom should be a youth court judge.⁷⁶ Legal changes to the child criminal law enacted in 1995, modified the role of the youth court judge. Juvenile court judges before 1995 liaised with the public prosecutor and the Child Protection Board on a regular basis.⁷⁷ Nowadays, the youth court judge is excluded from these meetings, whilst among others the police are included. Courts in the Netherlands have different approaches to dealing with child cases: in some courts judges deal with all family related cases, while in other courts youth justice cases are dealt by youth court judges who are not involved in child protection and family law cases for example.⁷⁸ Moreover, in general criminal and civil cases involving one child or family are dealt with separately and not necessarily by the same judge, so judges are not always aware of the different legal procedures and measures imposed. It is the responsibility of the social work professionals to inform the judge regarding a child protection measure

⁷³ MINISTERIE VAN JUSTITIE EN VEILIGHEID, *Strafrechtketen 2022. Factsheet strafrechtketenmonitor*, Den Haag, 2022.

⁷⁴ INSPECTIE JUSTITIE EN VEILIGHEID, *Omgaan met wachtlijsten in de jeugdstrafrechtketen*, Den Haag, 2023.

⁷⁵ Article 495(1) CCP.

⁷⁶ Article 495(3) CCP.

⁷⁷ JONGE DE G., LINDEN VAN DER A.P., *Jeugd & Strafrecht*, Deventer, 2007.

⁷⁸ WEIJERS I., *Geschiedenis van het jeugdstrafrecht, (Jeugdstrafrecht. In internationaal Perspectie)*.

that has been ordered already or a criminal case that is pending.⁷⁹ According to the law, the pre-trial judge should be a specialised youth court judge.⁸⁰ In practice, however, this is not in every court the case, because adult criminal law judges can be appointed as substitute youth court judges in order to fulfil the task of a pre-trial judge.

The public prosecution service is formally responsible for the execution of sentences.⁸¹ While other organisations, such as the Child Protection Board and the child probation service, are responsible for the actual execution of sentences, the prosecutor comes into play in case the convicted young person does not carry out the sentence or comply with conditions attached to a sentence. In principle, the judge is no longer involved with the young person after the final judgment is rendered in a case.

Case consultations

As has been noted above, after the revision of the child criminal law in 1995, the child judge lost his central position in the youth justice process. However, new forms of case consultations developed between the police, the prosecution service and the Child Protection Board.⁸² For example, a fast-track system has been developed at the police level, whereby cases are assessed within 9 hours after arrest (the so-called ASAP [ZSM] meeting). To this end all relevant actors (police, Child Protection Board, public prosecution service, probation, the victim support service, and sometimes the youth care office) are present at a fixed location for seven days a week, sixteen hours a day.⁸³ For all cases involving children that are brought forward by the police, i.e. all suspects between 12 and 18 that were either summoned or arrested, a decision is taken to either settle the case by means of diversion or to decide on the trajectory to be followed.⁸⁴ The information material on which this decision is based depends on the circumstances of the case; sometimes this consists merely of the police report, the first interrogation and an overview of assistance/social work that is already ongoing.⁸⁵ During this phase of the procedure, a medium or high risk of recidivism as indicated by the LIJ, would be a reason for further investigation by the Child Protection Board. If a low risk has been found and it does not concern a serious offence, usually the case will be dropped or the child will be referred to a diversion project.⁸⁶ The child him/herself and the lawyer are not present at the ASAP meeting, although the lawyer is informed afterwards. Both lawyers that were interviewed made clear that they still have an important role to play during this phase of the criminal

⁷⁹ VLAARDINGERBROEK, P., *De samenhang tussen het jeugdstrafrecht en het civiele jeugdrecht*, in Weijers I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 61-82.

⁸⁰ Article 492 CCP.

⁸¹ Article 553 CCP.

⁸² JUNGER-TAS, J., *Youth justice in the Netherlands*, in TONRY M., DOOB A.N., (eds), *Youth crime and youth justice. Comparative and cross-national perspectives*, Chicago, 2004, pp. 300-301.

⁸³ MIJNARENDS, E.M., *De rechtspositie van de jeugdige verdachte op ZSM*, in *Strafblad*, 2014, 26-32.

⁸⁴ BEIJERSE UIT J., DUBBELMAN L., *De politie en het Openbaar Ministerie in jeugdstrafzaken (Jeugdstrafrecht. In internationaal perspectief)*; MIJNARENDS E.M., RENSEN E., *De rechtspositie van de jeugdige verdachte op ZSM*, in WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2017, pp. 259-272.

⁸⁵ MIJNARENDS, E.M., *De rechtspositie van de jeugdige verdachte op ZSM*, p. 30.

⁸⁶ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

procedure. When in doubt about the suitability of a certain decision, they see it as the task of the lawyer to reach out to the public prosecutor and provide more context or background information.⁸⁷

This fast-track system was pre-dated by case consultations taking place between the police, prosecutor and Child Protection Board at a later moment after arrest. These consultations have been expanded to include other organisations such as the local municipality, schools and the youth care service and take place in the so-called regional Care and Safety homes [*Zorg- & Veiligheidshuizen*]. Usually, more serious or complex cases, which have not led to a decision within seven days after arrest through the fast-track procedure, are discussed during these meetings. The Safety homes are regional cooperation initiatives between authorities within the justice and welfare system and other local organisations to improve cooperation between authorities, in order to solve complex cases involving children at risk, repeat offenders, domestic violence and the reintegration of ex-detainees. The aim of these consultations is to exchange information and to decide together what would be the most appropriate disposition in a specific case, which will then be proposed to the court.⁸⁸

Training of professionals

For judges trying youth justice cases, a course on communication during the youth justice hearing, provided by the training institute for the Dutch judiciary and public prosecution service, is recommended, but not required. A course on the basics of child law (i.e. for both youth justice and child protection cases), also discussing international children's rights, is obligatory. Periodically, sufficient educational credits must be obtained both by judges and by clerks, although no specific courses are prescribed for this purpose. Public prosecutors and deputy prosecutors handling youth court cases must follow a course on youth justice that includes role plays and focuses, among others, on interview techniques and child-friendly language.

Lawyers that want to be registered for youth justice cases (to provide funded legal aid) also need to ensure that they follow sufficient training in this area, although there are no specific requirements with regard to training in communication with children. Lawyers also have to obtain sufficient educational credits periodically, at least half of which relate to legal activities in an area of law that is relevant to their legal practice.⁸⁹ Lawyers are required to achieve a minimum of 20 training points per year to be able to register as a member at the Dutch Bar Association, and a minimum of 8 training points per year in the area of youth justice to be able to register as specialised lawyers with the Legal Aid Board. Lawyers must also attend several hearings, accompanying another specialised lawyer who has already been registered for three years, before being able to register. If the lawyer has already been registered for the youth justice specialisation for three years, he will cooperate in letting colleagues accompany him to youth justice court hearings. If a lawyer wants to register for the youth justice duty roster, then he must have successfully

⁸⁷ SCHMIDT E., OSPINA J., RAP, S.E., *Individual assessment of children in conflict with the law. A case study of Belgium, England & Wales, Finland and the Netherlands*.

⁸⁸ Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt.

⁸⁹ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research*, in *The Chronicle*, 2023.

completed a specific course for duty lawyers approved by the Legal Aid Board.⁹⁰ Research conducted by Defence for Children shows that in general, lawyers feel that they have a good theoretical and practical knowledge. However, they mention that more attention should be paid to soft skills and communication techniques.⁹¹

Adapted and focused on the rights of the child

The entire proceedings must be carried out with the child's needs and rights in mind. Any form of deprivation of a child's freedom must be a measure of last resort and of the shortest duration possible. Alternative means must be encouraged if they are in the best interests of the child. This section may concern, in particular, detention (in child institutions) and probation.

Diversion

The police have official powers to dispose of criminal cases. On the level of the police as well as the prosecution service 'a great diversity of diversion mechanisms exists'.⁹² Basically, the police have broad discretion in handling cases and they determine which cases are referred to the prosecutor.⁹³ The police can dismiss a case and send the young person to voluntary social support (provided by the local youth care organisation) or they can send the case to the Child Protection Board, to investigate whether the young person is in need of support.⁹⁴ The police can also issue an oral warning and notify the parents.⁹⁵ Or the police can refer a child who has committed a minor offence (such as vandalism, defacing property with graffiti or shoplifting) to a community service project called The Alternative [*Halt*].⁹⁶ Halt is an organisation that carries out restorative and educational projects of up to 20 hours for child first-time offenders.⁹⁷ Finally, the police can decide to send the charge to the public prosecutor for further handling.⁹⁸

⁹⁰ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

⁹¹ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

⁹² BRANTS C., FIELD S., *Discretion and accountability in prosecution: A comparative perspective on keeping crime out of court*, in FENNEL P., HARDING C., JÖRG N., SWART B. (eds), *Criminal justice in Europe. A comparative study*, Oxford, 1995, pp. 127-148.

⁹³ GELSTHORPE L., NELLIS M., BRUINS J., VLIET VAN A., *Diversion in English and Dutch youth justice*, in FENNEL P., HARDING C., JÖRG N., SWART B. (eds), *Criminal justice in Europe. A comparative study*, Oxford, 1995, pp. 199-226.

⁹⁴ When a child below the age of 12 comes into contact with the police, the police will report this to the local municipality, which serves as the gatekeeper to local youth care services.

⁹⁵ Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt.

⁹⁶ In Dutch 'Halt' is an abbreviation for 'The Alternative' [*Het Alternatief*].

⁹⁷ Article 77(e) CC.

⁹⁸ LAAN VAN DER P.H., *Just desert and welfare: Juvenile justice in the Netherlands (International Handbook of Juvenile Justice)*.

The public prosecutor in the Netherlands has the legal power to initiate court proceedings against a suspect or to decide that it is not expedient to prosecute a case (on the basis of the principle of opportunity⁹⁹). However, the prosecutor can also conditionally discharge cases which involve a misdemeanour or an offence punishable by a maximum of six years' imprisonment.¹⁰⁰ Since 1983, the prosecutor has the possibility to settle cases with defendants. In 1995, this form of diversion was laid down in the Criminal Code.¹⁰¹ In 2011, the prosecutor was given even more power, because since then he can declare the defendant guilty and order a sanction by means of a settlement.¹⁰² The defendant has the right to appeal against the decision of the prosecutor when he does not agree with it.¹⁰³ The prosecutor can impose 60 hours of community service, a fine or six months' probation on a young suspect.¹⁰⁴ The young suspect of a crime on whom a punishment order of more than 32 hours or a fine of more than €200 is imposed must be summoned in order to be heard.¹⁰⁵

It can be concluded that the police and the public prosecutor have a central role in child cases and plays an important role in determining which cases are sent to the youth court.¹⁰⁶ Prosecution offices in the Netherlands have designated youth court prosecutors and public prosecutor's clerks who exclusively deal with child cases.¹⁰⁷

Juvenile sentences and measures

In the Netherlands, the applicable juvenile criminal law sentences are a monetary fine (max. € 4.100), community service (max. 240 hours) and youth detention (max. 1 year for 12- to 15-year-olds and max. 2 years for 16- and 17-year-olds). The most common measures are treatment in a closed treatment facility for children and young people (max. 6 years and 1 year of aftercare), a behavioural treatment measure (6-12 months), restriction of liberty orders (e.g. a contact or location ban) and financial compensation. Juvenile probation can be ordered as a condition to a conditional sentence. In general, community service is the most widely used disposition in the Dutch youth justice system.¹⁰⁸ The probation service is part of

⁹⁹ This is a principle in Dutch law that means that the prosecutor has the discretion to decide whether it is opportune to prosecute a case. As a consequence, he can also refrain from prosecuting and dismiss the case (article 12-13 CCP).

¹⁰⁰ Article 74; article 77a CC.

¹⁰¹ Article 77(f) CC.

¹⁰² Article 77(f) CC.

¹⁰³ Article 257(e) CCP.

¹⁰⁴ Article 77(f) CC; BEIJERSE UIT J., DUBBELMAN L., *De politie en het Openbaar Ministerie in jeugdstrafzaken (Jeugdstrafrecht. In internationaal perspectief)*.

¹⁰⁵ Article 257c lid 1 CCP; article 491(2) CCP ; Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt.

¹⁰⁶ BEIJERSE UIT J., DUBBELMAN L., *De politie en het Openbaar Ministerie in jeugdstrafzaken (Jeugdstrafrecht. In internationaal perspectief)*; VLAARDINGERBROEK, P., *De samenhang tussen het jeugdstrafrecht en het civiele jeugdrecht (Jeugdstrafrecht. In internationaal perspectief)*.

¹⁰⁷ DRONKERS C., VOORDE TEN J.M., *OM-gaan met gestoorde ontwikkeling bij jong-volwassenen*, in DORELIJERS T.A.H., VOORDE TEN J.M., MOERINGS M. (eds), *Strafrecht en forensische psychiatrie voor 16- tot 23-jarigen*, Den Haag, 2010, pp. 39-50.

¹⁰⁸ TOLLENAAR N. & LAAN VAN DER A.M., *Monitor Jeugdcriminaliteit 2023. Ontwikkelingen in jeugdige strafrechtelijke daders en de afdoeningen tot 2022*, Den Haag, 2023.

the certified youth care organisations that operate in local municipalities and which are also responsible for the implementation of voluntary youth care and court ordered child protection measures.

Apart from the legally defined sentences and measures, tailored behavioural interventions are implemented within the framework of court orders. Examples of these interventions are family interventions such as multi-systemic therapy and functional family therapy, but also individual interventions relating to aggression regulation and substance abuse. The probation officer can decide to contact a specialised youth care provider to carry out such an intervention.¹⁰⁹

Probation

Probation supervision can be imposed 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 and as aftercare following detention. Probation supervision can also be accepted voluntarily, before the trial.¹¹⁰ When the young person does not comply with a compulsory order, the probation officer will report back to the prosecutor, who will decide on how to proceed further (e.g. officially warn the young person or order the judge to execute the conditional part of the (detention) sentence). The child probation service also implements intensive supervision trajectories of three to six months, in which the young person has to comply with a strict daily routine, sometimes combined with electronic monitoring. The probation officer closely cooperates with the police, the parents, school and/or workplace of the young person.¹¹¹ The child probation service can also refer the young person to specialised forensic treatment or behavioural interventions, implemented by specialised forensic care providers. Specialised treatment can also be imposed by the judge as special condition attached to a sentence.

The youth probation service is also responsible for the provision of aftercare when a young person is released from detention. When a young person is placed in detention, a supervision plan is made, together with the young person, his supervisor, a child psychologist, the Child Protection Board and the child probation service. Agreements concerning the provision of aftercare can also be part of this plan.¹¹² A specific programme aimed at reintegration, after a longer detention sentence, concerns the education- and training programme, which entails that the young person goes to school, work, leisure activities and/or other trainings and therapies outside the youth detention centre for a maximum of three months, with the aim to reintegrate into society.¹¹³ The programme needs to contain at least 26 hours of weekly activities, which are tailored to the needs of the young person. Both the child probation service and the Child Protection Board have to provide an advice on whether or not to start this programme. The youth detention centre is responsible for design of the programme and the child probation service is responsible for the

¹⁰⁹ WEIJERS I., HEPPIING K., KAMPIJON M., *Jeugdige Veelplegers*, Amsterdam, 2010.

¹¹⁰ CARDOL, G. *Raad voor de Kinderbescherming, NIFP en jeugdreclassering (Jeugdstrafrecht. In internationaal perspectief)*.

¹¹¹ CARDOL, G. *Raad voor de Kinderbescherming, NIFP en jeugdreclassering (Jeugdstrafrecht. In internationaal perspectief)*.

¹¹² Articles 147, 494 CC LIEFAARD, T., BRUNING, M., *De justitiële jeugdinrichting (Jeugdstrafrecht. In internationaal perspectief)*.

¹¹³ Article 3 Youth Custodial Institutions (Framework) Act; article 4(2) Youth Custodial Institutions Regulation.

actual implementation. This means that the probation officer needs to report changes in the programme and updates on the progress of the young person to the director of the youth detention centre.¹¹⁴

In general, it can be stated that the child probation service has a considerable amount of freedom in implementing child probation services and supervision. In practice, no close contact is maintained between judges and social workers.¹¹⁵ When a young person does not comply with the directives of the probation officer, the latter can warn the young person himself first, before reporting to the prosecutor. Also, regarding the content of the supervision, the probation officer has rather large room for discretion.¹¹⁶ The aim of probation services is to control the child's behaviour in order to prevent re-offending, while at the same time trying to influence the behaviour of the young person and giving support to help organise his life.¹¹⁷ In research, probation officers have indicated that not the offence, but the young person is central in the support they provide and the approach is geared towards helping the young person and his parents in education and upbringing and positive development of the young person.¹¹⁸ Research among children shows that they perceive the interaction with probation officer as rather controlling and corrective however.¹¹⁹

Youth detention

Next to the large-scale youth detention centres in the Netherlands (five in total at the moment and one to be opened in 2024), five small-scale reception centres have been opened since 2016. In these low security centres, males between the ages of 14 to 23 can be placed on remand. The goal is to continue care and education in their own environment, instead of being placed in a centre that is further away from their home. During the day children go to their own school and at night (from 22h-7h) they are locked up in their room, without access to a mobile phone or other mobile devices.¹²⁰ Until now, however, the capacity of these centre is not fully used yet. Young people need to have their daily activities close by the centre and that is not always the case.¹²¹ On average, children spend 70 days in detention in 2021.¹²²

¹¹⁴ CC LIEFAARD, T., BRUNING, M., *De justitiële jeugdinstelling (Jeugdstrafrecht. In internationaal perspectief)*.

¹¹⁵ RAP, S.E., *The participation of social services in youth justice systems in Europe*, in *European Journal of Social Work*, 2015, pp. 675–689.

¹¹⁶ KAAL H.L., JONG DE B.J., *Het signaleren en registreren van LVB in het justitiële domein: stof tot nadenken*, in *Justitiële verkenningen*, 2017, pp. 63-73.

¹¹⁷ NIJNATTEN VAN C., STEVENS G., *Juvenile participation in conversations with probation officers*, in *International Journal of Offender Therapy and Comparative Criminology*, 2012, pp. 483-499; NIJNATTEN VAN C., ELK VAN E., *Communicating care and coercion in child probation*, in *British Journal of Social Work*, 2015, pp. 825-841.

¹¹⁸ BRINK VAN DEN Y.N., *Voorlopige hechtenis in het Nederlandse jeugdstrafrecht: wet en praktijk in het licht van internationale en Europese kinder- en mensenrechten*.

¹¹⁹ NIJNATTEN VAN C., STEVENS G., *Juvenile participation in conversations with probation officers*.

¹²⁰ SPIRIT JEUGD & OPVOEDHULP, GEMEENTE AMSTERDAM, MINISTERIE VAN VEILIGHEID EN JUSTITIE, *Factsheet KV, Kleinschalige Voorziening vrijheidsbeneming justitiële jeugd*, .

¹²¹ CROOIJMANS K., BROCKEN N., OFFRINGA S., GEMERT VAN L., *Eindrapport Monitor Kleinschalige Voorzieningen Justitiële Jeugd*, Rotterdam, 2023.

¹²² TOLLENAAR N. & LAAN VAN DER A.M., *Monitor Jeugdcriminaliteit 2023. Ontwikkelingen in jeugdige strafrechtelijke daders en de afdoeningen tot 2022*.

Respecting the right to a due process

Children, like adults, must be guaranteed all the principles of due process, such as the principle of legality and proportionality, presumption of innocence, right to a fair trial, right to legal assistance, right of access to justice.

The right to legal assistance

All arrested young suspects are entitled to free consultation and interrogation assistance by a lawyer.¹²³ Moreover, they cannot waive this right.¹²⁴ Consultation assistance for the first interrogation is subject to a limit of 30 minutes, which can be extended once by 30 minutes.¹²⁵ The lawyer and the child's parents can speak freely with the young suspect, without others being able to listen in.¹²⁶ The lawyer and the young suspect are also entitled to inspect all procedural documents, such as minutes of interrogations.¹²⁷ During the first contact, the lawyer tries to form a picture of the offences and advises the child to talk or remain silent. The lawyer can also explain the child about the preliminary investigation and what might happen.¹²⁸ When a minor is held at a police station in order to be interrogated, a family member or a member of his household should be warned by the police as soon as possible.¹²⁹

Young suspects are also entitled to the assistance of the lawyer during the police interrogations. The lawyer may sit next to the child and may make comments or ask questions at the beginning of the interrogation and at the end of interrogation.¹³⁰ The lawyer is entitled to inform the police during the interview when the child does not understand a question or may not be able to continue the interview due to his physical or psychological condition. Where applicable, lawyers inform the child about the options of diversion.¹³¹ In addition, the child also has the right to the presence of a parent, legal guardian or trusted person during the interrogation.¹³² This person may only be present to provide emotional support and may not interrupt, disrupt or make contact with the child during the interrogation.¹³³

On average, lawyers meet the child 5 to 6 times in cases involving pre-trial detention and 2 to 3 times on average in cases not involving pre-trial detention. Lawyers spend an average of 24 hours or less on cases

¹²³ Article 28c CCP; article 489(1) CCP.

¹²⁴ Article 489(2) CCP.

¹²⁵ Article 28c CCP.

¹²⁶ Article 490(3) jo. 45 CCP.

¹²⁷ Article 31 CCP; Article 48 CCP.

¹²⁸ OEHLÉN, F. JONGE, DE G., *De verdediging van jongeren*, in: WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2021, pp. 323-342.

¹²⁹ Article 27(1) Policy instruction for the police [*Ambtsinstructie voor de politie*].

¹³⁰ OEHLÉN, F. JONGE, DE G., *De verdediging van jongeren (Jeugdstrafrecht. In internationaal perspectief)*.

¹³¹ GRAZIANI, L., *Practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania and The Netherlands. European overview*, CLEAR Rights, 2021.

¹³² Article 488ab(1) CCP.

¹³³ OEHLÉN, F. JONGE, DE G., *De verdediging van jongeren (Jeugdstrafrecht. In internationaal perspectief)*.

involving pre-trial detention. And on average 5 hours on youth justice cases not involving pre-trial detention.¹³⁴ During the first meeting, lawyers spend most of the time:

- Explaining who they are, their role, and the rights of the child
- Discussing what happened, the suspected offence, and why the child thinks he has been apprehended
- Explaining what is going to happen during a police interview and discussing the strategy to be used
- Explaining the role of other actors with whom the child may also come into contact.¹³⁵

When a young person is held in police custody the lawyer's role is to prepare the child for the pre-trial detention hearing. Usually, the file with documents is not available until shortly before the hearing, but the lawyer should be given sufficient time to discuss them with the child.¹³⁶ It is also important that the lawyer discusses possible suspension conditions with the child, because if applicable, the child must agree to any special conditions attached to the suspension of pre-trial detention.¹³⁷

If the child has not yet been assigned a lawyer at an earlier stage of the process, because he has not been in pre-trial detention, this occurs when the written summons has been issued.¹³⁸ Until the child is 16 years old, the lawyer can independently exercise all the client's rights, such as appealing against a judgment.¹³⁹ From 16 years onwards, the lawyer needs an authorisation from the child to exercise his rights. In this case, the child can conduct his own defence and instruct the lawyer on what to do. The lawyer has the task to prepare the child for the hearing; how the hearing will proceed, who will be present and what their role is, and what is expected of the child.¹⁴⁰

Respecting the right to participate in and understand the proceedings

Children must be informed in a language they can understand about their rights and about all judgments and decisions that affect them. They must understand how the situation may or will evolve, what options they have and what the consequences will be. They have the right to be heard and to give their opinion in all matters that affect them.

¹³⁴ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

¹³⁵ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

¹³⁶ OEHLLEN, F. JONGE, DE G., *De verdediging van jongeren (Jeugdstrafrecht. In internationaal perspectief).*

¹³⁷ Article 493(6) CCP.

¹³⁸ Article 491(1) CCP.

¹³⁹ Article 503 CCP.

¹⁴⁰ OEHLLEN, F. JONGE, DE G., *De verdediging van jongeren (Jeugdstrafrecht. In internationaal perspectief).*

The right to be heard

In Dutch criminal law, the terms 'hearing' and 'interrogation' are used interchangeably. However, Weijers indicates that the distinction does matter. In 'interrogation', the young suspect is the object of investigation and the child is questioned. In 'hearing', the young suspect is a litigant and is given the opportunity to put forward his point of view. This assumes an active attitude on the part of the child.¹⁴¹ There are no specific procedures or guidelines for the interrogation of children, related to the techniques used or the choice of interrogator.¹⁴² It has already been advised on multiple occasions to incorporate quality requirements for among others police officers who handle cases with children in the Dutch legislation.¹⁴³

After the arrest and initial interrogation, there are several moments during the criminal proceedings when the young suspect is heard by a youth court judge. In the case of pre-trial detention, this will first take place during the pre-trial detention hearing before the investigative judge.¹⁴⁴ During that hearing (and any subsequent hearings dealing with the extension of pre-trial detention), the child has the right to have his parents present and they are summoned to do so.¹⁴⁵ At this hearing, the child is first heard by a judge about the offence. In addition, the child's judicial documentation and personal circumstances are discussed, upon which the investigative judge decides on the request for detention and a possible suspension thereof subject to conditions.¹⁴⁶ An official report is drawn up of the interrogation, which is read by the court clerk and signed by the child.¹⁴⁷

The other option is an out-of-court settlement imposed by the public prosecutor. If the public prosecutor intends to impose a community service for more than twenty hours, or payment obligations in the form of a fine and/or a compensation measure which amounts to more than 115 euro, the child is heard and has a right to funded legal aid.¹⁴⁸ According to policy of the public prosecution service, minors are always heard for serious offences (when a punishment order of more than 32 hours or a fine of more than €200 can be imposed)¹⁴⁹ and violation of the Act on Compulsory Education (i.e. truancy).¹⁵⁰

The young suspect is obliged to be present during the criminal court hearing.¹⁵¹ The parents are also obliged to appear.¹⁵² If the judge considers the presence of the parents or guardian to be contrary to his

¹⁴¹ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

¹⁴² RISPENS I., DEKENS K., *De politie en de omgang met jeugdige getuigen en verdachten*, in: Kimpe de S., Noorda J., Ferwerda H. (eds), *Jongeren en politie. Cahier politiestudies*, Antwerpen/Apeldoorn, 2015 p. 154, 156.

¹⁴³ BEIJERSE UIT J., VIS VAN DER C., *Een voorzet voor de modernisering van het jeugdstrafprocesrecht in lijn met het IVRK en met oog voor de knelpunten in de praktijk*, Platform Modernisering Strafvordering, 2019.

¹⁴⁴ Article 492 CCP.

¹⁴⁵ Article 491a(1) CCP; article 493a(1) CCP.

¹⁴⁶ Article 63(1) CCP.

¹⁴⁷ BEIJERSE UIT J., BRUIJN DE M., *De beslissing over de voorlopige hechtenis en de berechting in jeugdstrafzaken*, in: WEIJERS I. (ed), *Jeugdstrafrecht. In internationaal perspectief*, Den Haag, 2021, pp. 289-305.

¹⁴⁸ Article 491 sub-section 2 CCP.

¹⁴⁹ Article 257c lid 1 CCP; article 491(2) CCP ; Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt.

¹⁵⁰ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research*; Instruction on punishment orders [*Aanwijzing OM-strafbeschikking (2022A003)*].

¹⁵¹ Article 495a(1) CCP.

¹⁵² Article 496 CCP.

interests, the child has the right to the presence of a trusted person. If the child does not have a trusted person or the court deems this person unsuitable, the child must be assisted by a representative of the Child Protection Board.¹⁵³ If the child does not appear at the hearing, the court may order his appearance, which means that the child will be picked up by the police at home on the next hearing day.¹⁵⁴ If a child has turned 18 during the criminal proceedings, he is no longer obliged to appear.¹⁵⁵ This also applies to parents.¹⁵⁶ When parents are not present at the hearing, but the young suspect and his lawyer are, the law prescribes that the case should be adjourned and that the parents should be notified of the new court date.¹⁵⁷ The case can only continue in the absence of parents when it is in the best interests of the child, when parents do not have a fixed home or address or when the case was already suspended once.¹⁵⁸ In practice, it suffices when one of the parents is present at the hearing, and in that case it is not adjourned.

During the hearing, the judge interviews the young suspect.¹⁵⁹ To protect the child's privacy, the hearing takes place behind closed doors.¹⁶⁰ The parents are given the opportunity to speak in court after the young suspect and any witnesses or experts. They may introduce what may serve to defend the child and they may only ask questions of a witness or expert regarding a claim for compensation. In the case of a 12- or 13-year-old suspect (at the time of the offence), the parents may also defend against a claim for compensation.¹⁶¹ The lawyer can also request that the hearings of the child and any witnesses and experts take place outside the presence of the parents if the parents turn against their child during the hearing. They must then be briefly informed on their return about what was discussed.¹⁶² Incidentally, it is also possible for the lawyer to request that certain matters concerning the child's personality be discussed outside the presence of the child, if this is in his client's interest. The child must then briefly leave the courtroom and on his return must be briefly told what was discussed.¹⁶³

Before the conclusion of each hearing, the child is given the opportunity to have the last word.¹⁶⁴ The verdict takes place in public and the child must be present.¹⁶⁵ If advice on the child was given during the criminal proceedings by the Child Protection Board, the judge must indicate in the judgment how the advice was taken into account.¹⁶⁶ Finally, the judge must inform the child of the possibility of lodging an appeal and the time limit for doing so.¹⁶⁷ Increasingly, judgments are also being written in child-friendly

¹⁵³ Article 496(2-3) CCP.

¹⁵⁴ Article 495a(1) CCP.

¹⁵⁵ Article 495a(4) CCP.

¹⁵⁶ Article 488(3) CCP.

¹⁵⁷ article 496(a)(1)-(2) CCP.

¹⁵⁸ Article 496(a)(3) CCP.

¹⁵⁹ Article 286(1) CCP.

¹⁶⁰ Article 495b(1) CCP.

¹⁶¹ Article 496(4) CCP jo 51g paragraph 4 CCP.

¹⁶² Article 496(3) CCP

¹⁶³ Article 497 CCP; OEHLLEN, F. JONGE, DE G., *De verdediging van jongeren (Jeugdstrafrecht. In internationaal perspectief)*.

¹⁶⁴ Article 311(4) CCP.

¹⁶⁵ Article 362(1) CCP.

¹⁶⁶ Article 494b(2) CCP.

¹⁶⁷ Article 364(1) CCP.

language by judges, so that the child concerned better understands the final decision and the reasoning behind it.¹⁶⁸

Youth's opinions on the process

Research on young people's experience of the youth justice process, shows that the atmosphere in the courtroom was perceived as tense, hostile and strict. The perception of the prosecutor was predominantly negative, with these professionals particularly perceived as strict and angry. Young people were slightly more lenient towards the judge compared to the prosecutor, with the judge more often characterised as neutral and friendly. Almost all young people indicated that they were able to speak (a little) during the hearing, but a third nevertheless indicated that they were not able to tell their side of the story. Almost half of the young people did not feel they were treated fairly, and most of them were not satisfied with how the hearing went and its outcome.¹⁶⁹

In this study, young people were also asked about how they felt they were treated during the hearings. 13 of the 28 young people indicated that they did not feel they were treated fairly (46 per cent). Eight young people indicated that they felt they were treated only somewhat fairly (25 per cent). Only a small proportion of young people were also satisfied with how the hearing went (n=4; 15 per cent). The majority of young people (n=23; 85 per cent) were not satisfied or only slightly satisfied with how the session went. In addition, a large proportion of young people were only slightly or not at all satisfied with the outcome of the case (n=21; 87 per cent). Young people indicated that they would like professionals to listen to them more and understand their circumstances. Many young people felt that their future prospects were not sufficiently considered.¹⁷⁰

Respecting the right to a private and family life

The private life and personal data of children who are or have been involved in any proceedings should be protected. No information, images or data that could directly or indirectly allow the identification of the child may be disclosed. The authorities should provide limited access to records or documents, and all proceedings involving minors should take place behind closed doors.

To protect the child's privacy, youth court hearings take place behind closed doors,¹⁷¹ although the court can make an exception to this, in the event that the interest of the publicity of the hearing must outweigh

¹⁶⁸ KALVEEN VAN E.A.A., *Kindvriendelijke rechtspraak – wat valt te verwachten voor het jeugdstrafrecht?*, in *Strafblad*, 2020, pp. 27-32; Poot, S.D., *In de kinderschoenen: Onderzoek naar kindvriendelijke uitspraken in de Nederlandse civiele rechtspraak*, in *Tijdschrift voor Familie- en Jeugdrecht*, 2020.

¹⁶⁹ RAP, S.E., *Participatie in het jeugdstrafrecht: in hoeverre ervaren jongeren procedurele rechtvaardigheid?*.

¹⁷⁰ RAP, S.E., *Participatie in het jeugdstrafrecht: in hoeverre ervaren jongeren procedurele rechtvaardigheid?*.

¹⁷¹ Article 495b(1) CCP.

the interest of protecting the privacy of the accused, his co-defendant or parents.¹⁷² The judge may grant special access to persons such as social workers, and also researchers, interns, or possibly members of the press.¹⁷³ However, both during a trial in camera or in public, the court may decide that some of those present should leave the courtroom for part of the hearing, for instance during the discussion of the personal circumstances of the child.¹⁷⁴

When a child is held in detention, he has the right to receive and to send mail.¹⁷⁵ Also, the child has the right to receive visitors for a minimum of one hour per week.¹⁷⁶ And the child has the right to make phone calls twice a week for a minimum of two hours.¹⁷⁷

Respecting the right to integrity and dignity

Children must be protected from harm, including intimidation, reprisals and secondary victimisation. They must always be treated with care, sensitivity, fairness and respect, and with full respect for their physical and psychological integrity. Special protection and care must be provided for the children in special conditions vulnerability. If deprived of their liberty, they must be separated from adults. Children must not be subject to torture or inhuman and degrading treatment or punishment. This section also concerns the condition of detention.

Separation from adults

When a child is taken into police custody, he will be held in a general detention centre. The child will be placed in a cell alone and not together with adults. Children are also transported to court separately from adults, when they are detained. The courts also have cells, with for the most part single-person cells. In exceptional cases there are child-friendly cells designed. However, this is not always the case. Usually, the child will stay in either a standard cell or a 'child-friendly' cell with slightly more room and/or colored walls. In some courts however the child-friendly space is intended specifically for children in residential care instead of children in the justice system.¹⁷⁸

In principle the courtroom is no different for young suspects compared to for adults. In the court of Amsterdam two 'child-friendly courtrooms' have been designed and are in use for child protection and

¹⁷² Article 495b(2) CCP.

¹⁷³ Article 495b sub-section 1 CCP.

¹⁷⁴ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

¹⁷⁵ Article 41(1) Youth Custodial Institutions Act.

¹⁷⁶ Article 43(1) Youth Custodial Institutions Act.

¹⁷⁷ Article 44(1) Youth Custodial Institutions Act.

¹⁷⁸ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

youth justice cases. These courtrooms are smaller and there is a large, round table placed in the center of the room, without computers. All attendees have a seat at this table.¹⁷⁹

Complaint mechanisms in youth detention

When a child disagrees with a decision in youth detention that directly affects him, he can submit the decision to an impartial body.¹⁸⁰ In the first instance, the child must submit a complaint to the complaints committee of the youth detention centre.¹⁸¹ The child must state in his own words what he is complaining about. It must then be assessed whether the complaint can be resolved through mediation.¹⁸² When mediation does not offer a solution, the complaint is dealt with by the complaints committee. The child and the director of the JJI are heard and the decision must ultimately be sent in writing to the child. Both the young person and the director can appeal the aforementioned decision of the complaints committee to the Appeals Committee of the Council for the Administration of Criminal Justice and Protection of Juveniles [*Raad voor Strafrechtstoepassing en Jeugdbescherming*].

Furthermore, a child may appeal directly to the Council for the Administration of Criminal Justice and Protection of Juveniles when he disagrees with a request for transfer, a decision on leave, or the behaviour of an institution doctor. The hearing of the filed appeal may be entirely in writing, or a hearing may follow in a court.¹⁸³

Final comments

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. From the above analysis it can be concluded that most of the child-friendly justice principles have been implemented in the Dutch criminal (procedural) law. However, in practice some challenges still exist with regard to the implementation of these principles. This is also reflected in the fact that the European Commission considers that the Netherlands has failed to transpose some of the Directive 2016/800 provisions on substantive rights. The Netherlands has also failed to comply with the obligation to include a reference to the Directive 2016/800 in or when adopting transposition measures. Consequently, the Commission has sent a letter of formal notice. The Netherlands has to take the necessary measures to remedy the shortcomings identified by the Commission.

From the analysis it has also become clear that in general the overall aim of individual assessment is not to take individual circumstances into account in the youth justice procedure. Procedural adaptations are made in general for all children and are not tied to individual circumstances or personal characteristics. Making the youth justice system more adapted to the rights and needs of all young people is a positive development, however some young people have additional vulnerabilities. Positive developments in this regard are the increased attention for children with cognitive disabilities (e.g., learning disabilities, speech

¹⁷⁹ SCHMIDT, E. *Child participation in juvenile justice in the Netherlands. National report for AIMJF's comparative and collaborative research.*

¹⁸⁰ Article 65 Youth Custodial Institutions Act.

¹⁸¹ Article 66 Youth Custodial Institutions Act.

¹⁸² Article 66(4) Youth Custodial Institutions Act.

¹⁸³ For more information see: <https://www.rsj.nl/rechtspraakprocedure/in-beroep-jeugd>.

and language disorders, traumatic brain injury, etc.) and children from different ethnic minority backgrounds. However, the extent to which their specific vulnerabilities and needs can be taken into account – both procedurally as well as substantially – should be placed at the top of the agenda of all youth justice professionals. More awareness of the individual needs and circumstances of the child in the procedure would benefit the effective participation of children in these often highly complex procedures.



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