

# RAOUL WALLENBERG INSTITUTE

OF HUMAN RIGHTS AND HUMANITARIAN LAW

THE ROLE OF SOCIAL WORK IN  
JUVENILE JUSTICE:

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INTERNATIONAL EXPERIENCES



Sweden

Sverige

## Foreword

The objectives of the juvenile justice system, as stated in Article 40 of the Convention on the Rights of the Child, are promoting “the child’s sense of dignity and worth”, reinforcing “the child’s respect for the human rights and fundamental freedoms of others”, and “promoting the child’s reintegration and the child’s assuming a constructive role in society”. In order to achieve this, tailored support for each child should be provided throughout the juvenile justice process.

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) has been working on juvenile justice issues in mainland China since 2011, with the objective of improved implementation of gender sensitive juvenile justice mechanisms among justice sector stakeholders. The cooperation was started with Haidian District People’s Procuratorate of Beijing City (a local prosecution office in Haidian District, Beijing) in 2011, and expanded to include Beijing Chaoyue Adolescents Social Work Services Agency (a social work organization in Beijing) in 2014, as the justice sector actors in mainland China have more and more realized the distinctive characteristics of juvenile justice, and the need of support by professional social workers. The fast development of juvenile justice social work in mainland China in recent years has brought about both opportunities and challenges, and it is of value to learn about the experiences and explorations in other countries and regions.

Therefore, RWI decided in 2018 to draft this study, with the aim of introducing the role of social work in juvenile justice in ten jurisdictions in the world. But hopefully the impact of this publication will be beyond mainland China. It will provide useful insights for any country whose juvenile justice system, including juvenile justice social work is still developing or can be improved further.

I would like to sincerely thank all the authors that contributed to this publication by sharing the experiences of their countries and regions, they are: Robert G. Schwartz (US), Barry Goldson (UK), Lynn Bushell (Canada), Anja Dobri (Canada), Mary Birdsell (Canada), Jane Stewart (Canada), Jane McPherson (US), Stephanie Rap (Netherlands), Kerstin Nordlöf (Sweden), Julia Sloth-Nielsen (South Africa), Blessing Mushohwe (Zimbabwe), Koon-mei Lee (Hong Kong), Tzu-Hsing Chen (Taiwan) and Xiaohua Xi (mainland China). I would also like to thank Oma Lee for her work as copy and language editor, as well as my colleagues Yifang Chen (Programme Officer, RWI China Programme), Linnea Ekegren (Communications Officer, RWI) and Desirai Thompson (Communications Intern, RWI).

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# Chapter V The Role of Social Work Services in Juvenile Justice in the Netherlands

**Stephanie Rap\***

## 1. General Introduction to Social Work in Juvenile Justice in the Netherlands

Juvenile justice in the Netherlands has undergone marked changes in the past century. However, the ‘pedagogical approach’, geared towards re-education and prevention of re-offending, employed by juvenile justice organisations and actors has largely been preserved. In this chapter the development and waves of change the juvenile justice system has undergone will be described, focussing on the involvement of social work services. Although the approach towards children in conflict with the law has become more punitive, social work services have maintained a central role in the juvenile justice process. The general aims of the juvenile justice system – behavioural change and prevention of re-offending – require the involvement of social workers, probation officers and psychologists, to work towards these goals together with juveniles and parents.

This chapter will start with a general introduction of social work, juvenile justice and child protection from an historical perspective (section. 1). Consequently, the specific role of social work services in the Dutch juvenile justice system in law and in practice will be described (section. 2). This chapter will conclude with an analysis of recent achievements, challenges and reforms to the system (section. 3) and some concluding remarks (section. 4).

### 1.1. *Social Work*

In the Netherlands, the modern discipline of social work stems from private initiatives to relief the poor, which can be traced back to the Middle Ages. Hospices date back to 1122, and food distribution at churches and public spaces took place since the 13th century. In 1492, the first children’s orphanage was opened in the Netherlands. All of these initiatives stemmed from Christian charity.<sup>1</sup> In the 19th century, views on what caused poverty and crime changed. Poverty was seen as a consequence of people’s laziness and irresponsibility and the lower classes were subjected to “civilizing campaigns”. This was the first step in professionalising social work and the first School for Social Work was established in 1899.<sup>2</sup> However, for decades social work and child protection concerning poor families, children in trouble, foster care and adoption were dealt with by laypersons. Also, the staff of institutions and borstals was poorly educated and was paid low wages for long hours in poor working conditions. Only after World War II, a long and slow process of professionalisation of institution staff started.<sup>3</sup> Around

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1 M. van der Linden, *Korte geschiedenis van het social werk in Nederland*, retrieved from <<https://www.bodyofknowledgesociaalwerk.nl/pagina/korte-geschiedenis-van-het-sociaal-werk-nederland>>.

2 J. Junger-Tas, ‘Youth justice in the Netherlands’, in M. Tonry and A.N. Doob (eds.), *Youth crime and youth justice. Comparative and cross-national perspectives* (The University of Chicago Press, Chicago, 2004) pp. 300-301.

3 I. Weijers, ‘Geschiedenis van het jeugdstrafrecht’, in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 19-38.

1960, only half of the care workers in institutions had a qualification and in 1968 almost half of the family guardians were still unqualified.<sup>4</sup> Fortunately, this situation changed in the 1980s.<sup>5</sup> More and more educational programmes began to focus on the discipline of social work, and currently there are multiple universities (of applied sciences) that teach the discipline.

## 1.2. *Juvenile Justice*

*“The separate juvenile justice system was based on humanitarian concerns.”<sup>6</sup>*

### 1.2.1. Brief History and Development

From the 16th century onwards, the Dutch child care and juvenile justice system can be characterised by a welfare approach towards children. In the 18th and 19th century the conception of childhood and adolescence changed: children had to be prepared for adulthood. Opposition to corporal punishment started to grow; it was increasingly seen as barbaric and ineffective and behavioural change should take place through psychosocial interventions.<sup>7</sup> Junger-Tas explains:

*“The new rationalism looked for interventions that would have greater effect on children and be more humane. It was based on two notions. The first is that deviance and delinquency are not so much caused by the innate wickedness of a child as by the environment in which the child is raised. Poverty, neglect, and abandonment would lead to vagrancy, deviance, and delinquency. The second is the optimistic illusion that antisocial behavior can be eliminated if correct measures are taken”.<sup>8</sup>*

In the 19th century, many institutions for abused, neglected and delinquent children were established. The common idea was to isolate these children from their corrupt and criminal ‘lower class’ environment.<sup>9</sup> Two types of institutions were established: private institutions for abandoned and neglected children and state institutions for delinquent children.<sup>10</sup>

In 1901 three child protection laws were enacted in the Netherlands: the *Civil Child Act*, the *Penal Child Act* and the *Child (Framework) Act*. The last one contained provisions on the implementation and enforcement of the measures and sanctions – laid down in the other two laws – by institutions, borstals and orphanages, guardianship organisations and courts. The three laws entered into force in 1905. The main principles enshrined in these laws were that parental authority could be restricted and that delinquent children were to be re-educated and not punished. The child’s future was the guiding principle in the court’s decision and not the offence. At the same time the minimum age of criminal

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4 I. Weijers, *De creatie van het mondige kind. Geschiedenis van pedagogiek en jeugdzorg* (Uitgeverij SWP, Amsterdam, 2001).

5 Weijers, *supra* note 4; I. Weijers and T. Liefwaard, ‘Youngsters’, in M. Boone and M. Moerings (eds.), *Dutch Prisons* (Boom Juridische uitgevers, Den Haag, 2007) pp. 127-166.

6 Junger-Tas, *supra* note 2, p. 316.

7 Junger-Tas, *supra* note 2.

8 Junger-Tas, *supra* note 2, pp. 302-303.

9 E. Dumortier, ‘Under Pressure? The Foundations of Children’s Courts in Europe’ in B. Goldson (ed.), *Juvenile Justice in Europe. Past, Present and Future* (Routledge, London / New York, 2018), pp. 3-23.

10 Junger-Tas, *supra* note 2.

responsibility (MACR) of 10 years (enacted by the penal code of 1886) was abolished and the act applied to children up to 18 years.<sup>11</sup> The choice of the judge for a sentence or measure was guided by the individual assessment of the child's needs and not by his/her guilt or responsibility. To this end a preliminary enquiry into the child and his/her family was made by the guardianship organisation. In addition, children were given certain procedural rights such as that hearings should take place behind closed doors, the child was required to appear in court, his/her parents were invited and a lawyer was always appointed.<sup>12</sup> The juvenile judge was awarded extensive discretionary powers and children usually appeared before a single judge (*unus iudex*). Specialised juvenile courts and judges were introduced in the law in 1921, which entered into force in 1922.<sup>13</sup> The welfare approach can be characterised by several principles:

- the notion of *parens patriae* was dominant: all parties involved acted in the best interests of the child;
- the proportionality principle was rejected: the interests of the individual child were dominant in the decision-making;
- treatment was favoured over punishment: this led to development of diversionary measures;
- proceedings were informal and children were given less procedural safeguards compared to adult suspects.<sup>14</sup>

In the 1960s, new juvenile criminal legislation was enacted in several Western European countries. In the Netherlands, the MACR was re-installed at 12 years. Also, social professionals such as social workers, psychologists and educators became much more involved in the juvenile justice system.<sup>15</sup> At the same time, from the mid-sixties onwards, the welfare approach slowly began to crumble, influenced by the landmark decisions made by the US Supreme Court in the *Kent* (1966) and *Gault* (1967) cases (see the chapter on the role of social work in juvenile justice in the United States in this volume). Besides the increased attention for due process rights for children, the Dutch system started to collapse because of the failure to provide non-custodial alternatives to detention which were evidence-based and able to reach the most difficult and seriously delinquent children.<sup>16</sup> From the 1980s onwards the typical Dutch policy of minimal intervention disappeared, which can be illustrated by the net-widening of all sorts of judicial responses to juvenile delinquency, and by the rapidly increased capacity of the youth custodial institutions and the enormous number of young people being deprived of their liberty.<sup>17</sup> As will be shown below, diversion has led to an enormous growth of interventions –such as community service– and nowhere else has detention on remand been (and still is) applied on such a large scale as in the Netherlands.<sup>18</sup>

In 1995, the revised juvenile criminal law entered into force, which reflected an increased punitiveness and emphasis on the responsibility of juveniles. For example, the maximum detention sentences were increased and the requirements for transfer to the adult

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11 Junger-Tas, *supra* note 2; Weijers and Liefwaard, *supra* note 5.

12 Junger-Tas, *supra* note 2; Weijers and Liefwaard, *supra* note 5.

13 Weijers and Liefwaard, *supra* note 5.

14 Junger-Tas, *supra* note 2, pp. 315-316; see also Dumortier, *supra* note 9.

15 Weijers and Liefwaard, *supra* note 5.

16 Junger-Tas, *supra* note 2.

17 Weijers and Liefwaard, *supra* note 5.

18 P.H. van der Laan, 'Just Desert and Welfare: Juvenile Justice in the Netherlands', in J. Junger-Tas and S.H. Decker (eds.), *International Handbook of Juvenile Justice* (Springer Dordrecht, 2006) pp. 145-172; S.E. Rap and I. Weijers, *The Effective Juvenile Court. Juvenile Justice procedures in Europe* (Eleven International Publishing, The Hague, 2014).

criminal justice system of 16- and 17-year-olds were liberalised.<sup>19</sup> Moreover, the system was simplified and made more similar to the adult criminal justice system, for example regarding the due process rights granted to juveniles.<sup>20</sup> As a result of these legislative changes the dominant position of the juvenile judge largely disappeared. Before, the juvenile court judge managed the juvenile court cases by himself, supported by the Dutch Child Protection Agency (*Raad voor de Kinderbescherming*). For decades, the juvenile court judge was the one and only institution for any decision concerning young offenders (and family law cases concerning adoption, divorce and child protection).<sup>21</sup> The prosecutor had to consult the judge before taking any decision in a case and the judge oversaw the execution of sanctions. Since 1995 this central function has been taken away from the judge and is assigned to the Child Protection Agency, in order to guarantee an independent position and less paternalistic role for the judge.<sup>22</sup> Another explanation for the corrosion of the unique position of the juvenile court judge as the 'central patriarch of the child protection'<sup>23</sup> can be found in the popularity and dispersive use of diversionary measures in the 1980s and 1990s. In the Netherlands, both the police and the public prosecution service gained large-scale discretionary powers in disposing cases.<sup>24</sup>

Nowadays, the Child Protection Agency has taken over the directive function the judge had in the past and has the responsibility to manage juvenile justice cases together with the public prosecution service. The knowledge of the judge regarding the personal background and circumstances of the young person largely depends on the content of the social work report produced by the Child Protection Agency or the juvenile probation service (see further below).<sup>25</sup>

### 1.2.2. Age Limits

In the Netherlands, children can be prosecuted in the juvenile court when at the time of the offence the child is 12 years or older (art. 77 (a) Criminal Code [Cc]). Below the age of 12 children are not deemed to be criminally responsible, but when the child experiences certain problems (s)he can be offered supervision and care through the civil child protection system. For children between the age of 12 and 18 separate provisions are laid down in the Criminal Code and the Criminal Procedure Code. However, when a 16- or 17-year-old juvenile is suspected of having committed a serious offence (s)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 offence has been committed (art. 77 (b) (1) Cc). However, even if this provision is applied, the case remains in the juvenile justice system; a juvenile court judge is part of the bench of three judges who handle the case and juvenile court procedures are followed during the trial. When the young person is found guilty, the bench can

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19 Weijers and Liefwaard, *supra* note 5.

20 Junger-Tas, *supra* note 2.

21 I. Weijers, et al. 'Juvenile Justice and Juvenile Crime: Tradition and Topicality of an Interdisciplinary Approach', in F. de Jong (ed.), *Overarching views of delinquency and deviancy. Rethinking the legacy of the Utrecht School* (Eleven International Publishing, Den Haag, 2015) pp. 367-384.

22 Junger-Tas, *supra* note 2.

23 J.C.Hudig, 'De macht van de jeugdrechter' in C. Kelk, M. Moerings, N. Jörg and P. Moedikdo (eds.), *Recht, macht en manipulatie* (Aula, Utrecht, 1976) pp. 294-310.

24 Weijers, et al. *supra* note 21; P. Vlaardingerbroek, 'De samenhang tussen het jeugdstrafrecht en het civiele jeugdrecht', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 61-82.

25 S. Verberkand K. Fuhler, *De positionering van de jeugdrechter* (Raad voor de Rechtspraak, Den Haag, 2006).

order an adult criminal court sentence. Research in the Netherlands shows, however, that adult custodial sanctions imposed on minors hardly ever exceed the maximum of two years of youth detention, which is allowed for 16- and 17-year-olds.<sup>26</sup> Moreover, the number of juvenile defendants that is transferred to the adult criminal justice system is very low.<sup>27</sup>

In April 2014, the *Dutch Act on Adolescent Criminal Law* entered into force. With this law, the upper age limit in article 77c of the Criminal Code, which allowed for the application of juvenile criminal law to young adults of 18 to 21 years, was stretched from 21 to 23 years. Under this provision, young adults can be sentenced to a juvenile sentence when this is deemed necessary based on the personality of the young adult or the circumstances of the case. In these cases, the general (adult) criminal procedural provisions apply. In practice, this provision is increasingly being applied, however still to a limited extent. Among other reasons, this has to do with confusion about the target group that qualifies for the adolescent criminal law.<sup>28</sup>

### 1.2.3. The Dutch Juvenile Justice System in Numbers

As is the case in other Western European countries the juvenile delinquency rates in the Netherlands have steeply declined over the past ten years.<sup>29</sup> Police statistics show a drop of around 65 per cent in the number of juvenile suspects since 2007. This drop can be seen across all types of crimes, among both boys and girls and among juveniles with different ethnic backgrounds.<sup>30</sup> Table 1 shows that the number of juveniles interrogated by the police has declined by 12 per cent in one year and the number of juveniles in police custody has declined by four per cent. Approximately 80 per cent of the juvenile suspects are males. In total, 47 per cent of juvenile suspects are from an ethnic minority background (ten per cent of those are female).<sup>31</sup>

In absolute numbers, the number of juveniles deprived of their liberty has dropped from 3.500 in 2007 to a little over 1.000 in 2016. As a consequence, half of the youth custodial institutions in the Netherlands has been closed over the past years, with seven facilities remaining open.<sup>32</sup> It is interesting to note that around 75 per cent of the population of these institutions consists of juveniles who are on remand and have not been found guilty and sentenced (yet). This results in the conclusion that most juveniles who have allegedly committed an (serious) offence serve their unconditional youth detention sentence during the pre-trial phase of the process. When found guilty it is standard practice to deduct the time spent in pre-trial detention from the sentence, which mostly results in releasing the young person from detention under conditions.<sup>33</sup>

26 I. Weijers, *Jeugdige dader, volwassen straf?* (Kluwer, Deventer, 2006).

27 In 2014, 67 juveniles were transferred to be sentenced according to the adult criminal law, which accounts for around two-and-a-half per cent of all juvenile cases, A.M. van der Laan, et al., *Adolescentenstrafrecht. Beleidstheorie en eerste empirische bevindingen* (WODC/Boom Criminologie, Den Haag, 2016).

28 T. Liefwaard and S.E. Rap, 'Het adolescentenstrafrecht in Nederland: de stand van zaken bijna 4 jaar na invoering van de Wet Adolescentenstrafrecht', 60:3 *Tijdschrift voor Criminologie* (2018) pp. 364-375.

29 See also L. McAra and S. McVie, 'Transformations in youth crime and justice', in B. Goldson (ed.), *Juvenile Justice in Europe. Past, Present and Future* (Routledge, London / New York, 2018) pp. 74-103.

30 P.R. Smit and R.J. Kessels, 'Misdrijven', in S.N. Kaldien (ed.), *Criminaliteit en Rechtshandhaving 2017. Ontwikkelingen en samenhang* (WODC/CBS/Raad voor de rechtspraak, Den Haag, 2018); B. Berghuis and J. de Waard, 'Declining Juvenile Crime – Explanations for the International Downturn', originally published in Dutch under the title 'Verdampende jeugdcriminaliteit: Verklaringen van de internationale daling', 43:1 *Justitiële Verkenningen* (2017) pp. 10-27.

31 S.N. Kaldien (ed.), *Criminaliteit en Rechtshandhaving 2016. Ontwikkelingen en samenhang* (WODC/CBS/Raad voor de rechtspraak, Den Haag, 2017).

32 UNICEF Nederland/Defence for Children, *Jaarbericht Kinderrechten* (UNICEF/DCI, Den Haag/Leiden, 2017).

33 Y.N. van den Brink, *Voorlopige hechtenis in het Nederlandse jeugdstrafrecht: wet en praktijk in het licht van internationale en Europese kinder- en mensenrechten* (Wolters Kluwer, the Meijers Research Institute and Graduate School of the Leiden



The number of young adults that is sentenced according to the juvenile criminal law remains rather low; it has increased from one to five per cent in 2016 after the entry into force of the Adolescent Criminal Law.<sup>34</sup>

**Table 1: Juvenile Delinquency Rates**<sup>35</sup>

	2015	2016	Difference
Juveniles* in police interrogation	37.592	33.082	-12%
Juveniles in police custody**	7.450	7.116	-4%
Juveniles in youth detention	1.029	1.054	+2%

\* This concerns juveniles between the age of 12-18 years. In 2016, 2.2 million children and young adults between the ages of 12-23 lived in the Netherlands, 54 per cent of whom were between 12-18 years old. A.M. van der Laan and M.G.C.J. Beerthuis, *Monitor Jeugdcriminaliteit 2017. Ontwikkelingen in de geregistreerde jeugdcriminaliteit in de jaren 2000 tot 2017* (WODC/CBS, Den Haag, 2018).

\*\* This concerns the number of unique instances and not persons, which means that juveniles who have come in contact with the police more than once are counted more than once. In 2016, around 20.000 juveniles have been registered by the police as juvenile suspects.

#### 1.2.4. Stages in the Juvenile Justice Process

In the Netherlands, a preliminary investigation led by an investigating judge can take place (art. 170 Criminal Procedure Code [Cpc]), but usually this phase in the process is omitted and the young person is not taken into pre-trial detention when it concerns a less complicated or less serious case. The prosecutor in charge of the preliminary investigations can order pre-trial detention (art. 57; art. 63; art. 65 Cpc) or conditional suspension of pre-trial detention and (s)he can ask for a forensic psychiatric investigation (art. 227 Cpc). Within 90 hours (i.e. three days and 18 hours) the juvenile suspect is brought before an investigating judge, who examines the lawfulness of the arrest and police custody (art. 57 Cpc). According to the law, the pre-trial judge should be a specialised juvenile court judge (art. 492 Cpc). In practice, however, this is not in every court the case, because adult criminal law judges can be appointed as substitute juvenile court judges in order to fulfil the task of a pre-trial judge. 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 Agency (art. 493(6) Cpc). As a consequence, the judge needs information concerning the current situation of the young person with regard to how things are at home, his/her school record, his/her leisure time, etc. In general, the judge receives a (preliminary) social report, but because of the short time span the report is mainly based on a short interview with the young person and a phone call with the parents. The probation service is also asked to provide advice on the conditions for suspension and the feasibility of certain interventions.<sup>36</sup> On the basis of the social report and the information the young person and his/her parents provide at the hearing, the judge decides what type of conditions should be attached to the suspended pre-trial detention.<sup>37</sup> The judge involved in the pre-trial phase is not allowed to hear the case in court as a trial judge (art. 268(2) Cpc).

Law School of Leiden University nr. MI 296, Deventer, 2018) (Dissertation Leiden University).

<sup>34</sup> C.S. Barendregt, et al., *De toepassing van het jeugdstrafrecht bij jongvolwassenen in de praktijk. Een procesevaluatie van het adolescentenstrafrecht* (WODC, Den Haag, 2018); Van der Laan et al., *supra* note 27.

<sup>35</sup> UNICEF Nederland/Defence for Children, *supra* note 32.

<sup>36</sup> Van den Brink, *supra* note 33.

<sup>37</sup> S.E. Rap, *The participation of juvenile defendants in the juvenile court: A comparative study juvenile justice procedures in Europe* (Pallas Publications, Amsterdam, 2013) (dissertation Utrecht University).

Until 2011, a lawyer was not appointed free of charge when a juvenile was arrested and interrogated by the police. Only when the young person was held in pre-trial detention a lawyer was appointed to represent him/her (art. 40 Cpc). Following the judgments of the European Court on Human Rights in the cases of *Salduz v. Turkey and Panovitz v. Cyprus*,<sup>38</sup> the Dutch Supreme Court ruled that juvenile suspects have the right to consult a lawyer before and be assisted by a lawyer during the first police interrogation and every interrogation thereafter.<sup>39</sup> In 2017 the Criminal Procedural Code was amended, giving suspects who are arrested by the police the right to consult and have a lawyer present during the police interrogation (art. 28(c)(d) Cpc).<sup>40</sup> Moreover, juveniles cannot waive the right to consult a lawyer before the interrogation (art. 489 Cpc). When a minor is held at a police station in order to be interrogated, a family member or a member of his/her household should be warned by the police as soon as possible.<sup>41</sup> When a juvenile is remanded in custody a duty lawyer is always appointed free of charge (art. 40 Cpc). This is also the case when the young person needs to appear in court (art. 489(1)(c) Cpc) or when the prosecutor wishes to settle the case with a community service order of more than 20 hours or a fine of more than EUR 115 (art. 489 (1)(a-b) Cpc). If the juvenile is sanctioned by the police or a more lenient sentence is given by the prosecutor, as a diversionary measure, a lawyer is not appointed free of charge.

The police have official powers to dispose of cases. On the level of the police as well as the prosecution service 'a great diversity of diversion mechanisms exists'.<sup>42</sup> Basically, the police have broad discretion in handling cases and they determine which cases are referred to the prosecutor.<sup>43</sup> 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 Agency, to investigate whether the young person is in need of support.<sup>44</sup> The police can also issue an oral warning and notify the parents.<sup>45</sup> Or the police can refer a juvenile who has committed a minor offence (such as vandalism, defacing property with graffiti or shoplifting) to a community service project called Halt.<sup>46</sup> Halt is an organisation that carries out restorative and educational projects of up to 20 hours for juvenile first-time offenders (art. 77(e) Cc). Finally, the police can decide to send the charge to the public prosecutor for further handling.<sup>47</sup>

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 opportunity).<sup>48</sup> However, the prosecutor can also conditionally discharge cases which involve a misdemeanour or an offence punishable by a maximum of six years' imprisonment (art. 74; art. 77a Cc). Since 1983, the prosecutor has the

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38 ECtHR, 27 November 2008, appl. no. 36391/02; ECtHR, 11 December 2008, appl. no. 4268/04.

39 HR 30 June 2009, LJN: BH3079, NJ 2009, 349.

40 Interestingly this is not the case for suspects who report voluntarily to the police, the so-called summoned suspects.

41 Policy Instruction for the Police, art. 27(1) [Ambtsinstructie voor de politie].

42 C. Brants and S. Field, 'Discretion and Accountability in Prosecution: A Comparative Perspective on Keeping Crime Out of Court', in P. Fennell, C. Harding, N. Jörg and B. Swart (eds.), *Criminal justice in Europe. A comparative study* (Clarendon Press, Oxford, 1995) pp. 127-148.

43 L. Gelsthorpe, et al., 'Diversion in English and Dutch Juvenile Justice', in P. Fennell, C. Harding, N. Jörg and B. Swart (eds.), *Criminal justice in Europe. A comparative study* (Clarendon Press, Oxford, 1995) pp. 199-226.

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

45 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijnen kader voor strafvoeding jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

46 In Dutch 'Halt' is an abbreviation for 'the alternative' (Het Alternatief).

47 Van der Laan, *supra* note 18.

48 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, (s) he can also refrain from prosecuting and dismiss the case (art. 12-13 Cpc).

possibility to settle cases with defendants. In 1995, this form of diversion was laid down in the Criminal Code (art. 77(f) Cc). In 2011, the prosecutor was given even more power, because since then (s)he can declare the defendant guilty and order a sanction by means of a settlement (*strafbeschikking*) (art. 77(f) Cc). The defendant has the right to appeal against the decision of the prosecutor when (s)he does not agree with it (art. 257(e)Cpc). The prosecutor can impose 60 hours of community service, a fine or six months' probation on a juvenile defendant (art. 77(f) Cc).<sup>49</sup> The prosecutor is obliged to invite the young person and his/her parents for a hearing, during which the offence and the personal circumstances are discussed (art. 257c lid 1 Cpc).<sup>50</sup> It can be concluded that the prosecutor has a central role in juvenile cases and plays an important role in determining which cases are sent to the juvenile court.<sup>51</sup> Prosecution offices in the Netherlands have designated juvenile court prosecutors and public prosecutor's clerks who exclusively deal with juvenile cases.<sup>52</sup>

In court, juvenile defendants can be heard by one judge (art. 495(1) Cpc) or in more serious cases by a panel of three judges, one of whom should be a juvenile court judge (art. 495(3) Cpc). The changes to the juvenile criminal law enacted in 1995, modified the role of the juvenile court judge. Juvenile court judges before 1995 liaised with the public prosecutor and the Child Protection Agency on a regular basis.<sup>53</sup> Nowadays, the juvenile court judge is excluded from these meetings, whilst among others the police are included.<sup>54</sup> Courts in the Netherlands have different approaches to dealing with juvenile cases: in some courts judges deal with all child related cases, while in other courts juvenile justice cases are dealt by juvenile court judges who are not involved with child protection and family law for example.<sup>55</sup> The public prosecution service is formally responsible for the execution of sentences (art. 553 Cpc). While other organisations, such as the Child Protection Agency and the juvenile 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.

During the trial the judge occupies a central role; (s)he leads the dialogue with the young person to find out the truth about the alleged offence. The juvenile defendant is in the position to answer the questions posed by the judge by himself/herself, without intervention from the lawyer or his/her parents.<sup>56</sup> A dossier is prepared in the preliminary phase by the prosecutor, while the Child Protection Agency has conducted a social investigation (art. 494 Cpc). Witnesses can be subpoenaed, but in uncomplicated cases this rarely happens. The defendant has the explicit right to call witnesses (art. 287(3) (a) Cpc) and until the young person is 16 years of age the lawyer has the independent power to call witnesses as well.<sup>57</sup>

49 J. uit Beijerse and L. Dubbelman, 'De politie en het Openbaar Ministerie in jeugdstrafzaken', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 239-272.

50 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

51 Uit Beijerse and Dubbelman, *supra* note 49; Verberk and Fuhler, *supra* note 25; Vlaardingerbroek, *supra* note 2.

52 C. Dronkers and J.M. ten Voorde, 'OM-gaan met gestoorde ontwikkeling bij jong-volwassenen' in T.A.H. Dorelijers, J.M. ten Voorde and M. Moerings (eds.), *Strafrecht en forensische psychiatrie voor 16- tot 23-jarigen* (Boom Juridische Uitgevers, Den Haag, 2010) pp. 39-50.

53 G. de Jonge and A.P. van der Linden, *Jeugd & Strafrecht* (Kluwer, Deventer, 2007).

54 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines. Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

55 I. Weijers, *supra* note 3.

56 De Jonge and Van der Linden, *supra* note 53.

57 G.P.M.F. Mols, *Getuigen in strafzaken* (Kluwer, Deventer, 2003).

Since 2011, it is obligatory for parents to attend the juvenile court hearing of their child (art. 496(1) Cpc). When parents are not present at the hearing, but the juvenile defendant and his/her lawyer are, the law prescribes that the case should be adjourned and that the parents should be notified of the new court date (art. 496(a)(1)-(2) Cpc). 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 (art. 496(a)(3) Cpc).<sup>58</sup> At the juvenile court hearing, parents are generally given the opportunity to say something to the judge. They can comment on everything they have heard during the hearing and according to the law they can raise anything that contributes to the defence of their child (art. 496(2) Cpc).

#### 1.2.5. Dispositions

As has been explained above, the police and the prosecution service have large discretionary powers in handling juvenile cases. As a consequence, a large number of juvenile suspects receive a diversionary measure from either the police or the prosecutor. The diversionary programme Halt received 17,000 juveniles in 2016. Also in 2016, the public prosecution service ordered a disposition (in case of a settlement) against 8,700 juveniles and summoned 7,700 juveniles to court. Of the latter group 5,600 juveniles were sentenced by the judge.<sup>59</sup>

In general, it can be stated that community service is the most widely used disposition in the Dutch juvenile justice system. Since the 1980s a development has taken place whereby the phrase 'community service, unless...' was the dominant way of thinking, meaning that community service orders were in principle given first before resorting to harsher sentences.<sup>60</sup> The police diversion programme Halt is considered to be the lowest tier of community service orders. Halt consists of educational and restorative elements and has a maximum duration of 20 hours. At the prosecutor level, mainly community service orders are imposed as well and they have a maximum duration of 60 hours. Diversion at the level of the police and prosecutor cannot imply any restriction of movement or deprivation of liberty. At the court level, a distinction is made between sentences and measures. A sentence can only be imposed when the culpability of the defendant is proven. For a measure to be imposed guilt or intention on the part of the defendant do not have to be proven. Measures aim at protecting society against new crimes committed by the convicted person and compensating for the damage inflicted upon victims.<sup>61</sup>

The applicable juvenile sentences are a monetary fine (max. 4,100 EUR), community service (max. 240 hours) and youth detention (max. one year for 12- to 15-year-olds and max. two years for 16- and 17-year-olds). The most common measures are treatment in a youth custodial institution (max. six years and one year of aftercare), a behavioural treatment measure (six-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. Of the sentences imposed by the juvenile judge 54 per cent are community service orders. In 2016, 5,00 juveniles have started supervision at the

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<sup>58</sup> The reason for laying down by law the presence of parents is to strengthen the position of victims who would like to claim civil damages. However, parents in the Netherlands only have civil liability for their children up until 14 years of age (art. 6:169 (1) CCiv). When the child is between 14 and 16 years of age parents can only be held liable in case they did not exercise sufficient supervision over their child and could have prevented the child from acting harmfully (art. 6:169 (2) CCiv).

<sup>59</sup> Kalidien, *supra* note 31.

<sup>60</sup> F. Imkamp, 'Taakstraffen in het jeugdstrafrecht', in I. Weijers (ed.), *Justitiële Interventies. Voor jeugdige daders en risicjongeren* (Boom Juridische Uitgevers, Den Haag, 2008) pp. 31-44.

<sup>61</sup> G. de Jonge, 'Straffen en maatregelen voor jongeren', in I. Weijers (ed.), *Justitiële Interventies. Voor jeugdige daders en risicjongeren* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 151-186.

juvenile probation service.<sup>62</sup> The probation service is part of 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 the 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.<sup>63</sup>

### 1.3. *Juvenile Justice and Child Protection*

The historical development of the Dutch juvenile justice system as described above shows that the approach can be characterised as being offender-centred, aiming at resocialisation, re-education and reintegration into society. From the 1980s onwards the approach became more legal in nature, emphasising legal safeguards for juvenile defendants and penal responses to delinquent behaviour (i.e. community service orders).<sup>64</sup> Until the legislative changes that took place in 1995, the juvenile court judge managed all the juvenile court cases by himself/herself, supported by the Child Protection Agency. The juvenile court judge handled both civil and criminal juvenile court cases and supervised all cases dealing with one child or family. Nowadays, it depends on the organisation of the court whether juvenile court judges are attached to the criminal law section or the family law section of the court. Only in the latter case judges are involved in both juvenile criminal and civil child protection cases. However, criminal and civil cases involving one child 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 that has been ordered already or a criminal case that is pending.<sup>65</sup> In theory, the prosecutor in juvenile justice cases can ask the judge to order a supervision measure (art. 1:254(4) Civil Code [CCiv]) or to place the young person in care during a juvenile court trial (art. 1:261(1) CCiv), but prosecutors hardly ever do so.<sup>66</sup> In practice, the Child Protection Agency is usually the authority that requests the judge to place the young person under supervision (as a result of delinquent behaviour) and a separate civil procedure is commenced in that case (art. 1:254(4) CCiv).

Regarding the protection of child victims and the prevention of juvenile delinquency, provision of youth care is the main avenue for intervention. In the Netherlands, local municipalities are responsible for access to and provision of voluntary and compulsory youth care since 1 January 2015.<sup>67</sup> An important principle of the *Dutch Youth Act* is that the provision of care and support to children must be based on families' and children's own capacities, engagement and problem-solving abilities and of their own network (Explanatory Memorandum to the *Youth Act*). Municipalities have far-reaching obligations

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62 Kalidien, *supra* note 31.

63 I. Weijers, et al., *Jeugdige Veelplegers* (Uitgeverij SWP, Amsterdam, 2010).

64 Vlaardingerbroek, *supra* note 24.

65 *Ibid.*

66 *Ibid.*

67 Before 2015, the regional provinces had the legal responsibility to provide youth care.

regarding the organisation and provision of youth care services. When parents and children need support, they can contact a local care team from their municipality. When this local team decides that support is necessary, because of insufficient or inadequate family and network support, youth care services will be offered by youth care providers.<sup>68</sup>

When voluntary youth care is not or no longer sufficient for children in need of care or protection, the Child Protection Agency starts an investigation and may request the juvenile court to impose a child protection order (arts. 1:255 and 1:266 CCiv). A child protection order involves family supervision. The family is obliged to accept this assistance by a social worker of a certified youth care organisation. Similar to the voluntary framework, support will be carried out by local youth care providers.<sup>69</sup>

## **2. The Role of Social Work Services in Juvenile Justice in the Netherlands**

### *2.1. Legal Basis for Juvenile Justice Social Work*

From the international children's rights instruments, it can be derived that juvenile justice systems should not focus on repression and retribution, but rather on resocialisation and reintegration of children who are in conflict with the law (art. 40 UN Convention on the Rights of the Child [CRC]; General Comment No. 10, paras. 23; 29). The manner in which juveniles are treated in the justice system should promote their sense of dignity and worth and their reintegration into society (art. 40(1) CRC). The 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*) have more specifically formulated that "[I]n all cases (...) the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated" (Rule 16(1)). In addition, these rules have stipulated that the well-being of the child should be the guiding factor in the course of adjudication and sentencing (Rule 17(1) (d)). These rules require that adequate social services are available to deliver information to the juvenile court. More recently, the Council of Europe (2010) has recommended in its Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice that professionals in the juvenile justice system should cooperate to obtain "a comprehensive understanding of the child as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation" (para. IV(A)(16)). The importance of assessing the background situation of the young person is stressed in these guidelines. Also, a multidisciplinary approach is specifically advocated (paras. IV(A)(70-72)).

On the regional level, the EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>70</sup> gives juveniles the right to an individual assessment by qualified personnel<sup>71</sup> (art. 7). The aim of an individual assessment should be to safeguard the needs of the child (also during the criminal proceedings) and to inform decision-making (art. 7(1)-(3)). The individual assessment of the child should take into account the child's personality and maturity, the child's

68 S.E. Rap, et al., 'Children's Participation in Dutch Youth Care Practice: An Exploratory Study into the Opportunities for Child Participation in Youth Care from Professionals' Perspective', 25:1 *Child Care in Practice* (2018) pp. 1-14.

69 *Ibid*; see also Netherlands Youth Initiative, *Dutch Youth Care System*, < [www.youthpolicy.nl/en/Introduction-to-Dutch-youth-policy/Dutch-youth-care-system](http://www.youthpolicy.nl/en/Introduction-to-Dutch-youth-policy/Dutch-youth-care-system)>.

70 EU Directive on Procedural Safeguards for Children Suspected or Accused in Criminal Proceedings, 2016/800, 11 May 2016.

71 The term 'qualified personnel' is not further defined.

economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties (art. 7(2) and Recital 36). Moreover, the seriousness of the alleged offence and the measures that could be taken if the child is found guilty of such an offence should be taken into account in the assessment (Recital 37). The individual assessment should take place at the earliest appropriate stage of the proceedings and in any event before the court hearings (art. 7(5-6)).

In the Netherlands, social workers are involved in different parts of the juvenile justice process and a division is made between the advisory role of social workers and the implementation of measures and interventions (see further below). The Child Protection Agency is responsible for the provision of social reports to the juvenile court judge; that is providing an individual assessment of the young person and advice on the best appropriate disposition. When the prosecutor has the intention to try the young person in court, (s) he is legally obliged to ask the Child Protection Agency for a social report (art. 494(1) Cpc). This organisation can also inform the prosecutor on its own accord (art. 494(3) Cpc). The Child Protection Agency undertakes a systematic social investigation with regard to almost every juvenile defendant who has to appear before the prosecutor or judge. The report contains social background information concerning the young person and his/her family and an advice concerning the most appropriate sanction and/or measure. The actual implementation of measures, such as probation, is executed by the certified youth care organisations that operate in local municipalities and that provide for juvenile probation services (art. 77 (aa) (2) Cc).

## 2.2. *The Advisory Role of Social Work Services in Juvenile Justice*

As has been noted above, after the revision of the juvenile criminal law in 1995, the juvenile judge lost his/her central position in the juvenile justice process. However, new forms of case consultations developed between the police, the prosecution service and the Child Protection Agency.<sup>72</sup> Most recently, a fast track system has been developed at the police level, whereby cases are assessed within nine hours after arrest (the so-called ASAP [ZSM] meeting). The police, prosecutor and Child Protection Agency decide together how the case can be dealt with and whether a form of diversion is appropriate.<sup>73</sup> This fast track system was pre-dated by case consultations taking place between the police, prosecutor and Child Protection Agency 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 Safety homes (*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 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 juveniles 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.<sup>74</sup>

<sup>72</sup> Junger-Tas, *supra* note 24.

<sup>73</sup> Uit Beijerse and Dubbelman, *supra* note 51; I. Mijnaerends and E. Rensen, 'De rechtspositie van de jeugdige verdachte op ZSM' in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 259-272, see also Openbaar Ministerie, *Landelijke invoering van de ZSM werkwijze*, <[www.om.nl/@24445/factsheet-zsm/](http://www.om.nl/@24445/factsheet-zsm/)>.

<sup>74</sup> Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines; Halt [Richtlijn

In the Netherlands, when a young person is arrested by the police, the police immediately involve the Child Protection Agency, through the ASAP-meeting.<sup>75</sup> If the young person is remanded in custody the prosecutor has to inform the Child Protection Agency (art. 491(1) Cpc). A social worker conducts a first assessment of the well-being of the juvenile defendant in pre-trial detention, also when the young person is arrested during the weekend. The social worker prepares a report for the prosecutor and pre-trial judge, including advice on releasing the young person on supervision or on prolonging the period on remand and whether further investigations into the personality of the young person are necessary.<sup>76</sup> The prosecutor must consider this advice before ordering a continuation of the pre-trial detention (art. 491(2) Cpc).<sup>77</sup> In general, the Child Protection Agency will advise to suspend pre-trial detention, unless it is strictly necessary to keep the juvenile detained.<sup>78</sup> In the case of suspension of pre-trial detention, special conditions can be attached hereto, such as supervision carried out by the juvenile probation service (art. 80 Cpc). Moreover, this may mean that the young person is subjected to measures such as intensive supervision, a training programme, a contact ban, a location ban, a curfew, ban on drugs and/or alcohol, mandatory blood- or urine-testing or other interventions relating to the behaviour of the young person.<sup>79</sup> Electronic monitoring can be attached to these special conditions.<sup>80</sup> When the prosecutor decides to try the young person in court, (s)he is legally obliged to ask the Child Protection Agency to prepare a social report as well, in which the social background of the juvenile is described in more detail and an advice is given on the most appropriate sentence and/or measure (art. 494(1) Cpc).

When the young person is not taken into custody after his/her arrest, (s) he will be invited to come to the office of the Child Protection Agency, where a standardised assessment is carried out by a social worker. In 2012, a standardised risk assessment instrument was introduced in the juvenile justice process (*Landelijk Instrumentarium Jeugdstrafrechtssketen*). Information is gathered through dossier analysis, a structured interview with the young person and with his/her parents and telephone contact with relevant others such as a school teacher. The aim of the instrument is to find an intervention that will reduce the risk of re-offending. The Child Protection Agency bases its reports on this instrument.<sup>81</sup> At this stage, voluntary supervision can also be proposed to the young person. In basically every juvenile criminal case the Child Protection Agency prepares a report for the prosecutor (also in case of a conditional dismissal), the pre-trial judge or the juvenile court judge and gives advice on the most appropriate disposition. In case further forensic psychiatric investigation is needed, this will be carried out by the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP), which will seek a qualified and independent psychologist or/and psychiatrist to conduct the assessment and advise the court.<sup>82</sup>

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en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

<sup>75</sup> *Ibid.*

<sup>76</sup> Uit Beijerse and Dubbelman, *supra* note 49.

<sup>77</sup> On the other hand, the pre-trial judge can also ask the Child Care and Protection Board to inform him/her concerning the situation of the young person, for example after the pre-trial detention has been continued for an additional period of time (art. 494 (4) Cpc).

<sup>78</sup> Van den Brink, *supra* note 33.

<sup>79</sup> Art. 27(1) Decree on the enforcement of juvenile criminal law [Besluit tenuitvoerlegging jeugdstrafrecht]

<sup>80</sup> Art. 27(3) Decree on the enforcement of juvenile criminal law [Besluit tenuitvoerlegging jeugdstrafrecht]

<sup>81</sup> H. Spanjaard and C. van der Put, 'Landelijk Instrumentarium Jeugdstrafrechtssketen', 91:5 *Proces* (2012) pp. 355-370.

<sup>82</sup> G. Cardol, 'Raad voor de Kinderbescherming, NIFP en jeugdreclassering', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 273-290.



When a young adult between 18- and 23-years-old is suspected of an offence, the prosecutor can order to impose a juvenile sentence. The prosecutor is advised on this matter by the adult probation service and the Child Protection Agency. These organisations use the national guidelines on the application of adolescent criminal law. Criteria that need to be met in order to ask for a juvenile 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.<sup>83</sup>

Regarding child victims of crime, the police have specialised officers who conduct the interviews with victims below the age of 12. These interviews are carried out in child-friendly interview rooms, which are available in several cities in the Netherlands. The child is informed and prepared by the officer during a home visit, before the day of the interview. The interview is audio and visually recorded, and another officer (in rare cases accompanied by the judge and prosecutor) is present in the control room to observe the interview.<sup>84</sup> For child victims of 12 to 18 years, the law does not provide for these special arrangements (i.e. a child-friendly interview room and specialised professionals).<sup>85</sup>

At the court hearing, a representative of the Child Protection Agency can be present. This depends, however, on the practice of the specific court and is generally more common in complicated cases and when the young person is being held in pre-trial detention.<sup>86</sup> The actual implementation of measures, such as probation, is executed by local social services (art. 77 (aa) (2) Cc) and not by the Child Protection Agency. However, the Child Protection Agency is responsible for the coordination of community service orders. The coordinators have intakes with juveniles who have been sentenced to a community service order and assign them to educational programmes and community service projects. When the order has been completed successfully, the coordinator reports this to the prosecutor. In case the young person is not cooperating, this will also be reported back to the prosecutor, who can officially warn the young person and ultimately report back to the judge.<sup>87</sup>

### 2.3. *The Implementation of Social Work Services*

With the entry into force of the *Youth Care Act* in 2015, the juvenile probation service also became part of the responsibility of the local municipalities. Certified youth care organisations are legally assigned to provide youth care, protection and probation services. The probation service – as part of the certified organisations – is responsible for providing juvenile probation measures, electronic monitoring and aftercare programmes for juveniles coming out of detention.<sup>88</sup>

The general compulsory probation supervision can be ordered by the prosecutor as part of diversion, by the investigating judge as part of suspended pre-trial detention, by the

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83 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

84 Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers getuigen en verdachten, Stcrt. 2012, nr. 26900.

85 Y.M. Hokwerda, et al., *Minderjarige slachtoffers van seksueel misbruik in het strafproces. Een toetsing aan het internationale kinderrechtenskader* (Defence for Children, Leiden, 2015).

86 S.E. Rap, 'The participation of social services in youth justice systems in Europe', 18:5 *European Journal of Social Work* (2015) pp. 675–689.

87 Cardol, *supra* note 82.

88 *Ibid*; see also art. 77(aa) (2) Cc.

judge as part of a conditional sentence and as aftercare following detention. Probation supervision can also be accepted voluntarily, before the trial. 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 juvenile 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. The juvenile 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 juvenile probation service is also responsible for supervision during leave out of detention and aftercare (art. 147, 494 Cc). A specific programme aimed at reintegration 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 custodial institution for a maximum of three months, with the aim to reintegrate into society.<sup>89</sup> The programme needs to contain at least 26 hours of weekly activities, which are tailored to the needs of the young person. Both the juvenile probation service and the Child Protection Agency have to provide an advice on whether or not to start this programme. The youth custodial institution is responsible for design of the programme and the juvenile probation service is responsible for the 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 institution.<sup>90</sup>

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/her supervisor, a child psychologist, the Child Protection Agency and the juvenile probation service. Agreements concerning the provision of aftercare can also be part of this plan.<sup>91</sup> In the Netherlands, a few organisations provide specialised aftercare and resocialisation programmes for young people leaving detention, such as Young in Prison and the Foundation 180 (see further below).<sup>92</sup>

In general, it can be stated that the juvenile probation service has a considerable amount of freedom in implementing juvenile probation services and supervision. In practice, no close contact is maintained between judges and social workers.<sup>93</sup> When a young person does not comply with the directives of the probation officer, the latter can warn the young person himself/herself first, before reporting to the prosecutor. Also, regarding the content of the supervision, the probation officer has rather large room for discretion.<sup>94</sup> The aim of probation services is to control juveniles' behaviour in order to prevent re-offending, while at the same time trying to influence the behaviour

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89 *Ibid*; art. 3 Youth Custodial Institutions (Framework) Act; art. 4(2) Youth Custodial Institutions Regulation.

90 T. Liefwaard and M. Bruning, 'De justitiële jeugdinstelling', in I. Weijers (ed.), *Jeugdstrafrecht. In internationaal perspectief* (Boom Juridische Uitgevers, Den Haag, 2017) pp. 393-416.

91 *Ibid*; Weijers, *supra* note 63.

92 See <<https://180.nl/>> and Young In Prison, (YIP) <[www.younginprison.org/en/about-yip](http://www.younginprison.org/en/about-yip)>.

93 Rap, *supra* note 86.

94 H.L. Kaal and B.J. de Jong, 'Het signaleren en registreren van LVB in het justitiële domein: stof tot nadenken', 43:6 *Justitiële verkenningen* (2017) pp. 63-73.

of the young person and giving support to help organise his/her life.<sup>95</sup> Probation officers indicate 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/her parents in education and upbringing and positive development of the young person.<sup>96</sup> Research among juveniles shows that they perceive the interaction with probation officer as rather controlling and corrective.<sup>97</sup>

#### 2.4. Qualification and Evaluation of Juvenile Justice Social Work

Since 1995, the juvenile probation service has undergone significant changes and it has professionalised considerably. Before, there was no national rollout of probation services and no uniformity in work methods. Nowadays, the *Handbook method juvenile probation* is used and this has led to a more uniform national working method among the juvenile probation providers. Moreover, since 2015 youth care organisations must be certified to provide youth care and probation services. This certificate is periodically reviewed by the government.<sup>98</sup>

Another quality assurance method is the existence of the Database Effective Juvenile Interventions. Youth care providers can have their interventions reviewed by a committee of experts who will decide whether the intervention can be qualified as well-grounded in theory and effective in practice. A separate committee for the evaluation of juvenile justice interventions exists.<sup>99</sup>

### 3. Recent Achievements, Challenges and Reform Initiatives Regarding Juvenile Justice Social Work in the Netherlands

#### 3.1. Achievements

Historically, the Dutch juvenile justice system is rooted in a welfare model, whereby the underlying problems of delinquent behaviour form an important object for intervention, in order to prevent re-offending and foster re-education and protection of the child. Classical criminal justice notions, such as guilt, proportionality and retribution hardly played any role in the juvenile justice system. This changed in the 1960s, influenced by developments in the United States.<sup>100</sup> However, as becomes clear in this chapter the Dutch juvenile justice practice still has a clear pedagogical focus and social work plays an important role in this respect.

Throughout every phase of the juvenile justice process social work services are engaged, either to advise the judge and prosecutor or to supervise the young person and his/her parents. The latter task is completely assigned to the juvenile probation services, which can be involved in every phase of the process, from arrest until release from detention. The advisory work is primarily the responsibility of the Child Protection Agency, which operates independently from the courts (and also advises the court in family law, child protection and adoption cases). However, other organisations can also advise the court, such as the juvenile probation service and specialist psychologists and psychiatrists. Despite the fact that the Dutch juvenile justice system has become more punitive, with

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95 C. van Nijnatten and G. Stevens, 'Juvenile Participation in Conversations with Probation Officers', 56:3 *International Journal of Offender Therapy and Comparative Criminology* (2012) pp. 483-499; C. van Nijnatten and E. van Elk, 'Communicating Care and Coercion in Juvenile Probation', 45 *British Journal of Social Work* (2015) pp. 825-841; Van den Brink, *supra* note 33.

96 Van den Brink, *supra* note 33.

97 Van Nijnatten and Stevens, *supra* note 95.

98 Cardol, *supra* note 82.

99 See Netherlands Youth Initiative, *supra* note 69.

100 I. Weijers, *supra* note 3; Van der Laan, *supra* note 18.

more emphasis on guilt, retribution and possibilities for imposing a wider variety of dispositions and longer detention sentences, the focus on the social background and development of juveniles remains. Every disposition should have a re-educative aim and should lead to resocialisation of the young person. However, this has also led to increased emphasis on risk assessment and the prevention of re-offending. It should be born in mind that most of the juveniles that come into contact with the law are one time-offenders and that the risk of re-offending is rather low.<sup>101</sup> Moreover, this has led to an extensive diversion scheme in the Netherlands, whereby juveniles can be imposed dispositions in every phase of the process (i.e. at the police, prosecutor and court level). Some have concluded that this has led to increased net-widening.<sup>102</sup> Several recent studies show that prevention programmes can be effective in preventing persistent juvenile delinquency, but these should be behavioural-oriented, delivered in a family or multimodal format and the intensity of the programme should match the risk level of the juvenile.<sup>103</sup> The latter aspect may clash with criminal justice principles (e.g. principle of proportionality) and legal safeguards of the juvenile defendant. This issue and the topic of after care and reintegration of juveniles will be discussed in the next sections.

## 3.2. Challenges

### 3.2.1. Fair Trial Versus Early Intervention

As has been explained above pre-trial detention of juveniles can be conditionally suspended and this happens on a regular basis.<sup>104</sup> Behavioural intervention is the core aim of the special conditions attached to suspension, meaning that during the pre-trial period, and anticipating a possible court conviction, behavioural interventions that have a legal basis can be implemented. Van den Brink explains that early intervention is geared towards a pedagogical and educational approach of the Dutch juvenile justice system, aimed at preventing re-offending. It is acknowledged in the law that interventions should not be aimed at punishment or anticipate a court conviction. Interviews conducted with, among others, judges by Van den Brink shows that judges value the 'pedagogical effectiveness' of their decisions. They strive for tailor-made decisions, incorporating the pedagogical interests and needs of the young person. However, they also acknowledge that this approach sometimes clashes with the applicable legal framework and the legal safeguards of juvenile defendants.<sup>105</sup> Procedural safeguards for a fair trial require that authorities exercise restraint with regards to intervening in the life of a defendant before the trial and final judgment have taken place. From a defendants' rights perspective, the early involvement of social services in criminal cases can be scrutinised. A basic fair trial requirement is the fact that a defendant is presumed to be innocent until proven guilty (see art. 6 European Convention on Human Rights; art. 40 (2) (b) (i) CRC). When implementing preliminary measures, it can be argued that this basic right is violated, because the guilt of the young person has yet to be proven in court. Also, tailored decision-making is on strained terms with the equality principle, requiring similar sentences in similar cases.

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101 See for example McAra and McVie, *supra* note 29.

102 Weijers, et al., *supra* note 21; Imkamp, *supra* note 60; Weijers and Liefwaard, *supra* note 5.

103 L.A. de Vries, et al., 'Practitioner Review: Effective Ingredients of Prevention Programs for Youth at Risk of Persistent Juvenile Delinquency – Recommendations for Clinical Practice', 56:2, *The Journal of Child Psychology and Psychiatry* (2015) pp. 108-121.

104 See Van den Brink, et al., *Voorlopige hechtenis van jeugdigen in uitvoering. Een exploratief kwantitatief onderzoek naar rechterlijke beslissingen en populatiekenmerken* (Meijers-reeks nr. 298, Nijmegen: Wolf Legal Publishers, 2017); Van den Brink, *supra* note 33.

105 Van den Brink, *supra* note 33.

Early intervention and preventive activities have always been the primary reason for the early involvement of social work in the welfare model in the juvenile justice systems in continental Western Europe, including the Netherlands. Implementing early interventions can be seen as a structural difference between a welfare and a justice approach in juvenile justice.<sup>106</sup> Intervening early means that the young person can be provided with help and supported in an earlier stage of the process, instead of waiting for a decision from the judge. In favour of the practices employed in the welfare model, it can be argued that early involvement of social services in the juvenile justice system is justified when the young person clearly suffers from problems; at home, at school and/or personally. When the offence is a sign that much more difficulties are present in the life of the young person, early interventions and supervision can be beneficial. The early social work involvement, employed in the welfare model, has the advantage for the judge that (s)he can be provided with information with regards to how the young person is developing under the care that is already given to him/her. The judge can in this case decide to adapt the sentence to the individual development and progress of the young person.

### 3.2.2. After Care and Reintegration

In the past few years, after care in juvenile justice has received increased attention in the Netherlands. This has resulted in the introduction of mandatory after care when deprivation of liberty in the form of a sentence or measure is ended. This can be in the form of a (partly) conditional detention sentence with probation supervision, the education- and training programme and conditional release in case of a treatment measure in a youth custodial institution.<sup>107</sup> After care should contribute to successful reintegration in society and reduce the high re-offending rates after deprivation of liberty. It is incorporated into the *Youth Custodial Institutions Regulation* and the *Decree on the enforcement of juvenile criminal law*.<sup>108</sup> The juvenile probation service is in principle responsible for the implementation of after care, but for 16- to 18-year-old, the adult probation services can be engaged, when the development and circumstances of the young person require so.<sup>109</sup> Voluntary after care provided by a youth care organisation is also possible, when the young person does not qualify for mandatory after care services (e.g. because of the limited duration of a sentence) (art. 77hh (2) Cc).<sup>110</sup> Furthermore, for every young person who is admitted to a youth custodial institution a plan is developed in which the judicial trajectory and reintegration is planned.<sup>111</sup> The Child Protection Agency is responsible for developing these plans and initiating regular meetings with the young person, a representative of the institution and the juvenile probation service.<sup>112</sup>

It can be concluded that after care has been given a legal basis in the Dutch juvenile justice system, also for young people who have reached the age of 18 while in detention. However, in practice not every juvenile is reached through this system of after care. For example, only around 20 per cent of the juveniles leaving detention have participated in an education- and training programme. Experience in practice shows that it is important to start early with planning the reintegration of the young person and that collaboration is needed between the organisations working in the juvenile justice system and those working in the adult criminal justice system.<sup>113</sup>

106 Rap, *supra* note 86.

107 M.R. Bruning, et al., *Verplichte (na)zorg voor kwetsbare jongvolwassenen? Onderzoek naar de juridische mogelijkheden voor (verplichte) hulp aan kwetsbare jongvolwassenen na kinderbescherming* (WODC, Den Haag, 2016).

108 *Ibid.*

109 Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt [Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007)].

110 Regulation Voluntary Support Juvenile Probation Service [Regeling vrijwillige begeleiding jeugdreclassering, 12.01.2005, no. 5328243/04/DJJ].

111 Art. 28, Decree on the Enforcement of Juvenile Criminal Law [Besluit tenuitvoerlegging jeugdstrafrecht]

112 *Ibid.*

113 Bruning et al. *supra* note 107.

### 3.3. Reforms

#### 3.3.1. Small Scale Reception

With the decrease in juveniles admitted to youth custodial institutions, which resulted in the closing of institutions across the country, the Ministry of Justice has started an exploration into reforming deprivation of liberty of juveniles. Because institutions have closed, local or regional placement, which was the point of departure when depriving juvenile of their liberty, is no longer possible. Also, the cooperation between institutions and local organisations that provide after care is more difficult to realise.<sup>114</sup> Therefore, the pilot project of designing small-scale reception centres (*kleinschaligevoorziening*) has been developed and implemented 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 an institution that is further away from their home. During the day juveniles 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.<sup>115</sup> At the time of writing this practice is being evaluated and no results of its implementation and effectiveness are available yet.

#### 3.3.2. Adolescent Criminal Law

As has been explained above, in 2014, the *Dutch Act on Adolescent Criminal Law* entered into force. As a result, young adults until 23 years of age can be sentenced to a juvenile sentence when this is deemed necessary based on the personality of the young adult or the circumstances of the case (art. 77(c)Cc). The aim of this law is to tailor the decision-making and sentencing to the individual needs of the young person. This legislative change is largely influenced by the increased knowledge of and attention for the neurological and brain development of adolescents and the fact that this development has significant influence on adolescent delinquent behaviour and is not completed at the age of 18.<sup>116</sup> The insight emerged that the development of adolescents does not fit well with applying fixed age limits between minority and majority. This legislative change makes it possible to tailor the judicial intervention to the individual needs of young people until 23 years of age.<sup>117</sup> The point of departure is still to apply adult criminal sentences, but the individual personality of the defendant and his/her circumstances can lead to application of a juvenile justice sentence. The prosecutor can order the application of this provision, already when (s)he asks to place the young person in remand. When the pre-trial judge agrees to apply juvenile criminal sentencing, this means that the young person can be placed in a youth custodial institution, instead of a remand prison and that conditional release should be considered, on the basis of a social work report.<sup>118</sup> A recent evaluation of this legislative change shows that in practice no clear definition exists of the target group of young adults.<sup>119</sup> It appears that the offence should not be of

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114 J. van Alphen, et al., *Verkenning Invulling Vrijheidsbeneming Justitiële Jeugd. Mogelijke richting: lokaal maatwerk voor de jongere* (Significant, Barneveld, 2015).

115 Factsheet KV, *Kleinschalige Voorziening vrijheidsbeneming justitiële jeugd* (Spirit Jeugd & Opvoedhulp, Gemeente Amsterdam, Ministerie van Veiligheid en Justitie).

116 See R. Loeber, et al., 'Overview, Conclusions, and Policy and Research Recommendations', in *Persisters and Desisters in Crime from Adolescence into Adulthood: Explanation, Prevention and Punishment* (Ashgate/Farnham/Burlington, 2012) pp. 335-412.

117 E. Schmidt, et al., 'Young adults in the justice system: The interplay between scientific insights, legal reform and implementation in practice In the Netherlands', *Youth Justice* (forthcoming).

118 M.A.H. van Kempen, 'Het adolescentenstrafrecht; een flexibel sanctiestelsel voor jongvolwassenen', *5 Tijdschrift voor Familie-en Jeugdrecht* (2014) pp. 1-9; Liefwaardand Rap, *supra* note 28.

119 L.J.C. Prop, et al., *Adolescentenstrafrecht. Kenmerken van de doelgroep, de strafzaak en de tenuitvoerlegging* (WODC, Den Haag, 2018).

a too serious nature, but also not be too light, which bears the question, which category of offences qualifies for the application of this law.<sup>120</sup> Positive is the finding that since the application of this law, more social work reports are prepared for the courts. Also, the probation service makes more often use of risk assessment instruments in the case of young adults.<sup>121</sup>

#### **4. Concluding**

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. Naturally, social work services play a substantive role in this system, being involved in every phase of the process. The main tasks of the social services are to advise the legal actors in the process to come to a tailored decision and to supervise and guide the young person to prevent him/her from re-offending. As a consequence, the social work service works within a strictly legal context and has to navigate between pedagogical goals expectations and legal rules and regulations. Important developments such as the increased importance attached to risk assessment, prevention of re-offending and behavioural change have to be balanced with the application of legal safeguards and minimum intervention. In this context challenges remain for the social work services, regarding the moment at and intensity with which they should intervene and provide their services to children involved in the juvenile justice system.

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<sup>120</sup> Liefwaard and Rap, *supra* note 28.

<sup>121</sup> Van der Laan et al., *supra* note 27; Prop et al., *supra* note 119.

## Annex 1: Relevant Laws and Regulations

Dutch title	English translation
Burgerlijk Wetboek, 01.10.1838	Civil Code
Wetboek van Strafrecht, 03.03.1881	Criminal Code
Wetboek van Strafvordering, 15.01.1921	Criminal Procedure Code
Wet Adolescentenstrafrecht, 01.04.2014	Act on Adolescent Criminal Law
Beginselenwet Justitiële Jeugdinstellingen, 01.09.2001	Youth Custodial Institutions (Framework) Act
Reglement justitiële jeugdinstellingen, 01.09.2001	Youth Custodial Institutions Regulation
Besluit tenuitvoerlegging jeugdstrafrecht, 10.07.1995	Decree on the enforcement of juvenile criminal law
Jeugdwet, 01.01.2015	Youth Care Act
Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2018R007), 01.01.2015	Directive and framework criminal procedure for juveniles and adolescents, including sentencing guidelines Halt
Ambtsinstructie voor de politie, 01.04.1994	Policy instruction for the police