The role of the youth lawyer in the juvenile justice system in the Netherlands

National report
September 2016 - February 2017

Defense for Children International The Netherlands

This project is cofinanced by the Justice Program of the European Union
Table of content

INTRODUCTION ......................................................................................................................... 4
  a. List of acronyms .................................................................................................................. 4
  b. Organisation and team in charge of the research .............................................................. 4
  c. Methodology ....................................................................................................................... 4
  d. The limitations of the research .......................................................................................... 5
A. The international framework ................................................................................................ 7
  1. Ratified Conventions .......................................................................................................... 7
     1.1. The International Covenant on Civil and Political Rights (ICCPR) ...................... 7
     1.2. Convention on the Rights of the Child (CRC) ....................................................... 7
     1.3. Optional protocol CRC .............................................................................................. 8
  2. Measures taken to promote soft law .................................................................................. 8
B. Regional framework ............................................................................................................. 9
  1. Ratified Conventions .......................................................................................................... 9
     1.1. ECHR .......................................................................................................................... 9
     1.2. European Union Charter of Fundamental Rights .................................................... 9
     1.3. European Charter of social rights ............................................................................... 9
  2. Transposition of European Directives into national law .................................................. 9
     2.1. Dir. 2010/64/EU: The right to interpretation and translation in criminal proceedings ..... 9
     2.2. Dir. 2012/13/EU: The right to information in criminal proceedings ......................... 9
     2.3. Dir. 2013/48/EU: The right of access to a lawyer in criminal proceedings (...) .......... 9
     2.4. Dir. 2016/800/EU: Procedural safeguards for children who are suspects or accused persons in criminal proceedings ........................................................................ 10
     2.5. Dir. 2016/1919 on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings .............................................. 10
  3. Measures taken to promote soft law .................................................................................. 10
     3.1. Guidelines on Child Friendly Justice of the Council of Europe (CoE) ...................... 10
  4. Jurisprudence .................................................................................................................... 10
C. The national framework ....................................................................................................... 11
  1. Children suspected or accused in criminal proceedings: national definitions ............ 11
     1.1. National definitions .................................................................................................... 11
     1.2. Criminal proceedings and the best interest of the child ........................................... 12
  2. Legal basis & derogations ................................................................................................... 12
     2.1. Legal framework on the juvenile justice system in The Netherlands ....................... 12
        2.1.1. Introduction ......................................................................................................... 12
2.1.2. Actors at each stage of the procedure ................................................................. 13
2.1.3. Sentence and measures ......................................................................................... 15
2.1.4. Deprivation of liberty ............................................................................................ 15
2.1.5. Special laws ........................................................................................................... 15
2.2. The right of access to a lawyer in criminal proceedings for children suspected or accused 17
2.3. The right to assistance by a lawyer in criminal proceedings for children suspected or accused .................................................................................................................. 19
2.4. The right to information in criminal proceedings for children suspected or accused ..... 19
2.5. The right to interpretation and translation in criminal proceedings for children suspected or accused ................................................................. 20
2.6. The legal aid system .............................................................................................. 22
D. The youth lawyer - from theory to practice: analysis ................................................. 25
1. The youth lawyer ......................................................................................................... 25
1.1. Role and mission ...................................................................................................... 25
1.2. Cooperation with other professionals ................................................................. 25
2. Access to a lawyer and assistance by a lawyer at all stages of the procedure .......... 26
2.1. The rights of access to/assistance by a lawyer ...................................................... 26
2.1.1. Definitions ........................................................................................................... 26
2.1.2. Derogations ......................................................................................................... 28
2.1.3. Waiver ................................................................................................................ 30
2.1.4. Difficulties .......................................................................................................... 32
2.2. Information for minor suspects about their rights ................................................. 32
2.3. Choice of the lawyer ............................................................................................. 34
3. Interpretation and translation ...................................................................................... 34
4. Legal aid system for children ....................................................................................... 35
5. Education and specialisation of youth lawyers ......................................................... 37
6. Relation youth lawyer - minor client ......................................................................... 40
7. Relation youth lawyer - parents of the minor client ................................................. 41
8. Collaboration with other professionals .................................................................... 41
9. The best interest of the child .................................................................................... 42
E. Socio legal defence centers or equivalent for children .............................................. 43
Conclusions and recommendations .............................................................................. 45
1. Conclusions .............................................................................................................. 45
2. Recommendations .................................................................................................... 46
2.1. Recommendations to policy makers ..................................................................... 46
2.2. Recommendations concerning the police, ZSM procedure and the prosecution .......... 47
2.3. Recommendations to and on behalf of youth lawyers .......................................................... 47
List of Annexes ...................................................................................................................................... 48
Bibliography........................................................................................................................................... 48
  Literature ........................................................................................................................................... 48
  Policy documents .............................................................................................................................. 49
INTRODUCTION

a. List of acronyms

AKJ Advies en Klachtenbureau Jeugdzorg, translated as: Advice and Complaints Bureau Youth Care
BJJ Beginselenwet Justitiële jeugdinrichtingen, translated as: YJI-Act - Youth Justice Institutions Act
CC Criminal Code
CCP Code of Criminal Procedure
CRC Convention on the Rights of the Child
LAA Legal Aid Act
NOVA Nederlandse Orde van Advocaten, translated as: The Dutch Bar Association
OTP Oproep ten Parkette, translated as: Call at the office of the Prosecutor
Stb. Staatsblad, translated as: State Magazine
Stc. Staatscourant, translated as: State Newspaper
TvCN Tolk- en vertaalcentrum Nederland, translated as: Interpreters and translation centre the Netherlands
VNJA Vereniging Nederlandse Jeugdrecht Advocaten, translated as: Association of Dutch Youth Lawyers
WbtV Wet beëdigde tolken en vertalers, translated as: Sworn Interpreters and Translators Act
ZSM ZSM-methodology, translated as: “Rapidly, Selective, Smart, Together and as Simple’ as possible – methodology

b. Organisation and team in charge of the research

The research was carried out by Maartje Berger, legal adviser children's rights and child protection at Defence for Children - the Netherlands. Charlotte Vanderhilt assisted preparing the research document.

c. Methodology

The aim of the report is to consider, by mapping the youth lawyers system, whether the right to legal representation for child suspects is fully recognised in The Netherlands and in line with European standards and the Convention on the rights of the Child.

The analysis gives an overview of:
1) Legislation
2) Practise
3) Financing system
4) Type of training for youth lawyers
5) Associations of youth lawyers and their functioning
6) Existing tools at national level
7) Existing reports on this topic

Desk research
During the research national laws, procedures and practises were analysed. In European perspective the research sets out the status of the implementation of the EU directives providing procedural guarantees and whether children’s rights have been guaranteed by these. Furthermore, literature was studied to analyse how The Netherlands applies the right to legal representation of children in
conflict with the law.

Interviews
During the research phase interviews took place with four lawyers (two male, two female), a prosecutor (female), a trainer (male) of behavioural interventions for children in conflict in with the law, four minors (male, suspects and perpetrators) and a mother of a child suspect. The minors who were interviewed were all represented by specialized youth lawyers. As the system was changing during the project an interview by phone was done with the police (male) in order to talk about the procedure at the level of the police s after 1 March 2017.

The purpose of the interviews was to talk about experiences with the penal procedure in the juvenile justice system and the role of the youth lawyer. Insight was given on the question whether and how the guarantees enshrined in the European directives were implemented in Dutch law and practice. The respondents are anonymous. Their names will not be mentioned in this report. They were informed about the project and the use of the information given.

Furthermore on 25 March 2017 Maartje Berger took part in the national dissemination forum of the EU project PRO JUS, “Procedural rights of juveniles suspected and accused in the EU”. Here the issues of the right access to a lawyer and the right to translation for migrant children were discussed with professionals such as lawyers, prosecutors and a judge.

d. The limitations of the research

On 17 November 2016 changes have been adapted by the Senate in a new law to implement Directive 2013/48/EU. On 1 March 2017 two new laws on “Access of a lawyer to police hearings” went into force. During most of the interviews “old law and policy” was in practise and the new rules were not yet clear. After 1 March some major changes became visible. For example since 1 March it is not possible for minors to waive the right to a lawyer (except concerning small offences), where that was possible in before 1 March. New prosecution policy rules which were published 1 March 2017 state that that a lawyer and a person of trust are allowed during police interrogations. Before 1 March it was a lawyer or a person of trust.

Another legislative change is concerning the Code of Criminal Procedure. In 2017 the Code of Criminal Procedure will be revised as part as a modernisation process. Furthermore a proposal of law for the Legal Aid Act is discussed in Parliament. This means the criminal procedure and the legal aid procedure in The Netherlands will soon be renewed. Because most changes are not yet in use practically, a complete view on the consequences for young suspects and for the daily practise of lawyers cannot be given. Although it is not yet fully clear what the changes and the consequences of the new laws and rules will be, some future risks and challenges are mentioned in this report.

During the interviews it appeared to be difficult for young people to talk about their experiences with the justice system. When contacting minors for an interview it became clear that they don’t want to be reminded of the arrest and the penal procedure and their stay in a police custody. It was possible to talk to four minors about their experience with a lawyer. One minor did not come to the interview, but his mother was willing to participate. The research team would like to thank all the experts for

---

3 Website in Dutch: https://www.rijksoverheid.nl/onderwerpen/modernisering-wetboek-van-strafvordering/documenten
sharing their views and experiences and especially acknowledge and thank the minors who shared their experiences with us.
A. The international framework

1. **Ratified Conventions**

The Netherlands has signed and ratified several international treaties empowering children’s rights, such as the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of the Child (CRC).

1.1. The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented.\(^4\)

The Netherlands signed the International Covenant on Civil and Political Rights (ICCPR) on 25 June 1969 and ratified it on 11 December 1978. The ICCPR entered into force on 11 March 1979. The Netherlands has made reservations to article 10, 12, 14, 19 and 20 and one interpretative declaration. Reservations to article 14:

- Par. 3 (d) The Kingdom of the Netherlands reserves the statutory option of removing a person charged with a criminal offence from the courtroom in the interests of the proper conduct of the proceedings.
- Par. 5 The Kingdom of the Netherlands reserves the statutory power of the Supreme Court of the Netherlands to have sole jurisdiction to try certain categories of persons charged with serious offences committed in the discharge of a public office.
- Part. 7 The Kingdom of the Netherlands accepts this provision only insofar as no obligations arise from it further to those set out in article 68 of the Criminal Code of the Netherlands and article 70 of the Criminal Code of the Netherlands Antilles as they now apply. They read:
  1. Except in cases where court decisions are eligible for review, no person may be prosecuted again for an offence in respect of which a court in the Netherlands or the Netherlands Antilles has delivered an irrevocable judgment.
  2. If the judgment has been delivered by some other court, the same person may not be prosecuted for the same offence in the case of (I) acquittal or withdrawal of proceeding or (II) conviction followed by complete execution, remission or lapse of the sentence.\(^5\)

1.2. Convention on the Rights of the Child (CRC)

The Netherlands signed the Convention on the Rights of the Child (CRC) on 26 January 1990 and ratified it on 6 February 1995. The CRC entered into force in the Netherlands on 8 March 1995, and on the islands of the former Netherlands Antilles on 16 January 1998. On 17 January 2001 the CRC entered into force on Aruba. At the ratification of the CRC the Netherlands made three reservations, namely with regard to legal aid and appeal in all cases (art. 40 CRC), the application of adult criminal law on 16- and 17-year olds (Art. 37c CRC) and the right to social security (art. 26 CRC). Since the first of April 2014, sixteen and seventeen year-olds can be tried as adults.\(^6\)

---

\(^4\) Defence for Children Belgium, My lawyer, my rights, Enhancing children’s rights in criminal proceedings in the EU, Compendium of Standards, Brussels 2016, p. 4.


The reservation concerning article 40 CRC has impact on the right of minors of access to a lawyer.

The text of the reservation states that “The Kingdom of the Netherlands accepts the provisions of article 40 of the Convention with the reservation that cases involving minor offences may be tried without the presence of legal assistance and that with respect to such offences the position remains that no provision is made in all cases for a review of the facts or of any measures imposed as a consequence”.

1.3. Optional protocol CRC

The Third Optional Protocol allows bringing complaints before the Committee on the Rights of the Child regarding the violation of individual rights of the convention or the two Optional Protocols agreed on in 2000, with reference to the sale of children, child prostitution as well as related to the involvement of children in armed conflicts. Unlike Belgium, Germany, Spain, Portugal and other countries, the Dutch Government has not yet signed the Third Optional Protocol. The government is still considering whether or not to sign the protocol. The Dutch Ombudsman for Children and the Dutch NGO Coalition for Children’s Rights have criticized the slow process and have claimed that an early signature and ratification of this Optional Protocol to the CRC represents an opportunity for the Netherlands to further confirm its efforts for protection of children’s rights.

2. Measures taken to promote soft law

In The Netherlands the CRC is a legally binding treaty. The convention has to be implemented during the national law-making process. In court decisions young suspects and their lawyers can use the articles of the CRC to make the judge weigh children’s rights. Concerning the right to a lawyer the Court of Appeal referred to the CRC and decided that minors had access before and during police hearings.

The international Rules and Guidelines concerning children’s rights are seen as an interpretation tool for the implementation of the CRC. Basic rights as an pedagogical and educational approach and the rules for due process are set out in detail in the Beijing Rules, Riyadh Guidelines, UN Basic Principles on the role of the lawyers, Havana Rules, UN Guidelines for Action on Children in the Criminal Justice System, General Comments of the Committee on the Rights of the Child and the UN Principles and Guidelines on access to legal aid in criminal justice systems. These standards are also used in the Dutch law making process. Standards from General Comment nr 10, the Beijing Rules and the Havana Rules were used as a guideline for ‘Youth Justice Institutions Act and setting the Rules for penal procedure youth and adolescents’. In court decisions, concerning for example the unnecessary delay in cases of young suspects, General Comment nr 10 (juvenile justice) and nr 14 (best interest of the child), several European Rules and the Beijing Rules are mentioned by the judge.
B. Regional framework

1. **Ratified Conventions**

1.1. ECHR

The Netherlands signed the European Convention on Human Rights (ECHR) on 4 December 1950 and ratified it on 31 August 1954. The ECHR entered into force on 31 August 1954. The declarations concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands.14

1.2. European Union Charter of Fundamental Rights

The Charter was initially solemnly proclaimed at the Nice European Council on 7 December 2000. At that time, it did not have any binding legal effect. On 1 December 2009, with the entry into force of the Treaty of Lisbon, the Charter became legally binding on the EU institutions and on national governments, just like the EU Treaties themselves.15

1.3. European Charter of social rights

The Netherlands signed the European Charter of social rights on 18 October 1961 and ratified it on 22 April 1980. The European Charter of social rights entered into force on 22 May 1980.16

2. **Transposition of European Directives into national law**

2.1. Dir. 2010/64/EU: The right to interpretation and translation in criminal proceedings

The Directive was incorporated into national legislation on the 28th of February, 2013 through the law “Implementation of Directive nr. 2010/64/EU of the European Parliament and of the Council of 20 October 2010 concerning the right to interpretation and translation in criminal proceedings (OJEU L 280)”.17 This law came into effect on 1 October 2013.18

2.2. Dir. 2012/13/EU: The right to information in criminal proceedings

The Directive was incorporated into national legislation on 5 November 2015 through the law “Implementation of Directive 2012/13/EU of the European Parliament and the Council from the 22nd of May, 2012 concerning the right to information in criminal proceedings (OJEU L 142)”.19 This law came into effect on 1 January 2015.20

2.3. Dir. 2013/48/EU: The right of access to a lawyer in criminal proceedings (...)

The law “Implementation of Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and the right to have a third party informed of deprivation of liberty and to

---

17Stb. (State Magazine) 2013, 85.
18 This is before the deadline of 27 October 2013 from article 9 Directive 2010/64/EU.
19 Stb. (State Magazine) 2014, 433.
20 Stb. (State Magazine) 2014, 434.
communicate with third persons and with consular authorities while deprived of liberty (OJ L294)” is adopted on 17 November 2016. The law came into effect on 1 March 2017.21

2.4. Dir. 2016/800/EU: Procedural safeguards for children who are suspects or accused persons in criminal proceedings


2.5. Dir. 2016/1919 on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

The directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (COM(2013)0824 – C7-0429/2013 – 2013/0409(COD)) has not been discussed in Dutch Parliament.22

3. Measures taken to promote soft law

3.1. Guidelines on Child Friendly Justice of the Council of Europe (CoE)

The Guidelines on Child Friendly Justice are a non-binding practical tool for the government to implement specific rights, interest and needs of children. The Netherlands has taken several measures to promote soft law and include European standards in national law, policy and practise. For non-binding measures it is often difficult to see or not visible in which way they are implemented.


The Commission is not informed on the measures taken about the following recommendations:
- Commission Recommendation C(2013) 8179/2 (right to legal aid)23
- Commission Recommendation C(2013) 8178/2 (procedural safeguards for vulnerable persons)24

4. Jurisprudence

In 2008 the European Court of Human Rights ruled in the case Salduz v. Turkey that denying legal assistance to Salduz, while he was held and interrogated in police custody, was a violation of his right to a fair trial. The police should provide access to a lawyer from the first interrogation of a suspect unless there are very compelling reasons not to in particular circumstances. The court gave particular weight to the applicant’s age and stressed the importance of access to a lawyer where the person in custody is a minor.25

In the Netherlands the decision of the European Court had consequences for young suspects heard by the police. Before the ruling, suspects had no right to legal assistance before or during police

21 Stb. (State Magazine) 2017, 66; State Magazine 2016, 475 and State Magazine 2016, 476; www.eerstekamer.nl/wetsvoorstel/34157_recht_op_toegang_tot_een
23https://www.eerstekamer.nl/eu/europeesvoorstel/c_2013_8179_aanbeveling_inzake_het/meta
24https://www.eerstekamer.nl/eu/europeesvoorstel/c_2013_8178_aanbeveling/meta
25ECtHR 27 November 2008, nr. 36391/02, NJ 2009, 214 (Salduz v. Turkey)
interrogation. After Salduz, Dutch rules and policy had to change. The High Court stated on 30 June 2009 that arrested young suspects have access to a lawyer and a person of trust before and during police hearings. If the minor suspect is not able to speak with a lawyer before the first police hearing within reasonable time, this leads to exclusion of proof and the statements given by the suspect before consulting a lawyer.27

In a court case on 13 January 2017 a minor was picked up from school by the police to be heard as a witness but appeared to be heard as a suspect during police hearings. The judge noted that the minor’s right to consultation before police hearings was denied and that the right to assistance by a lawyer and the presence of his parents during police hearings was denied. The judge noted the minor should have been treated as a suspect and decided not to use the information from the police hearings and from his laptop and mobile phone. The minor was acquitted due to lack of proof.

In 2009, the District Court of Amsterdam considered that a child cannot renounce his right to consultation assistance, because as a child he is not capable of overseeing his position and is more likely to succumb under pressure.29 Later, the Amsterdam Court of Appeal has mentioned in a number of cases that children are only allowed to renounce their right to consultation assistance prior to and during a police interrogation when the child can be considered to understand the meaning of this right and the consequences of renouncing it.30 The District Court of Haarlem added to this that the interrogator must assure himself that this is the case.31

C. The national framework

1. Children suspected or accused in criminal proceedings: national definitions

1.1. National definitions

Child:
A child is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (see art. 1 of the CRC). In Dutch criminal law the date of the day on which the alleged crime was committed is relevant.32

Age of criminal responsibility:
In the Netherlands according to penal law child suspects can be heard by the police at any age. They can be prosecuted at the age of 12.

Young adults / adolescents:
Young people aged 16-23. According to adolescence law young people between 18-23 can be tried under juvenile justice.16 and 17 year olds can be tried under adult law. 33

Person of trust:34 A parent or legal guardian or any other person of trust that is part of the personal

27 Art. 359 CCP
29 ECLI:NL:RBAMS:2009:8K4115, r.o. 3.3.
33 Stb. (Staatsblad, translated as State Magazine) 2013, 485; art 77c CC and 63 par 5 CCP; https://www.rechtspraak.nl/Hoe-werkt-het-recht/Rechtsgebieden/Strafrecht/Paginas/Adolescentenstrafrecht.aspx
34 Policy rules Prosecution a March 2017, Staatscourant (State newspaper) 2017 no 12009; https://zoek.officielebekendmakingen.nl/stcrt-
circle of the child suspect. A person of trust needs to be an adult (18+) and clearly not involved in the alleged crime.

**Assistant Public Prosecutor**: the prosecutor at the level of the police. The Assistant Public Prosecutor is a police officer with special expertise and qualifications and is deciding about police custody.

**Public Prosecutor**: is part of the Public Prosecutors office and in charge of the prosecution of the suspect and the charges.

**Stand by duty arrangement**: lawyers free of charge added by the court or Legal Aid Council ("piket centrale")

**Vulnerable groups**: Juvenile justice is part of the penal law system containing special rules for a vulnerable group: minors. Within juvenile justice there are not many additional rules for other vulnerable groups such as, children with mental disorder, children with disabilities, foreign minors.

Children with mental disorder will be tried by the health and psychiatric care system. However, these children can also become involved in the penal system. Recent research shows that neuroscientific applications in the juvenile criminal justice system have impact on criminal behaviour.\(^{35}\) Therefore more knowledge is recommended when working with young people.

1.2. **Criminal proceedings and the best interest of the child**

The best interest of the child during the penal procedure means as mentioned in the CRC the right of a minor to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. According to a Dutch study the best interest of children in conflict with the law is best served when working along the BIC model. The BIC-model is based on a broad international literature study researching the relation between developmental problems on the one hand and the quality of the educational and pedagogical environment on the other hand.\(^{36}\)

2. **Legal basis & derogations**\(^{37}\)

2.1. **Legal framework on the juvenile justice system in The Netherlands**

2.1.1. **Introduction**

The Dutch juvenile justice system has a broad variety of special laws, rules and practices especially for children. The Criminal Code and the Code of Criminal Procedure contain special sections on juvenile criminal law.\(^{38}\) For children who are deprived of their liberty the Youth Justice Institutions Act (YJI-Act, Beginselenwet Justitiële Jeugdinrichtingen) is applicable.

The age for criminal responsibility in the Netherlands is twelve.\(^{39}\) From that age on minors can be recognized and prosecuted for having infringed the penal law. Children younger than twelve can be alleged and accused of infringing the penal law meaning they can be interrogated by the police, but

---


\(^{36}\) Brummelaar, ten, M., Kalverboer, M., Children, children’s rights and penal procedure . The best interest of the child during the penal procedure, Groningen University, October 2011, p. 33.

\(^{37}\) See also: National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016, page 9

\(^{38}\) Title VIII A CC, Art. 486 CCP Cf. art. 77A CC

\(^{39}\) art. 486 CCP.
they are not prosecutable under Dutch criminal law. For them, there is an irrefutable presumption of incompetence. However, children under the age of twelve do not fall entirely outside of the scope of criminal law. Article 487 of the Code of Criminal Procedure provides that certain provisions of the Code of Criminal Procedure apply in the case of a child under the age of twelve if there is a reasonable suspicion that the child has committed a serious offence. This concerns a limited number of investigative powers and coercive measures that can be applied by the police and the judiciary. In short, these provisions specify that children under the age of twelve can be held, searched, questioned and stopped for the purpose of investigation or interview and that their items may be confiscated. Despite the fact that children under the age of twelve are not criminally responsible and cannot be prosecuted for a criminal offence, there are child protection measures for children in conflict with the law that can be taken under civil youth law. Children can obtain the necessary assistance via the civil rights process, whether or not in a voluntary framework.

2.1.2. Actors at each stage of the procedure

Arrest and police hearings
Children can be heard by the police at any age. When a child is arrested, the parents and the Council for Child Protection are informed. The police can issue a warning or reprimand (police dismissal or reprimand) and take no further action or refer a case to child support services. The police can keep a young suspect under twelve for a maximum of six hours at the police station and above twelve for a maximum of nine hours before police interrogation starts. The Dutch Supreme Court has concluded that minor suspects arrested by the police have the right to be assisted by a lawyer or a person of trust before and during police interrogations. On 1 March 2017 this right was implemented in Dutch law.

HALT
Cases involving vandalism or minor property offences can be referred to ‘Halt’, a diversion service for first offenders, where young suspects who confess guilt can carry out up to 20 hours of restorative or other types of activities, or possibly damage compensation. HALT is a form of out-of-court settlement, based on art. 77e of the Criminal Code. Participation with a HALT-project can prevent a criminal conviction. To participate a minor has to plea guilty. The relevant Directive of the Public Prosecution Office states that if the police proposes HALT, the lawyer of the child must be informed. If the investigating officer has already established, prior to the interrogation of the child, that the offence constitutes a fact eligible for HALT-settlement and that the child may qualify for the HALT-settlement, this is communicated to the lawyer who will provide legal assistance to the child. The Halt completion falls under the responsibility of the public prosecutor. When a Halt completion is successful the case will not be sent back to the public prosecutor and the minor will not be confronted with a criminal record. Children often do not know that if they refuse a HALT-settlement, they risk prosecution.

Prosecution
Since 2011, the Public Prosecution Office operates with a new methodology – named ZSM, which means “Rapidly, Selective, Smart, Together and as Simple’ as possible”. ZSM is a multi-disciplinary approach in which multiple partners work together to speed up the settlement process. In ZSM the

40 Arts. 486-509 CCP.
41 Art. 488b and 490 CCP.
42 Art. 487 paragraph 2 CCP.
43 HR 30 June 2009; ECLI:NL:HR:2009:BH3079
45 Art. 77e paragraph 4 CC; http://www.halt.nl/
Public Prosecution Service, the police, the juvenile probation services, the Council for Child Protection and Victim Assistance in The Netherlands work together closely. All cases of minor suspects will be discussed in a ZSM coordination meeting between stakeholders. The manner in which cases can be resolved is listed in the Directive and framework for criminal procedure youth and adolescents.

When an offence is more severe or when HALT has failed, the case will be discussed in the Judicial Case Consultation between the police, the public prosecution service and the Council for Child Protection. In other cases, the police issues a summons and sends this to the public prosecution service for further handling. Many cases are (conditionally) dismissed by the public prosecutor or are dealt with by imposing an alternative sanction, e.g. a “transaction” or out-of-court-settlement. For these misdemeanours minor can not waive the right to a lawyer anymore, but after police hearings a lawyer is only accessible when the punishment asked by a prosecutor exceeds 20 hours of community service or a fine of €115. Halt and a low community service as an out of court settlement will be registered in the judicial database, but will not affect the future of the minor or lead to rejection of a declaration of good behaviour for a job or school.

The Public Prosecutor also has the authority to issue a “punishment order”. The punishment order given by the prosecutor is similar to a decision of a judge as it is an act of prosecution and punishment and it is registered as such. Although since several years it has had a legal basis in the CCP, in practise the punishment order has not been used in cases of minors yet. However, in the future it is likely possible that the punishment order will be used by the prosecution in cases of minors.

According to the law a punishment order can be issued in case of a misdemeanour or a serious offence which is punishable by a maximum of six years in prison. A conversation will first take place at the office of the Public Prosecutor (OTP), where minors and possibly parents or lawyer are invited to discuss the content of the intended punishment order. The Public Prosecutor may also issue the punishment order if the content thereof is not agreed upon. The child may appeal (in verzet) against this. In case of a (proposed) community service of over 32 hours or a fine above € 200 a lawyer should be appointed ex officio. The imposed sanction can be prepared and supported by the Child Care and Protection Board. The Public Prosecutor may include in the punishment order an instruction to the effect that the child will adhere to directions that are imposed by a certified institution. In this way the necessary support and guidance can be provided. This is part of the youth probation services which monitors that activities are proposed that are directed at an adequate offer of assistance and support for the children that have come into contact with the police and judiciary.

The Public Prosecutor may give an order for police custody ("inverzekeringstelling") for a maximum of three days. Children aged between 12-18 years who are accused of a crime can be placed in police custody for the purposes of public safety and further investigation.

---

47 https://www.om.nl/vaste-onderdelen/zoeken/@24445/factsheet-zsm/
49 Art. 74 CC.
50 Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt - 2016R008), section 5.
51 Art. 257a CCP jo. 77f par 2 CC.
52 OTP : Overleg ten Parkette (Call at the office of the prosecutor (=no official translation). OTP is a formal session between the prosecutor and the child, comparable to a court session. It is not just a meeting at the prosecutor’s office.
53 Art. 491 paragraph 2 CCP.
54 Art. 77o paragraph 1 CC.
55 Art. 77f paragraph 1 sub a CC.
56 Art. 58 CCP. Police custody can be extended in exceptional cases to a maximum of 9 or 16 and 18 hours days depending on the age of the minor. This rule (art 15 YCI Act) will be changed to a maximum of three days during the modernisation of CCP, see: 18 March 2017 motie Recourt: Kamerstuk 29279 nr. 306
Court decision: Pre-trial detention

Within three days and eighteen hours a minor must be presented in front of a magistrate judge for the review of the legality of the detention. At this stage the judge has to “suspend unless”. If suspension can’t be applied, the judge will decide that the minor has to stay in pre-trial detention. For minors police custody and pre-trial detention don’t have to be carried out in a police cell or youth justice institutions but it can be carried out in "any possible place". Night detention can be imposed as a form of pre-trial detention, enabling juveniles to go to school or work during the daytime. Recently three small scaled provisions opened where minors in pre-trial detention stay. Here they can go out during day time to attend school or work.

Lawyer: What also happens is that many children are placed in police custody during the night. More and more, juveniles are allowed to spend their police custody at home, but it still happens that they remain at the police station. There are many times when I think: Send the child home and allow him to report himself the next day at 9 am.

When deprivation of liberty is at stake minors have access to a lawyer. According to article 490 and 45 CCP the lawyer has free entrance to suspects deprived of their liberty.

2.1.3. Sentence and measures

The main penalties consist of a fine, community service or juvenile detention. The fine amounts to at least € 3, - and € 350, - as a maximum. Community service can consist of a work or study punishment or a combination of both. Youth detention and the non-custodial measure behavioural measure focusing on special conditions (Gedragsbeïnvloedende Maatregel; GBM) can be imposed on children considered criminally accountable for the crime they committed. Placement in a youth justice institution for treatment (PIJ) can be imposed on children considered not fully accountable for their crime, e.g. children with a development disorder. A combination of youth detention, a behavioural measure or PIJ measure is possible. Children aged 16-17 years can be sentenced to a maximum of two years youth detention. Children below the age of 16 can be sentenced to a maximum of one year youth detention. Children with psychiatric problems can be given a PIJ measure which can last for up to three years, with the possibility of lengthening it with a maximum of seven years including one year after care. The advice of two experts is required for PIJ measures.

2.1.4. Deprivation of liberty

The Youth Justice Institutions Act (Beginselenwet Justitiële Jeugdinrichtingen) sets standards for children who are deprived of their liberty and staying in an youth justice institution. It contains special rules for the staff, the institution, a daily programme, the size of the rooms and the application of measures such as restraint and isolation. Recently new more open child friendly places for pre-trial detention of minors are opened in Amsterdam, Groningen and Maastricht, named the Small Scaled Provisions (Kleinschalige Voorziening). In Groningen a pilot project is running in which minor suspects can be placed in a small scaled provision in police custody.

2.1.5. Special laws

Adult law applicable to 16 and 17 year olds

The Netherlands has made a reservation to article 40 of the Convention on the Rights of the Child

---

57 Art. 59a CCP.
58 Art. 63 paragraph 1 CCP
59 Art. 57 CCP paragraph 1 and 493 paragraph 3.
60 Art. 77l CC.
61 Art. 77m CC.
(CRC) making it possible to apply adult law in cases of 16 and 17 year olds. The Court may decide to declare juvenile justice inapplicable and impose a sentence derived from adult criminal law.\textsuperscript{63} The standards for treatment under the Youth Justice Institutions Act are not guaranteed in adult prisons. This exception can be used if it is grounded on (a) the severity of the committed offence, (b) the personality of the offender or (c) the conditions under which the offence is committed. The life sentence is, however, excluded.\textsuperscript{64} Hereby, it should be noted that the PIJ measure\textsuperscript{65} may be converted into a TBS-measure.\textsuperscript{66} This measure can be transformed to TBS long stay which can last for life, but a judge will consider the measure periodically and decide upon lengthening the measure or parole.\textsuperscript{67}

\textbf{Adolescence law: juvenile justice applicable to 18-23 year olds}

Since the introduction of the Adolescent Criminal Act of 1 April 2014 the judge can apply juvenile justice to young adults between eighteen and twenty-three years of age.\textsuperscript{68} The Adolescent Criminal Law can be applied where appropriate on the basis of (a) the personality of the offender or (b) the conditions under which the offence has been committed.\textsuperscript{69}

\textbf{Judicial record and the Law on DNA investigation of convicts}

The registration of judicial data is regulated by the Judicial Data and Criminal Records Act.\textsuperscript{70} The registration of judicial documentation is done by the Central Judicial Documentation of the Ministry of Security and Justice.\textsuperscript{71} Information about serious offences are – dependent on the maximum sentence – usually kept for twenty or thirty years.\textsuperscript{72} For misdemeanours, this is five or ten years.\textsuperscript{73}

After being sentenced by the prosecution or judge minors have to give their DNA to the prosecution which is saved for up to 30 years in the DNA database for criminal affairs.\textsuperscript{74} The Law on DNA investigation of convicts does not provide for a different treatment of punishable minors.

\textsuperscript{63} Art. 77b CC.
\textsuperscript{64} Art. 77b par 2 CC
\textsuperscript{65} PIJ stands for “placement in a judicial youth detention centre”, i.e. a custodial treatment order under penal law.
\textsuperscript{66} Art. 77tc CC. The TBS is a custodial treatment order under adult penal law. This order can be prolonged by the court (i.e. every two years) indefinitely.
\textsuperscript{67} https://www.rechtspraak.nl/Uitspraken-en-nieuws/Themas/Tbs/Paginas/Verlenging-en-beeindiging-tbs.aspx
\textsuperscript{68} Art. 77c CC. This possibility readily existed, however with the Adolescent Criminal Act the age limit was raised to 23 years. This concerns only the applications of sentences
\textsuperscript{69} Art. 77c CC.
\textsuperscript{70} Wet justitiële en strafvorderlijke gegevens, Wjsg (translated as: Judicial Information and Criminal Records Act)
\textsuperscript{71} Art. 2 Wjsg
\textsuperscript{72} Art. 4 Wjsg
\textsuperscript{73} Art. 6 Wjsg
\textsuperscript{74} http://dnapolicyinitiative.org/wiki/index.php?title=Netherlands;
### Data

<table>
<thead>
<tr>
<th>Indicators</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total police hearings of minor suspects</td>
<td>26.920</td>
<td>24.710</td>
<td>23.008</td>
<td>21.303</td>
</tr>
<tr>
<td>Total police custody of minor suspects (inverzekeringstellingen)</td>
<td>5.568</td>
<td>5.455</td>
<td>5.979</td>
<td>5.794</td>
</tr>
<tr>
<td>Total minor suspects in youth justice institutions</td>
<td>1.520</td>
<td>1.270</td>
<td>1.029</td>
<td>1.054</td>
</tr>
<tr>
<td>% minors suspects in pre trial detention in youth justice institutions at specific date (op peildatum)</td>
<td>74% (137)</td>
<td>79% (106)</td>
<td>76% (106)</td>
<td>76% (108)</td>
</tr>
<tr>
<td>Average number of days in pre trial detention</td>
<td>38</td>
<td>37</td>
<td>29</td>
<td>36</td>
</tr>
<tr>
<td>Total minor suspects in youth justice institutions with PU-maatregel at a specific date</td>
<td>30</td>
<td>15</td>
<td>23</td>
<td>22</td>
</tr>
<tr>
<td>12- and 13 year olds in youth justice institutions</td>
<td>27</td>
<td>18</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>16 en 17 olds tried as an adult</td>
<td>56</td>
<td>X</td>
<td>X</td>
<td>45</td>
</tr>
<tr>
<td>Number of offenders who committed the crime as a minor registered in the DNA Database for Criminal Matters at 31 December</td>
<td>22.649</td>
<td>24.283</td>
<td>25.962</td>
<td>27.521</td>
</tr>
</tbody>
</table>

Source: Ministry of Safety and Justice, Dienst Justitiële Inrichtingen (DJI), unless otherwise mentioned.

1 Source: BVI = police database. The number refers to the number of minors. One minor can be detained twice or more in police custody.
2 Number of minors in a youth justice institution at 1 January plus the number of minors that has been placed in the institution during the year.
3 At 1 January in the following year. For example a number of 2015 is set at 1 January 2016.
4 RACMIN, datasysteem Public Prosecutor (Parket Generaal van het Openbaar Ministerie)
5 Dutch DNA-database for Criminal Matters, Dutch Forensic Institute (NFI)

#### 2.2. The right of access to a lawyer in criminal proceedings for children suspected or accused

During criminal proceedings young suspects are entitled to free representation and translation from the moment they enter police custody to the end of their trial. Minors above the age of twelve are appointed to and assisted by a lawyer before and during police hearings. Minors aged under twelve are not criminally responsible and have no access to a lawyer before or during police hearings. However, coercion during police hearings is a risk. Therefor the police needs to invite a person of trust of the child such as the parents, to be present at the hearings.\(^{75}\)

Since 1 March 2017 the right to a lawyer is mentioned more explicit in the Code of Criminal Procedure.\(^{76}\) A minor suspect can not waive this right.\(^{77}\) During the first consultation the lawyer and the minor suspect speak about the necessity of the presence and participation of the lawyer during police interrogation. The lawyer informs the assistant prosecutor of the outcome. Upon request of the suspect or parents or guardian a lawyer will provide legal aid during the interrogation.\(^{78}\)

The new law does not mention the right of the minor to assistance of a person of trust during police hearings. However the minor can choose for a lawyer and/or a person of trust looking at the High Court decision.\(^{79}\) In March 2017 the Prosecution has made policy Rules ensuring this right.\(^{80}\)

---

\(^{75}\) Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor Strafvordering Jeugd en Adolescenten inclusief strafmaten Halt - 2016R008)\(^{79}\)

\(^{76}\) Art. 27c, 28c, 38, 39, 57 par. 2 CCP.

\(^{77}\) Art. 489 par 1 CCP.

\(^{78}\) Art 480 par 2 CCP

\(^{79}\) ECLI:NL:HR:2009:BH3079

\(^{80}\) Policyrules Prosecution 1 March 2017 (See: Staatscourant 2017 nr 12009, OM-beleid per 1 maart 2017 inzake bijstand door vertrouwenspersoon bij verhoor minderjarigen en procedure bij afstand verhoorbijstand door minderjarigen); Informatieblad Recht op bijstand van een advocaat voorafgaand aan en tijdens het politieverhoor en maatregel kostenverhaal draagkrachtige veroordeelden; https://www.rijksoverheid.nl/...recht-op-bijstand-van-een-advocaat-voorafgaand-aan...
request of the suspect or lawyer the police may allow in the best interest of the investigation or looking at the emotional or personal situation of the minor, the presence of a person of trust, besides or instead of the presence of a lawyer. The presence of a person of trust can be initiated by the police as well. A person of trust could be a parent or legal guardian or another confidant of the minor.81

A (piket) lawyer is only arranged free of charge for the arrested suspect. When a child is arrested and doesn’t have a lawyer yet, the Public Prosecutor makes notice to the stand by duty facility of the Legal Aid Board. The stand by duty facility will pass this to a lawyer who is in service at that moment.82 Then a lawyer will be assigned to the suspect automatically. According to article 28 paragraph 4 CCP the lawyer has to come within two hours.

For minors who are invited to come to the police station for interrogation, a “piket lawyer” free of charge is not available. Article 27d of the Code of Criminal procedure states that before the interrogation starts, the police has to mention whether the minor is heard as a witness or as a suspect.83 When the invited minor is suspected of a criminal offence, the police officer has to inform the minor about the right to a lawyer as mentioned in article 27c par 1 and 2 CCP. Because in this case minors or their parents have to arrange a lawyer themselves,84 it may then depend on the income of their parents what the costs are.

The Legal Aid Board adds a lawyer unless the minor suspect has chosen a preferred lawyer.85 The Legal Aid Board has been apprehended by the ministry of Safety and Justice to arrange the subsidised legal aid system. The Legal Aid Board appoints a lawyer when a suspect does not have a lawyer and prosecution has been instituted against the child for an offence which is tried by the District Court, not being the single-judge division of the SubDistrict Court Sector, as court of first instance.86 The assignment shall be arranged by or ordered by the presiding judge of the District Court, or, when appeal has been filed against the final judgment rendered at the court of first instance, by the presiding judge of the Court of Appeal.

For arrested minors and during police custody the “Piket Rules”((Reglement Piket) give access to a lawyer ex officio (ambtshalve) added by the Legal Aid Board or to a ‘preferred lawyer’.87 Piket lawyers are appointed lawyers free of charge and paid by the State.88 The preferred lawyer is a lawyer who is chosen by the minor or parents and takes part in the Piket Rules. The preferred lawyer can assist the child but does not have “piket-service” that day. If the minor chooses a lawyer who does not participate in the Piket Rules, the lawyer has to be paid by the child or his parents.

In law and policy rules it is stated that the minor and his or her parents can be invited to the Prosecutors Meeting (OM zitting) discussing a community service or a fine.89 According to art. 491 Code of Criminal Procedure (CCP) a lawyer shall be assigned ex officio to suspects above twelve years of age who do not yet have a lawyer when:

a. prosecution, other than by means of a punishment order, has been instituted him for an offence which is tried by the District Court, not being the single-judge division of the SubDistrict Court Sector,

82https://www.judex.nl/rechtsgebied/strafrecht/van-arrestatie-tot-strafzitting/artikelen/371/hoe-werkt-de-piketregeling.htm
83 Art. 489 CCP.
85 Art. 28b CCP.
86 Art. 28c CCP.
88 Art. 28c CCP, Section 8.1 Reglement Piket (Piket Rules).
89 Richtlijn en kader voor strafvordering jeugd en Adolescenten inclusief strafmaten Halt (2016R008)
as court of first instance.
b. the public prosecutor wishes to impose community service in a punishment order as referred to in section 77f paragraph 2 of the Criminal Code and said service amounts to more than thirty two hours;
c. the public prosecutor wishes to issue a punishment order and the amount involved exceeds the amount € 200.  

2.3. The right to assistance by a lawyer in criminal proceedings for children suspected or accused

In the past legal assistance was offered after the completion of police interrogation and after an order for police custody was issued against the suspect for a criminal offence, for which pre-trial detention was allowed. After the Salduz-ruling of the ECHR, the judgment of the Supreme Court of the 30th of June 2009 and the Instruction legal assistance police interrogation was based on this ruling, a large change occurred. The Senator adopted a legislative change of the Code of Criminal procedure, to implement Directive 2013/48/EU, which came into effect 1 March 2017.

According to the new law, art. 28c CCP ensures that suspects have the right to consult a lawyer before the first interrogation for half an hour. At the request of the suspect or the lawyer, the Public Prosecutor may extend this time, unless it is not in the interest of the investigation.

In addition to consultation assistance, minors also have the right to so-called interrogation assistance. A lawyer or a counsellor may provide this. This applies to all interrogations, not only the first interrogation. The lawyer and the young suspect will consult about the necessity for the lawyer to be present at the interrogation assistance. After that, the attorney tells the prosecutor (hulppofficier van justitie) about the result. On the request of the suspect or his parents or guardian, the lawyer will assist during the interrogation.

2.4. The right to information in criminal proceedings for children suspected or accused

According to article 27c the Code of Criminal Procedure young suspects are entitled to information.

The arrested suspect, is provided, as soon as possible after arrest – and in any case before the interrogation – with written notification of:

a) the right to receive information with regard to the offence of which he or she is suspected;
b) the right to legal assistance;
c) the right to interpretation and translation;
d) the right to remain silent;
e) the right to take notice of the materials of the case;
f) the period within which arraignment before a judge will take place;
g) the possibilities for requesting a removal from or suspension of pre-trial detention;
h) the right to notify parents about the deprivation of liberty;
i) possible other rights which are embedded in a general administrative order.

90 Art. 491 par. 2 CCP. See also: Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt (2016R008).  
92 Art. 28c par. 1 CCP.  
93 Art. 28d and art. 489 par. 2 CCP; HR 30 June 2009, ECLI:NL:HR:2009:83079, r. o. 2.6. Interrogation assistance also applies for adults, see HR 22 December 2015, ECLI: NL: HR: 2015:3608 and the policy letter of the Board of Procurators General of the Public Prosecution Offices d.d. 10 February 2016 “Raadsman bij verhoor per 1 March 2016”.  
94 Art. 489 CCP.  
95 Art. 27c par. 3 CCP.
Furthermore, the Assistant Public Prosecutor or the Public Prosecutor shall inform the suspect about the right of access to a lawyer:

1. Before detention and before pre-trial detention.
2. By the first interrogation in case research is conducted by the magistrate judge pursuant to article 181-183 CCP.  

The suspect who is not arrested but is invited for police interrogation is informed about the right to legal assistance and if needed the right to interpretation and translation before the interrogation.

When suspect have not been informed about the right to consult a lawyer before police hearings, and it appears that procedural requirements were not complied with during the preliminary investigation, the District Court may determine that the results of the testimonies given before seeing a lawyer may not be used as evidence of the offence as charged in the indictment.

According to art 30 CCP suspects can get access upon request to their file during police investigation.

Lawyer: The access to information is unequal. Only the Public Prosecutor’s Office has access to all the information and casefile. Minors and their parents often have no clue. They just receive a letter to present themselves for an interview, but they don’t receive a summons. They aren’t sent the casefile, they’ll have to request this. The lawyer usually did that, but can’t if he’s not appointed in case of a Public Prosecutor’s settlement. The Child Care and Protection Board does provide access to the child protection report.

Unlimited access of the lawyer and parents to visit minor suspects in custody

If the suspect has been deprived of his liberty by law, the right of a lawyer to unlimited access to the young suspect, according to art. 50 CCP, shall apply mutatis mutandis in regard of his parents or his guardian. However, the right of the lawyer to meet with a child suspect can be limited. Art. 50 CCP paragraph 2 states that: “If specific circumstances give rise to the strong suspicion that the free flow of information between the defence counsel and the suspect will serve either to inform the suspect about any circumstance which, in the interest of the investigation, he should not be informed about for the time being or is abused in attempts to impede the finding of the truth, then during the preliminary investigation the public prosecutor may order each time that the defence counsel shall not have access to the suspect or be permitted to confer with him in private and that letters or other documents exchanged between the defence counsel and the suspect shall not be handed out. The order shall describe the specific circumstances referred to in the preceding sentence; it shall not restrict the free flow of information between the defence counsel and the suspect any greater or any longer than is required by these circumstances, and shall, in any case, be in effect for maximum six days. The defence counsel and the suspect shall be notified in writing of the order”.

2.5. The right to interpretation and translation in criminal proceedings for children suspected or accused

According to the Code of Criminal Procedure suspects with no or insufficient command of the Dutch language have the right to assistance of an interpreter. The arrested suspect is – if applicable

---

96 Art. 27ca CCP.
97 Art. 27c par. 2 CCP.
98 Ar. 359a CCP, EHRM 27 November 2008 (Salduz), no. 36391/02; EHRM 11 December 2008 (Panovits), no. 4268/04; HR 30 June 2009, ECLI:NL:HR:2009:BH3079
99 Art. 490 CCP.
100 Art. 27 par. 4 CCP. Cf. art. 23 par 4 CCP; See also art. 3.1 Instruction assistance interpreters and translators
before his first interrogation – notified of his right to interpretation and translation. The notification must be done in a language which is understandable for the suspect and should be mentioned in the official record.

The interpreter is called upon by the official that conducts the interrogation, unless the law provides otherwise. When the assistance of an interpreter is necessary to enable the communication between the lawyer and the suspect, it is the responsibility of the lawyer to ensure the interpretation. When the police has already summoned an interpreter for the interrogation of the arrested suspect, they shall inform the suspect of his right to consult with his lawyer prior to the interrogation, and alert the suspect to the presence of the already summoned interpreter. The costs shall be borne by the State.

The interrogator must take into account the appointment obligation in art 28 of the Sworn Interpreters and Translators Act (Wbtv). If a sworn interpreter is not available in time, an interpreter can be commissioned who is not listed in the register. This should be amply noted in the official record of the interrogation. As a criteria for establishing whether or not an interpreter has to be called in, the following applies: “the suspect understands the questions asked and the notifications made, the suspect is able to give his own version of the events on which his statements are required and the suspect is able to include enough nuances in his version of the events”. When questions are only answered with “yes” and “no”, it must be assumed that the suspect has insufficient command of the Dutch language. In case of doubt, an interpreter is always called in. Also when the suspect specifies that he is unable to issue a statement in Dutch, an interpreter is appointed. Only if the reporting officer or the Assistant Public Prosecutor can reasonably assume that the suspect has command of the language, this does not apply. In the official record a note must be made with regard to the assistance of the interpreter.

For a number of materials of the case, it applies that the relevant parts thereof must – ex officio – be translated in writing if the suspect has no or insufficient command of the Dutch language. If an order for police custody is issued, the suspect must receive, as soon as possible, a written notification in a language he understands about the criminal offence he is suspected of, the grounds for the order and the period of validity. The same applies for an order of pre-trial detention or extension of the term of validity.

A punishment order issued by the Public Prosecutor because of a serious offence is translated, at least the parts indicated in article 257a paragraph 6 CCP. This concerns the name and the address of the suspect, a description of the offence and the qualification thereof, the imposed sanction, the day the punishment orders are issued, the way in which the order can be appealed against and the way of implementation. A punishment order issued by the Public Prosecutor because of a misdemeanor does not have to be translated. The reason for this is that a punishment order issued by the Public Prosecutor because of a serious offence cannot be considered to fall under the

---

101 Art. 27c par. 2 and 3 CCP.
102 Art. 27c par. 4 and 5 CCP.
103 Article 29b par. 2 CCP. See also art. 3.2 Instruction assistance interpreters and translators.
104 Article 28 par. 5 CCP. See also art. 3.6 Instruction assistance interpreters and translators.
105 Art. 1 par. 4 Wet Tarieven in Strafzaken translated as: Law concerning Rates in Criminal Cases
106 Art. 3.2 Instruction assistance interpreters and translators. Appointment obligation: art. 28 Wbtv.
107 Art. 3.7 Instruction assistance interpreters and translators. The unsworn interpreter should – when possible – prior to the interrogation, provide a declaration with regard to behaviour or an integrity statement. If this cannot, due to urgency, occur before the interrogation, it should occur as soon as possible after the interrogation.
108 Art. 3.2 Instruction assistance interpreters and translators.
109 Art. 4.1 Instruction assistance interpreters and translators.
110 Art. 59 paragraph 7 CCP. See also art. 4.2 Instruction assistance interpreters and translators.
111 Art. 78 paragraph 6 CCP. See also art. 4.2 Instruction assistance interpreters and translators.
112 Art. 257a paragraph 6 CCP. See also art. 4.4 Instruction assistance interpreters and translators.
category of minor offences, such as indicated in article 1, paragraph 3 of the Directive 2010/64/EU.

The reasoning behind this is that the Directive does not oblige translations of punishment orders, as these in principle fall under the category “minor offences”. Because of the fact that this cannot always be stated with regard to punishment orders issued by the Public Prosecutor because of a serious offence, that category is still selected to fall within the scope of the Directive. The difference between punishment orders based on a misdemeanour and punishment orders based on serious offence does not alter the fact that for all punishment orders – hence, including punishment orders issued for a misdemeanour – the Directive applies with regard to the processing of the appeal by the judge if the suspect decides to oppose an issued punishment order pursuant to 257e CCP and subsequent articles.

If the suspect initiates an appeal he is notified in writing of the court session, in conformity with the requirements of article 260 paragraph 5 CCP. The suspect who does not have command or has insufficient command of the Dutch language, is immediately provided with a written translation of the summons, without delay, or he is informed in writing of the place, date and time where and when the suspect has to appear at the court session as well as a brief description of the offence and the following notifications: (1) the convocation of some other parties, such as the victim or a survivor, (2) the right to call upon witnesses and experts and the way in which this can be done, (3) the possibility of objection against the summons and (4) the possibility that the Court may order personal appearance in court.

The content of an order extending custody for interrogation, is conveyed in written language. The suspect who has insufficient command of the Dutch language, may request in writing – and motivated - that materials of the case are translated in a language that he she understands. During the preliminary investigation this request is directed at the Public Prosecutor. Objection against a negative decision is possible within fourteen days with the magistrate judge. During the examination at the court session the request shall be directed to the court in question.

The Supreme Court confirmed on 16 December 1998 that the costs for translation should be borne by the State. The current policy is that documents up to 2500 words, in principle, are translated upon request. Otherwise it is possible when the lawyer is willing to pay an invoice to Interpreters and translation centre Netherlands (TvCN).

2.6. The legal aid system

Minors are entitled to free representation from the moment they are arrested and or in police custody to the end of their trial. A lawyer will be assigned when remanded into custody. Lawyers are assigned on the basis of the so-called stand by duty arrangement. But also in the further criminal

113 Kamerstukken II 2011-12, 33 355, nr. 3, p. 7.
114 Art. 257f paragraph 1 CCP. See also art. 4.4 Instruction assistance interpreters and translators. This applies regardless whether reference is made to the punishment order as a misdemeanor or a serious offence.
115 Art. 260 paragraph 5 CCP The article applies accordingly to appeals, see art. 412 CCP, and forfeiture procedures, see art. 511B paragraph 4 CCP and forfeiture procedures of appeals, see art. 511g paragraph 2 CCP. See also art. 4.3.1, art. 4.3.4 and art. 4.3.5 Instruction assistance interpreters and translators.
116 Art. 59 par. 7 CCP.
117 Art. 32a par. 1 CCP. See also art. 4.1 and art. 4.6 Instruction assistance interpreters and translators.
118 Art. 32a par. 3 CCP.
119 Art. 32a par. 2 CCP.
121 Art. 5 Uitvoeringsregeling Subsidie Vertaaldiensten 2009.
122 On the basis of the policy from the Legal Aid Board, lawyers receive a compensation for rendered consultation and interrogation assistance.
proceedings, children are entitled to free representation.123

The Code of Criminal Procedure contains a chapter about Criminal Proceedings in Matters concerning Persons who have not yet reached the age of eighteen years.124 The provisions of the Criminal Code shall apply insofar as the provisions of that Chapter do not derogate therefrom.125 In case of a child that does not already have a lawyer, a lawyer should be appointed ex officio and without any costs. Article 38 CCP is not excluded, so a suspect or a defendant shall have the right to legal representation by one or more defence counsel of his or her choice or an assigned defence counsel.

The Legal Aid Act offers an accessible provision to clients that fall under the scope of the legal aid system aiming to offer sufficient high quality legal aid providers. There is not a specific section about the assistance of minors in conflict with the law in the Legal Aid Act directly, but there is a chapter for legal aid in criminal proceedings.126 The Dutch Legal Aid Board was instituted by the Minister of Justice (Lord High Chancellor). It provides legal aid to people of limited means. Legal aid in the Netherlands is usually provided by private lawyers/law firms that provide legal advice and represent clients in cases that deal with the major fields of legal aid. Lawyers will receive a monetary allowance (toevoeging). Applicants will pay part of the costs themselves. The size of the contribution depends on the height of the income of the applicant. This is different for children in conflict with the law. For them, a lawyer shall be assigned ex officio.

In most cases minors get a free “piket” lawyer during police hearings. An arrested minor or parents can also choose a lawyer127 by telling the police to notify his/her arrest to a lawyer of his/her own choice. The legal assistance from the chosen lawyer will be free of charge as long as the appointed lawyer participates in the legal aid system. It is possible to ask permission for changing a lawyer by the Legal Aid Board if good reasons are mentioned.128 In case of an offence for which pre-trial detention is allowed legal aid is free of charge.129 This means it is free when in cases where the Board under any statutory provision in the Criminal Code or the Code of Criminal Procedure - or by a judge (last) - adds the accused person or the offender a lawyer.

There are 1.345 youth lawyers listed in the register of the Legal Aid Board.130 To be entitled to accept legal aid cases, lawyers need to be registered. As soon as a case is closed, the lawyer bills the Legal Aid Board for the services provided. A lawyer does not charge for hours but works for a fixed fee, which differs according to different types of cases, criminal offences included. These fees are based on extensive analyses of legal aid cases from the past and are supposed to correspond with the average time spent on a specific kind of case by a lawyer.131 The system work is a score system. Fees for police hearings are 1.5 points in ‘light’ cases and 3 points in more severe cases that take more time. The fees are paid for consultation and assistance before and during police hearings and during pre-trial detention.

Lawyer: Lawyers receive a fee for consultation and assistance at police hearings. In cases where a minor is in police custody and needs to be heard several times, the lawyer needs to go back to the police station several times. It can be in another city. For this the lawyer does not get paid extra. In court cases fees are limited as well.

---

123 Art. 38 CCP.
124 Article 486-509 CCP
125 Art. 488 CCP.
126 Art. 43-44a Legal Aid Act.
127 Art. 28, 38 and 39 CCP.
128 Art. 43 CCP
129 Art. 43 par 1 Legal Aid Act
131 Legal Aid Board, Legal Aid in the Netherlands a broad outline – 2015, Legal Aid Board: 2015, Art. 37, 41 Legal Aid Act and Besluit vergoedingen rechtsbijstand.
Lawyer: The juvenile justice system is no ‘childish game’, but it is financed like it is a ‘childish’ area of law. While, the interests at stake are great and the complexity of behavioural disorders and treatments options and providing adequate care for these juveniles - in relation to the social importance – requires extra time, that you will not get paid for. The biggest obstacle is the time spent on each case. For a single case, you get awarded 7 points, which equals €700, - for the legal aid for the entire procedure up to an appeal. For cases tried before the grand chamber - serious offenses committed by juveniles – you get awarded 8 points, so €800, -. For that you need to attend quite a number of court sessions, do witness hearings, get in contact with a behavioural psychiatrist, a psychologist and you need time to build a foundation of trust with the juvenile.

When a child needs subsidized legal aid because there is a conflict of interests between the child and the parents, a guardian ad litem can be appointed by the court instead of a lawyer. Then, there is no personal contribution required.132

Currently changes of the legal aid system are discussed in Parliament133 This will lead to extra activities at the level Legal Services Counters (Juridisch Loket) and improvements of quality of legal aid. As a consequence the Legal Services Counter will take less severe cases and will for example write letters and contact stakeholders but, will not act in court. The new concept (future) law “Sustainable legal aid” went into consultation.134 The concept law mentions:
- a strong first line provision for legal aid;
- limitation of a lawyer “ex officio” for suspects of a crime;
- quality standards for legal aid professionals.

The Association of Dutch Youth Lawyers (VNJA) mentions in the consultation letter concerning the new legal aid legislation the need of a special paragraph that enables a youth lawyer to ask in the name of the minor, for a monetary allowance (toevoeging) without a contribution. The VNJA advocates for independent access to a lawyer for minors.135

2.7. Financing the legal aid system

The Legal Aid Board is financed by the Ministry of Security and Justice and accounts to this ministry for its budgetary allocations. The Ministry of Security is responsible for organizing subsidized legal aid and its supervision.136 The Legal Aid Board is assigned to execute this organisation and supervision in the Netherlands. The funding of the Legal Aid Board is based on the number of monetary allowances between 1 September and 31 August. In 2016, the expected number of monetary allowances in regular criminal cases was 79.177.137

Lawyer: To me it seems more fair if a judge would give the suspect the same amount as the prosecutor. The judge should have to weigh how much allowance a lawyer should get. In Germany, it is stated per verdict how much the lawyer gets paid. In a complex case that involves a lot of action the judge will value it at a higher level. Problem is that when you’re a successful lawyer most cases you get are complicated. They pay the same as the simple cases.

133 www.rijksoverheid.nl/actueel/nieuws/2017/02/16/wetsvoorstel-voor-meer-duurzaam-stelsel-van-rechtsbijstand-in-consultatie
134 16 February 2017 Wetsvoorstel duurzaam stelsel rechtsbijstand – consultatie (translated as: Draft law for a sustainable system legal aid system)
www.rijksoverheid.nl/documenten/kamerstukken/2017/02/16/wetsvoorstel-duurzaam-stelsel-rechtsbijstand-consultatie
135https://www.linkedin.com/pulse/vnja-pleit-voor-meer-rechtsbijstand-minderjarigen-eva-huls?trkwl-feed&lipi=urn%3Ali%3Apage%3Ad_flagship3_profile_view_base_recent_activity_details_all%3BV8EW0EHfWdEcLPNrvwUlg%3D%3D
136 www.rvr.org/Informatie-over-de-raad/organisatie
D. The youth lawyer - from theory to practice: analysis

1. The youth lawyer

1.1. Role and mission

Youth lawyers are lawyers with a special focus on youth and specific knowledge on youth care and juvenile justice procedures. During the interviews with lawyers, other professionals and minors it became clear that representing minors requires a specific approach, knowledge of social mapping of the youth system and a good understanding of children.

Lawyer: In cases of minors it is important to explain what is happening, to see whether the minor understands the information that is given and whether he or she is aware of the consequences. All in all, these cases take more time.

Minor: A lawyer has to know how we will proceed, what you can do, what happens when you go to police custody and he needs to give information. But a lawyer also has to ask for camera images, find proof that I am not guilty, hear witnesses and share knowledge. Lawyers cannot say much during police hearings, but they can be present.

Minor: A lawyer is someone who will speak for me in court.

Lawyer: When a youth lawyer acts on his or her behalf, the minor must first decide what he or she wants. I have a big role in the determination of the way minor suspects position themselves in the proceedings. I try to advise them about the case and tell him what I think would be wise, but ultimately the young suspect decides. I can’t decide for a different approach than the one the minor wants.

I am sworn to secrecy. In private I can try to convince a young suspect, who persists in his right to remain silent while he’s been caught on camera and there are 36 witnesses, to admit to his part and that he’ll be better off doing so. But if he does not do that, I can’t come into court saying he did it and what he’s saying is nonsense. I am obliged to respect the position of the young suspect and I will have to conduct my work accordingly.

To be accepted as a youth lawyer by Dutch The Legal Aid Board specific education and a minimum of youth cases is required. The Legal Aid Board and the courts have lists of specialized youth lawyers they use when they need to refer to a lawyer in a youth case. When lawyers do not meet the requirements from the Legal Aid Board, they will be removed from the list.

1.2. Cooperation with other professionals

During criminal proceedings youth lawyers work with several professionals. Most youth lawyers contact other relevant caretakers as well before a child sees the judge. They will discuss what is possible and often ask to make an alternative plan quickly, so the minor can be released. When a minor is in police custody the Council of Child Protection will visit and make an early help report.138

The council advises upon whether and under which conditions a minor can go home. Furthermore, there will be contact with the prosecutor in the ZSM procedure. Prosecution also aims to work more closely with stakeholders and lawyers and make further improvements on the best interest of the child rather than focusing on conflicting interests. In pre-trial detention the Council of Child Protection will advise upon suspension and alternatives for detention. Youth probation will make a

---

138 Art 490 CCP
planning for the practical part of the alternative sanction.

1.3. Individual assessment

Although there are several moments in the criminal procedure where the lawyer receives information about the child from professionals, it is not yet agreed upon whether this is sufficient to ensure that the specific needs of children concerning protection, education, training and social integration are taken into account and whether the Dutch system is in line with the right to an individual assessment to identify their specific needs.\(^{139}\) This right follows from Directive (EU) 2016/800 and has to be implemented in 2019. Especially the assessment of children with a handicap, behavioural issues, autism, ADHD, low intelligence (LVB) or other vulnerabilities are not yet assessed or/and taken into account before or during police hearings.

Lawyer: *We know many minors in conflict with the law have a low intelligence (LVB). They can not oversee the consequences of their decisions well. It is not always easy to recognise it and takes more time to explain what will happen and what they are accused according to their file. It would be good to know how tests for these children work and which instruments are used to assess children.*

2. Access to a lawyer and assistance by a lawyer at all stages of the procedure

2.1. The rights of access to/assistance by a lawyer

2.1.1. Definitions

The right of access and assistance by a lawyer implementing Directive 2013/48/EU, has been implemented in Dutch law on 1 March 2017. This means that a minor has the right to consult and be assisted by a lawyer free of charge from the moment of arrest until the end of the penal procedure. Renunciation of this right is not possible.

Police interrogation

Before and during police interrogation a minor has a choice to be assisted by a lawyer and/or a person of trust. A lawyer free of charge is added by the stand by duty arrangement (“piket centrale”). Before 1 March the police could start interrogations with a minor suspect without a lawyer being present more easily. As a consequence of the new law, the police now has to make a stronger effort to ensure the right of minors to a lawyer is respected.

Looking at the role of the lawyer during police interrogation, the basic principle in Dutch law is that a reticent approach is required in order to limit the lawyer’s influence on the interrogations (i.e. process of truth finding) as much as possible. The lawyer’s main task is to observe possible police inflicted unlawful pressure on the minor and to make sure that the minor understands the questions and the transcription of the interrogation.\(^{140}\) On 1 March 20917 new legislation in the Code for Penal Procedure came into practise together with the “Decision on arranging and keeping order police interrogation”.\(^{141}\) Article 3 and article 5 paragraph 2 of the Decision state that the lawyer sits next to the suspect and can make comments and ask questions immediately at the start and just before the end of police hearings. The police interrogator will give the lawyer the chance to make comments at the beginning and at the end. Lawyers can furthermore ask for a time out to have a personal

\(^{139}\) Art. 7 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.


\(^{141}\) Besluit inrichting en orde politiebehoor (translated as: Decision on arranging and keeping order) d.d. 26 January 2017 which came into effect 1 March 2017. Before 1 March 2017 the Instruction legal assistance police interrogation was in use.
conversation with their client. The lawyer can bring to the attention of the interrogator that:
- the young suspect does not understand the question;
- the interrogator should prevent to obtain a statement of the suspect under pressure;
- that the physical or mental state of the suspect obstructs the ongoing of the interrogation.

The lawyer is allowed to make notes and bring writing equipment such as a lap top or mobile phone, but is not allowed to make recordings. Lawyers who act against these rules can be removed by the Assistant Prosecutor.

A person of trust can be present during police interrogation when this is upon request by the minor or the lawyer and in the best interest of the procedure or the emotional situation of the minor. The role of the person of trust is to emotionally assist the minor. The initiative can also be taken by the police. The person of trust needs to arrive at the police station within two hours after the notification of the police. If not the Assistant Prosecutor decides whether the interrogation can start. The person of trust can not disturb the interrogation (mobile phone off, be silent). Furthermore the person of trust may not interfere during the interrogation and is not allowed to make contact with the minor suspect. If these rules are denied the person of trust can be removed by the Assistant Prosecutor.

Mother: I think that both the parent and lawyer should be allowed to be present at the hearing. If it becomes too much for a kid, or he shuts off, as a parent you know your kid and you can tell what he needs. For the emotional support and trusting your feelings, it’s important.

Minor: I didn’t want my parents to be there. These are my problems, I don’t want to involve them.

Audiovisual recording is regulated for certain cases but is not done yet instead of a lawyer. In cases of minors it is not a practise to audio visually record police hearings.

Prosecutors Meeting
In law and policy rules it is stated that the minor and his or her parents can be invited to the Prosecutors Meeting (OM zitting) discussing a community service or a fine. This is called an out-of court settlement (transactie). A lawyer can be present free of charge if the Public Prosecutor imposes community service of more than 20 hours or a fine of more than € 115. The court will decide to add a lawyer and refer to the legal aid board, but the minor and parents can choose a lawyer by themselves as well.

According to the Code of Penal Procedure the prosecutor can also impose a punishment order. This is equal to a court decision. A punishment order will be registered in the judicial documentation which can have consequences when obtaining a Declaration of good conduct to be able to apply for a job. Due to the implementation of a new rule of law on 1 March 2017 assistance by a lawyer is only provided for if the Public Prosecutor imposes community service of more than 32 hours or a fine of more than € 200. Although mentioned in the CCP, in practise the punishment order, which is equal to a court decision, is not used much yet in cases of minors. They will in most cases be confronted by the prosecution with an out of court settlement, which has less severe consequences.

142 Art. 28d CCP.
143 Art. 29 paragraph 1 CCP
144 At. 8 Decision on arranging and keeping order.
145 Staatscourant 2017 nr 12009, OM-beleid per 1 maart 2017 inzake bijstand door vertrouwenspersoon bij verhoor minderjarigen en procedure bij afstand verhoorbijstand door minderjarigen (Policy Rules Prosecution, 1 March 2017)
146 Aanwijzing auditiief en audiovisueel registeren van verhoren van aangevers, getuigen en verdachten.
147 Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt (2016R008)
148 Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt - 2016R008), section 5.
149 Art. 491 par. 2 CCP. See also: Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt (2016R008).
concerning the registration in the penal database and for example obtaining a declaration of good conduct.

The minister of Safety and Justice commented during the debate in the Senate in November 2016: “Let’s be real. In most cases of minors a lawyer is not needed. The prosecution asks for customised solutions (maatwerk) via parents or a Halt procedure. Only in very severe cases assistance of a lawyer is available, because we think this is necessary in these cases. In small cases there is no need for free access to a lawyer, in case of severe cases there is. That’s the starting point, this is in the best interest of young people as well.”

Research points out that in cases decided upon by the prosecution, proof of the guilt is often not established. In the research report “Beschikt en Gewogen’ the Advocate General also looked at 29 cases of minors, including cases that exceeded a fine of 115 euro. In none of these cases a lawyer or parent was present at the meeting with the prosecutor. Nationwide lawyers are critical as well. Lawyer and judge Eva Huls sent, on behalf of the Association of Dutch Youth Lawyers (here after “VNJA”), a letter of opinion to the Senate against this new rule that has come into effect on 1 March 2017. Defence for Children also stated in a letter to the Senate this is a violation of children’s rights.

Lawyer: Getting twenty or even thirty two hours of community service via a prosecutor without a lawyer being present is absurd. As a lawyer, you ask for a dismissal. Without a lawyer, some juveniles will accept the offer just to get it over with it.

Lawyer: The majority of the criminal cases are handled by the Public Prosecutor’s Office. In the majority of these cases, there is no lawyer involved anymore. The Public Prosecutor’s office decides, at secretary level, in name of the Public Prosecutor whether a punishment is required. This competence lies with the Public Prosecutor but is often delegated to an assistant.

Court
Minor suspects who are summoned to appear in court before the children’s judge have access to a lawyer free of charge. The court takes the decision (‘gives a “last”) to refer to a lawyer and the legal aid board.

2.1.2. Derogations

The right to a lawyer is guaranteed for children who are being heard by the children’s judge or are deprived of liberty staying in a youth justice institution. At the level of the police and the prosecution, situations occur in which minor suspects have no access and are not represented by a lawyer. Derogations to this right are:

- The role of the lawyer during police interrogation of a minor is too passive. Lawyers monitor whether it is a fair trial. It is their role to listen and to check whether the young person understands what is being said and asked. They have to hold back. It is questionable whether a lawyer can contribute this was in maximizing the legal position of the child suspect.154 Recently, the new law

---

150 https://www.eerstekamer.nl/verslagdeel/20161115/recht_op_toegang_tot_advocaat_in
151 Knigge, G (advocaat-generaal), De Jonge van Ellemeet, C.H. (gerechtsauditeur), Beschikt en gewogen Over de naleving van de wet door het openbaar ministerie bij het uitvaarden van strafbeschikkingen, Den Haag 2014, p. 44.
152 https://www.linkedin.com/pulse/de-minderjarige-verdachte-uitgekleed-eva-huls
154 Research shows that when a lawyer is present the police uses less pressure. Especially when a minor remains silent, pressure is used when no lawyer assists the suspect. https://www.wodc.nl/onderzoeksdatabase/advocaat-bij-het-politieverhoor.aspx?cp=44&cs=6796

- Minor suspects can speak half an hour with their lawyer before the interrogation. Lawyers indicate that this time slot is too short to be able to discuss everything. There is hardly time to pay extra attention to the child. Vulnerable children, with for example low intelligence (LVB), behavioural problems or with a poor (or no) understanding of the Dutch language are substantially disadvantaged with regard to the preparation of an interrogation. There is a risk that not all the necessary information can be discussed and the interrogation is, therefore, not well prepared.

Lawyer: “The disadvantage is that for relatively minor offenses children have to wait a long time at the police station. The lawyer is busy with several cases at once. Children must therefore wait a long time to receive legal assistance from the lawyer. It can be damaging for the child.”

Lawyer: There is an inequality of rights based on the income of the parents. Parents with a high income can afford legal assistance for their child and parents without a good income don’t.

- Four groups of minor suspects risk absence of a lawyer during police interrogation. These minors can not use the lawyer free of charge. They have to call a lawyer themselves or their parents and depending on the income of parents they might have to pay a contribution.

1. **Minors under the age of 12**: Children who are not criminally responsible do not have the right to a lawyer. They can however be arrested and interrogated by the police as a witness.

2. **Minors suspected of minor offences**: When minor offences are at stake, the police tells young suspects they do not have the right to an official appointment of a lawyer\(^\text{155}\) and they need to pay for a lawyer themselves.\(^\text{156}\) Since 1 March 2017 a minor suspect can not waive the right to a lawyer. Whether minors that are arrested for misdeameanours now do have access to a “piket lawyer” free of charge is not yet clear.

3. **Minors who are not arrested, but invited to come to the police station**: When minor suspects are invited to come to the police station to be heard by the police, they will not be able to make use of a piket-lawyer free of charge. They have to call a lawyer themselves.

4. **Minors who are arrested after 8 p.m.**: Minors who are arrested during the evening or night can not call a lawyer. The “piket service” closes at 8 p.m. and the ZSM-office closes at 10 p.m. Minors who are arrested at night time often are told by the police that they need to stay in police custody to be able to get a lawyer. If the minor goes home the parents will have to call a lawyer. As a consequence minor suspects often accept the offer of the police and wait for a lawyer until the next morning staying in police custody for the night.

Lawyer: **Children under the age of twelve cannot be prosecuted. But measures of constraint can be used against them.** Therefore, a child under the age of twelve can be detained, questioned and taken into custody. However, he can never be convicted. When a child under the age of twelve is summoned for questioning, they must formally arrest him and he thereby has the right of access to a lawyer. If he is in jail, he also has the right of access to a lawyer. Children under the age of twelve have the right to legal assistance by a lawyer before and during police interrogations. It is exceptional that children under the age of twelve are held in custody, but when they are, they should be entitled to ‘Salduz’. The police is using measures of constraint, and it must be reviewed whether those have been applied correctly.

- A lawyer is not a standard partner during ZSM. Only when the prosecutor wants to decide upon a

---

\(^{155}\) Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt - 2016R008)

\(^{156}\) This is described in the folder of the police for minor suspects: www.politie.nl/binaries/content/assets/politie/documenten-algemeen/onderwerpteksten/folders-en-downloads/folder-rechten-verdachten-minderjarigen-def-090714.pdf
case immediately a lawyer has to be present.\textsuperscript{157} Access to a lawyer is only possible if the Public Prosecutor imposes community service of 20 hours or more or a fine of more than €115. Minor suspects meeting a prosecutor are not always informed about their right to a lawyer. The Public Prosecution Office has been criticized for the absence of a lawyer as it undermines the procedural rights of children.\textsuperscript{158} Lawyers complain about this and want to be informed what happens at the level of the prosecution. They are also critical because proof is not always established when the suspect agrees to accept a punishment. Research points out as well that in cases decided upon by the prosecution, proof of guilt is often not established. The Advocate General leading the research looked at 29 cases of minors, including cases that exceeded a fine of 115 euro, in the research report “Beschikt en Gewogen”. In none of these cases a lawyer or parent was present at the meeting with the prosecutor.\textsuperscript{159}

- The Public Prosecutor furthermore has the authority to issue a punishment order which is equal to a court decision.\textsuperscript{160} Appointment of a lawyer only takes place if the Public Prosecutor imposes community service of more than 32 hours or a fine of more than €200.\textsuperscript{161} Minors accepting a Punishment Order often are unaware of the consequences for their future. A Punishment Order is registered in the judicial database and can be seen as a criminal record.

\textbf{Professional: When a conviction has consequences for their future career, even if it is only a "light punishment", I am convinced that they need a lawyer.}

- After the penal procedure convicted children can be asked by the prosecutor to give their DNA, which will be kept in the DNA database for Penal Cases for thirty years.\textsuperscript{162} Minors who want to appeal this and want the DNA to be destroyed, have to arrange a lawyer for which their parents have to pay a contribution depending on their income. As a consequence minor offenders do not appeal against this decision much. This is questionable, because looking at the CRC, this is a violation of the privacy of the child. The Committee on the rights of the child has given a warning to the Dutch government, stating that The Netherlands has to “Eliminate the practice of DNA testing of children in conflict with the law and erase the criminal record of children who are acquitted or have finished their sentence”. Without a lawyer minors will not appeal against this procedure of DNA testing.\textsuperscript{163}

2.1.3. Waiver

Case (before 1 March 2017):
Minor (16) files a complaint about the police. He has been arrested at 9 p.m. The police tells him that if he wants assistance a “piket-lawyer” free of charge he will have to stay in the police cell for a night. The lawyer can assist him at 8 a.m. the next morning. If he wants police hearings to start the same night at 10 p.m. he can ask his mother to be present. His mother is at work and has to make an effort to find someone to replace her. She wonders why her son can’t come home and return to the police station the next morning to be advised by a lawyer. The police warns her that she will have to pay for the lawyer. The mother decides to go to the police station to be present at the police hearings from 11 until 1 p.m. at night.

\textsuperscript{157}http://www.mr-online.nl/advocaat-heeft-weinig-effect-op-uitkomst-zsm/
\textsuperscript{159}Knigge, G (advocaat-generaal), De Jonge van Ellemeet, C.H. (gerechtsauditeur), Beschikt en gewogen Over de naleving van de wet door het Openbaar Ministerie bij het uitvaardigen van strafbeschikkingen, Den Haag 2014, p. 44.
\textsuperscript{160}Art. 257a CCP jo. 77f CC. Although this order has a legal basis, it is not yet fully into practise. In the near future a punishment order can be given in case of a misdemeanour or a serious offence which is punishable by no more than six years in prison.
\textsuperscript{161}Art. 491 par 2 CCP.
\textsuperscript{162}https://dnadatabank.forenscinhistitut.nl/010DNDNadatabanken/010DNDNadatabankvoorstrafzaken/Dna-databank-strafzaken.aspx
\textsuperscript{163}CRC/C/NLD/CO/4, 8 June 2015, Committee on the Rights of the Child Concluding observations on the fourth periodic report of the Netherlands, par 59h.
Before 1 March 2017 children could in exceptional cases waive their right to a lawyer before and during police interrogation. The Instruction legal assistance police interrogation differentiated between cases by referring to them as A-, B- and C-cases, depending on the gravity of the offence. The main rule was that in A-cases it was not possible to renounce consultation assistance. In B- and C-cases, it was - in principle - possible. For so-called A- and B-cases, consultation assistance must always occur in person and be free of charge. For C-cases, consultation via telephone suffices, unless this was considered an undesirable way of consulting.\footnote{Aanwijzing rechtsbijstand politieverhoor. http://wetten.overheid.nl/BWBR0027381/2010-04-01#Circulaire.divisie_4} In 2009, the District Court of Amsterdam considered that a child cannot renounce his right to consultation assistance, because as a child he is not capable of overseeing his position and is more likely to succumb under pressure.\footnote{ECLI:NL:RBAMS:2009:BK4115, r.o. 3.3.} Later, the Amsterdam Court of Appeal has mentioned in a number of cases that children are only allowed to renounce their right to consultation assistance prior to and during a police interrogation when the child can be considered to understand the meaning of this right and the consequences of renouncing it.\footnote{ECLI:NL:GHAMS:BO8217, ECLI:NL:GHAMS:BO8219, ECLI:NL:GHAMS:BO8221 and ECLI:NL:GHAMS:BO8230.} The District Court of Haarlem added to this that the interrogator must assure himself that this is the case.\footnote{ECLI:NL:RBHAA:2009:BK3403.}

Since 1 March 2017 the Instruction has expired and the new law to implement Directive 2013/48/EU came into effect. From this date on a suspect has the right to consult with his lawyer before the first interrogation for half an hour. In the new law a legal basis is created for adults to renounce the right of access to a lawyer.\footnote{art. 28a paragraph 1 CCP.} The suspect must be made aware, by the investigating officer, of the possible consequences of renouncing a lawyer and of the fact that this renouncement may be revoked at any time.\footnote{art. 28a paragraph 2 CCP.} However, for minor suspects a lawyer is always present. According to article 489 CCP 	extbf{minors are not able to waive their right to assistance} and to (confidentially) consult a lawyer for half an hour before police hearings as meant in art. 28c CCP.

\textit{Mother: The police told him that he had a right to a lawyer. First he didn't want a lawyer. He was scared and in shock. He was a wreck when I saw him there. He didn't want anything anymore.}

According to article 28b CCP persons suspected of an offence, for which a prison sentence of more than twelve years is allowed and vulnerable persons (including children), may not renounce the right to consultation assistance, but may 	extbf{renounce the right for interrogation assistance}. During the police interrogation, the lawyer and the child suspect will consult about the necessity for the lawyer to be present at the interrogation assistance and about the consequences of renunciation. The lawyer has to inform the parents about the decision of the minor. When a minor decides not to have a lawyer present at police interrogations, the parents can decide otherwise. After that, the attorney tells the Assistant Public Prosecutor about the result. On the request of the suspect or his parents or guardian, the attorney will offer his assistance during the interrogation.\footnote{art. 489 CCP.}

When a lawyer is assigned, a lawyer should have a mobile phone with internet for receiving and reacting to the Legal Aid Board. The lawyer has to accept the stand by duty arrangement within 45 minutes. If the lawyer does not, another lawyer will be assigned and has to react within two hours also.\footnote{Piket Rules (Reglement Piket)}

When a lawyer does not arrive on time, police hearings can start without a lawyer. The lawyer has two hours to appear at the police station. If the lawyer cannot appear within two hours the Assistant

\begin{flushleft}
\footnotetext[164]{Aanwijzing rechtsbijstand politieverhoor. http://wetten.overheid.nl/BWBR0027381/2010-04-01#Circulaire.divisie_4}
\footnotetext[165]{ECLI:NL:RBAMS:2009:BK4115, r.o. 3.3.}
\footnotetext[167]{ECLI:NL:RBHAA:2009:BK3403.}
\footnotetext[168]{art. 28a paragraph 1 CCP.}
\footnotetext[169]{art. 28a paragraph 2 CCP.}
\footnotetext[170]{art. 489 CCP.}
\end{flushleft}
Prosecutor (police officer) decides whether or not to begin with the interrogation.\textsuperscript{172}

Minor suspect: My lawyer arrived after waiting for 2 and a half hours. I said I didn’t want to be heard by the police alone. They waited until the lawyer arrived. We could speak for half an hour and my lawyer also stayed during the police interrogation.

2.1.4. Difficulties

In youth cases where the right to a lawyer is ensured, difficulties may arise.

- Lawyers and minors complain about the length of the procedure. Criminal proceedings bring a lot of uncertainty, and especially for minor offences it gives a lot of stress and tension when it takes a long period of time before the case is brought for a judge.

Mother: It happened October and now it is February. It brings a lot of insecurity. The fine my son can get might be more than a few thousand euros. We don’t know what to expect and that is difficult. I don’t know how much money I have to reserve and whether I have to stop giving monthly money to my son. There is no end. We just want to know what the outcome is and what we need to count on regarding to the fines.

- For the police it is difficult to work with lawyers in cases of minors who are suspected of light offences when lawyers are not available directly, for example during the evening or night. Sending a minor home leads to disadvantages for the police. The minor suspect has to go home and come back (this does not always happen), the case has to be given to a new police officer the next day, the minor can not use a piket lawyer free of charge, it can harm the investigation process when friends or parents are involved and they see each other before the interrogation takes place, transportation has to be arranged to bring the minor home and back, parents who are working can not be present so easily.

Police: Misdemeanours or “light” cases (shoplifting etc) are in itself not very complex, but the procedure has become more complex than it should be. A lawyer needs to be available. Sending minor suspects home to let them come back the next day is complex. Lawyers in a certain region should be able to work together and make a planning. If there are 200 lawyers working in the same area they should be able to make sure that there is 24 hour availability? They can also make use of other people for example law students or legal advisers.

2.2. Information for minor suspects about their rights

(See also Chapter C paragraph 2.4.)

Minor suspects should be informed about their rights by the police, their lawyer and the council for child protection. The police or another investigating person will give the minor suspect the brochure “You are suspected of an offence” from the Education Administration of the Ministry of security and justice (March 2016). This information sheet is available in more than 20 languages and should be printed from the police station in the desired language.\textsuperscript{173} The brochure is written for children between twelve and eighteen years old. In the explanation is written that the language is focused on children.\textsuperscript{174} It is questionable whether the brochure is easy to read for children. For young adults, the

\textsuperscript{172} Art 28b paragraph 4 CCP
\textsuperscript{174} Kamerstukken II, 2013/14, 33 871, nr. 3.
brochure is likely understandable, but it is not as obvious that it is understandable for younger suspects. Furthermore, the police has opened a website especially to inform minors. In 2017 the police will publish a video on YouTube informing minors arrested and questioned by the police on their rights and responsibilities. Young suspects will be able to watch this video at the police station during arrest and police custody.

The Public Prosecutor published a youth page on its website as well. The Dutch court has a website that also explains the criminal procedure and the role of the judge to young people. And the website of the Children’s Ombudsman has information for young suspects.

According to lawyers the police only gives information about the lawyer ex officio, but do not tell minors who are invited for interrogation enough about their right to a (free) lawyer as well. The Dutch Bar Association has criticized this as well. The Netherlands has a positive obligation to assist non-arrested suspects to find an attorney. This requires that the necessary framework is created. At a minimum, written information should be provided with regard to the legal position of non-arrested suspect, where a referral is made to the Legal Help Desk. It should also be clarified that the non-arrested suspect can request for (financial) legal aid when he cannot bear the cost of legal assistance itself. It is recommended to include this in policy.

Lawyer: The biggest problem is that they’ll randomly detain certain young suspects for questioning, but there are also many who are invited by letter for a police hearing. In the Netherlands, it is still the case that you will not get a lawyer appointed automatically when you are invited for questioning without having been apprehended. It is not stated in the letter that you are entitled to free representation. While, in reality you are, but they’ll say they’ll have to bear the costs themselves. This information given by the police officers is incorrect.

Access to police file
According to article 30 CCP suspects have the right to unlimited access to their police file and take notice of the documents of the procedure before police hearings. The suspect or the lawyer can request the prosecutor before police hearings to get access to the documents.

In practice lawyers mention they have to make an effort to get the file and the documents to prepare police hearings at the police station. Their request is often denied. This is due to not being aware of article 30 CCP, lack of time and also to unwillingness. As a consequence, it occurs that the minor and lawyer start police hearings without having access to the relevant documents.

The documents will not be given in child friendly language, but the lawyer can explain the content to the minor. The prosecutor can in the best interest of the procedure withhold certain files.

Parents do not have direct access to the police file, but receive a copy of the summon and a copy of the report of the council for child protection and probation reports.

Lawyer: A child should be aware of the contents of the casefile, so that you can’t be surprised by it. It is annoying if during an interview, you get confronted with the casefile and you notice that they know more than you. Sometimes, the Public Prosecutor may withhold certain documents in favor of the

[175] https://www.vraaghetdepolitie.nl/
[176] https://www.om.nl/onderwerpen/onderwijs-jongeren/
[177] http://rechtvoor jou.nl/ik_komt_naar_de_rechter/ik_word_verdacht/
[181] Art 30 paragraph 3 CCP
investigation. But often, it is just a fact that the lawyer is the last one who receives the documents. You should always receive your own statement immediately, but that never happens. You also have the right to request the documents in the casefile, though they never receive that. You have the right, but you need to ask for it and make an effort to exercise it. Getting the casefile in order is difficult. When it is a serious case the juvenile can invoke his right to remain silent until he or she has access to the file.

Mother: The lawyer explained very well to me what was going to happen. The police didn’t.

Minor suspect: Sometimes I don’t understand at all what is being said. The prosecutor and judges speak difficult language. My lawyer always explains to me what they mean. Sometimes I ask what they have meant after the court session has finished.

2.3. Choice of the lawyer

According to article 38 CCP a suspect or a defendant has the right to legal representation by one or more defence counsel of his choice or an assigned defence counsel.

Arrested minors can choose to:
1. Consult the lawyer of the stand by duty arrangement (“piket centrale”) which is added automatically by the Legal Aid Board;
2. Call a lawyer of their own choice. Depending on whether the lawyer is assigned to the legal Aid Board he or she is free of charge.
3. Request a person of trust to assist during police interrogations. The person of trust can assist next to the lawyer during police interrogations and instead of the lawyer.182

Non arrested minors have to arrange a lawyer themselves. They can invite a person of trust to be at the police interrogation as well.

3. Interpretation and translation

(See also Chapter C paragraph 2.5)
The suspect is informed about the fact that he may ask for translation of the essence of the materials of the case in his mother tongue or another chosen language, a request that, in principle, will be granted.183 A sworn translator is commissioned, who is registered in the register, unless he is not available on time. In that case a non-registered translator can be commissioned and notification is made of this choice and the explanation thereof in the official record.184

In many cases, according to the Indication assistance of interpreters and translators, an oral translation of (essential) materials of the case will suffice, where the principle is that the suspect has the opportunity to go through the most important parts with his lawyer, in the presence of an interpreter.185 The suspect may request a copy of the judgment. In that case, notification of the judge’s decision and the consequences for him is provided to him in writing. These written notifications fail to appear in case the suspect was present at the delivery of the judgment and it was interpreted for him, or if the judgment has already been provided to him in an understandable

182 Policyrules Prosecution 1 March 2017 (See: Staatscourant 2017 nr 12009, OM-beleid per 1 maart 2017 inzake bijstand door vertrouwenspersoon bij verhoor minderjarigen en procedure bij afstand verhoorbijstand door minderjarigen)
183 Art. 4.7 Instruction assistance interpreters and translators. The unsworn interpreter should – when possible – prior to the interrogation, provide a declaration with regard to behaviour or an integrity statement. If this cannot, due to urgency, occur before the interrogation, it should occur as soon as possible after the interrogation.
184 Art. 4.6 Instruction assistance interpreters and translators.
language, pursuant to article 366 par 4 CCP.\textsuperscript{186} Documents that are sent to a suspect residing in a foreign country are translated into the language of the country in which the suspect resides, if it can be assumed that the suspect has no or insufficient command of the Dutch language.

In practise translation is available. There are not many complaints.\textsuperscript{187} Professionals are aware of the importance of translation. In case of any doubt they will choose to ask for translation.

Derogations of this right consist of:
- Lack of quality: Although translators are registered, good quality is not always guaranteed.
- Deaf or partially hearing minors: Translators for deaf children indicate that when a minor has hearing problems, communication takes place on paper or translation is done by a family member or friend.
- Not all documents that are supposed to be translated are being translated.\textsuperscript{188} Documents of a transaction given by the public prosecutor in case of misdemeanours are not always translated, which makes it difficult for a suspect who can not read Dutch to decide upon appeal/ ask a judge to decide.

4. **Legal aid system for children**

(See also Chapter C 2.6.)
The Dutch legal aid system is basically a threefold model in that it encompasses three lines that provide legal aid:
1. Online Roadmap to Justice: The preliminary provision of the interactive online application called Roadmap to Justice (Rechtwijzer; see www.rechtwijzer.nl) offers digital help by means of a ‘decision tree’. It helps people to find solutions for their legal problems in an interactive manner.
2. The Legal Services Counters (Juridisch Loket) acts as what is commonly known as the ‘front office’ (primary help). Legal matters are being clarified to clients and information and advice given. Clients may be referred to a private lawyer, who acts as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly.
3. The Legal aid Board: Private lawyers provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. A lawyer submits an application to the Legal Aid Board on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers are paid by the Legal Aid Board to provide their services to clients of limited means. Generally they are paid a fixed fee according to the type of case, although exceptions can be made for more time consuming cases. The costs of legal aid are not only paid by the Legal Aid Board, but are partly covered by a contribution from the client himself. Assessment of the applicant’s income and assets level (and hence his eligibility for legal aid) is based on his situation two years prior to the application date, the so-called reference year. This personal contribution, though often covering only a small part of the actual expenses, is meant to incite clients to carefully weigh the pros and cons of taking a matter to a lawyer, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.\textsuperscript{189}

The Legal Aid Board has been apprehended by the ministry of Safety and Justice to arrange the subsidised legal aid system. When a child is arrested and doesn’t have a lawyer yet, the assistant

\textsuperscript{186} Cf. art. 4.5 Instruction assistance interpreters and translators.
\textsuperscript{187} Barendse, A., Vegter, M. National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016, p. 28
\textsuperscript{188} Barendse, A., Vegter, M. National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016, p. 30
\textsuperscript{189} Legal Aid Board, Legal Aid in the Netherlands a broad outline – 2015, Legal Aid Board: 2015, p. 6-7.
Public Prosecutor makes notice to the stand by duty facility of the Legal Aid Board. The stand by duty facility will pass this to a lawyer who is in service at that moment. Then a lawyer will be assigned to the suspect automatically. The minor suspect van also chose a preferred lawyer. The lawyer has to come within two hours.

A lawyer will be assigned to young suspects when they are remanded into police custody waiting for police hearings. They are assigned on the basis of the so-called stand by duty arrangement. The stand by duty facility is open from 7 am to 8 pm o’clock. Outside of these working hours lawyers are not called for consultation assistance. The police only gives information about the lawyer ex officio, but do not tell minors who are invited for interrogation enough about their right to a (free) lawyer as well.

Lawyer: If you are suspected of a punishable offense as a young suspect, you have the right to free representation. When you are apprehended, you are entitled to a state appointed “piket”lawyer through ‘Salduz’. There is no right to ‘Salduz’ and assistance at the hearing when the young suspect is invited by a letter. I’ve had children who were suspected of rape who were invited for questioning, and they then didn’t have a lawyer. The wise parent will consult with a lawyer and make sure there’s legal assistance. But most won’t. They just go in for the interview. With this letter or invitation you can go to a lawyer, whose finances will be covered by the Legal Aid Board. People think it won’t get covered, but that’s not true. If you are suspected of having committed a punishable offence, you can go to a lawyer. The lawyer will have to motivate why legal aid is necessary, and in principle a request for legal aid has to be honoured.

The Legal Aid Board appoints a lawyer when a suspect does not have a lawyer and prosecution has been instituted against the child for an offence which is tried by the District Court, not being the single-judge division of the SubDistrict Court Sector, as court of first instance. The assignment shall be arranged by or ordered by the presiding judge of the District Court, or, when appeal has been filed against the final judgment rendered at the court of first instance, by the presiding judge of the Court of Appeal.

From the interviews it becomes clear that there are too many youth lawyers on the lists of the courts. This means that some lawyers only get 3 of 4 cases a year. That is not enough to stay on the list for specialized youth lawyers. According to lawyers they do not get paid enough for the time they have to spend assisting a child at police hearings. For being present at the first police hearing the lawyer gets paid € 105,– and in more serious cases with several hearings € 210,–. The Dutch Bar Association (Nederlandse orde van advocaten (NOvA) issues that this system does not take notice of the time lawyers spent when assisting at police hearings.

Lawyer: It would be fair to give 1 point more in youth cases than in adult cases. There are more people involved, like the minor, parents, the council for youth protection and more specialists.

Mother: The lawyer said that he was not sure if they would provide legal aid. For them it’s also like looking into a crystal ball. They’re going to get back to me on this. And I’ll probably have to pay a contribution.

Lawyer: Piket lawyers of the stand by duty arrangement do not get paid well enough. I notice that because of that they can not always be present at every police hearing. They cannot keep their

190 Art. 28b CCP.
192 Art. 28 paragraph 4 CCP.
193 On the basis of the policy from the Legal Aid Board, lawyers receive a compensation for rendered consultation and interrogation assistance.
194 Notifications that are received after 20:00 are forwarded at 07:00.
195 Art. 491 paragraph 1 CCP.
agenda empty for the rest of a week. They are often called at the last moment and they cannot drive up and down many times for 250 euro.

5. **Education and specialisation of youth lawyers**

A Dutch lawyer must have a law degree in Dutch law and needs to do three more years of education including practical and theoretical classes. During these years they work as a lawyer apprentice (advocaat stagiaire) under a supervisor (patroon). The education involves procedural classes and practical skills such as confronting witnesses and preparing a plea. The bye-law on advocates (Verordening op de advocatuur) regulates that after finishing the basic education course, every calendar year, a lawyer has to achieve at least 20 points gained by education courses, of which at least half relates to a relevant jurisdiction for his practice to guarantee their knowledge is up to date.196

The attorney is allowed to act in all kind of court cases as soon as he has become a member of the Dutch Bar Association. However, the first 3 years are a preliminary registration. In these training years the young Dutch Attorney works under supervision of an experienced Attorney, a patron and has obligatory training, mandatory courses, litigation experience, et cetera. Upon completion of the training period the registration of the attorney becomes permanent.

In order to provide legal aid, lawyers must be registered in the Legal Aid Board.197 The board shall register any attorneys who practise within its area of jurisdiction and who have submitted an application for this purpose, if they comply with the conditions stipulated in article 15 Legal Aid Act. The board may draw up rules governing the conditions of registration. The conditions which the board stipulates may pertain to the following:

- The minimum and maximum number of cases in respect of which an attorney will be appointed each year;
- An attorney’s expertise in certain fields of law;
- The structure of the office in which an attorney practices;
- The reports submitted by an attorney concerning the legal aid which he has provided.198

The conditions are further regulated in the Registration conditions lawyers 2016.199

With respect to legal assistance of children, extra specialist knowledge is required. The board shall register any lawyers who practise within this area of jurisdiction and who have submitted an application for this purpose, if they comply with the conditions stipulated in article 15. The board may draw up rules governing the conditions of registration.200 The conditions, which the board stipulates, may pertain to a lawyer expertise in certain fields of law.201 The Legal Aid Board has included a number of separate requirements especially in the legal field, including juvenile justice since 2013.202

Training:

- At least three years of relevant professional experience and the professional education for lawyers is required.
- A lawyer has accumulated at least twelve training points in the area of juvenile law, which can be demonstrated with certificates.

196 [https://www.advocatenorde.nl/251/consumenten/taken-van-de-nova](https://www.advocatenorde.nl/251/consumenten/taken-van-de-nova)
197 Art. 13 paragraph 1 sub a Legal Aid Act and Registration conditions lawyers 2016.
198 Art. 14 and 15 Legal Aid Act.
199 Registration conditions lawyers 2016.
200 Art. 14 Legal Aid Act.
201 Art. 15 paragraph 1 sub b Legal Aid Act.
202art. 28, 38 and 39 CCP; Work instruction legal aid board, Specialization lawyer/non-registered lawyer, art. 6, 6a, 6b and appendix 5 Registration conditions lawyers 2016.
- The lawyer, who also wants to participate in the juvenile criminal stand by duty arrangement, must have followed a course that is approved by the Legal Aid Board.

To be on the list of the court for specialized youth lawyers there are criteria on education and experience.\textsuperscript{203} The Act on advocates regulates that the advocates practise law in accordance with the rights and requirements, under the Code of Civil Procedure and the Code of Criminal Procedure and under the special acts and decrees done and ordered, and in accordance with this act and the regulations and orders based on that.\textsuperscript{204} The bye-law on advocates and the regulation on advocates further describe how a lawyer can achieve the needed 20 education points.\textsuperscript{205}

From the interviews it appears that minors and professionals are positive about youth lawyers. There is no difference in quality between a” piket lawyer” free of charge and an “paid lawyer”. Youth lawyers have sufficient knowledge, talk in a way minors can understand and it is possible to contact them regularly.

Lawyers mention that they would like to have more practical education about how to talk and work with minors.

Professional: \textit{Rich families also use the lawyer free of charge (piket lawyer). The quality is sufficient.}

Mother: \textit{The lawyer knew enough. I don’t know if he was a specialist, but he had thorough knowledge, that is the feeling I got.}

Professional: \textit{“Most youth lawyers are well educated. They have to get their yearly points to stay registered.”}

Professional: \textit{There is a pedagogical side involved when dealing with minor suspects. We prefer lawyers conducting a pedagogical approach saying “this is the proof, what is wise to do now”? They should know more about youth care and do an internship for a few days.}

\textbf{Associations of (youth) lawyers:}
In the Netherlands, there are about 17.343 lawyers.\textsuperscript{206} 271 of them are member of the Association of Dutch Youth Lawyers (VNJA).\textsuperscript{207} This Association aims to improve the legal position of children by ensuring that suspects have access to a specialized youth lawyer with paramount to the best interests of the child. There are quality and training requirements for all members. They organize training courses and a system of membership who have developed proven necessary knowledge and skills in juvenile law. On the website, lawyers can be found by name or area of law.\textsuperscript{208}

To become member of the VNJA a lawyer must be registered as a lawyer for at least 5 years. Before the request to become a member of the VNJA, a lawyer must have handled 10 youth cases. In the year before the request, a lawyer must have achieved at least half of the required training credits by the Dutch Bar Association on the area of youth law. Within three years after registration, a lawyer should have taken the following education: specialization course youth law. The training is accessible for youth lawyers and members of the VNJA. The costs are € 2495,- and members of the VNJA will get a discount of 20% (they pay €1996,-). To stay member of the VNJA a lawyer must achieve at least half of the required training credits by the Dutch Bar Association on the area of youth law, of which at least six points by attending an activity organized by the VNJA.

\textsuperscript{203} http://www.rvr.org/nieuws/2013/maart/specialisatie-jeugdzaken-%E2%80%93-wat-betekent-dit-voor-u.html
\textsuperscript{204} Art. 10 Act on advocates.
\textsuperscript{205} Art. 14 and 15 Regulation on advocates.
\textsuperscript{207}https://vnja.nl/leden/
\textsuperscript{208}https://vnja.nl
Regionally, youth lawyers can become member of a local association. The Hague Association of Youth Lawyers aims to promote and control the quality of legal assistance in youth cases. They regularly organize meetings and provide education, courses, readings and intervisio. They are also an interlocutor with judiciary and other institutions. On the website, lawyers can be found by name.209 The Association of Youth Lawyers Amsterdam was instituted in 2013 with the aim to promote the interests of the members and control the legal assistance in youth affairs. The Association focuses not only on lawyers, but also on children and their parents.210 The Association of Youth Lawyers Rotterdam is a specialized association who tries to promote the level of quality by organizing meetings and education. The Association has regular consultations with the Youth Care Agency Rotterdam and the court. The website is focused on both children and their parents to find a lawyer.211

**Specialized training for youth lawyers**

The specialized training for youth lawyers is established in cooperation with the Association of Dutch Youth Lawyers (VNJA) and SDU Publishers.212 It is a four-day training, from the afternoon until the evening, not online. Before every new day homework and an assignment must be made.

Day 1: Criminal law (the previous phase, the phase of sentencing, the European Directives on procedural guarantees of children suspected or accused in criminal procedures, recent jurisprudence of the European Court of Human Rights in the area of criminal law, relationship between criminal law and closed youth care).

Day 2: Family and juvenile law (protection of minors, the influence of the Convention on the Rights of the Child and the Convention on the Protection of Human Rights on the youth protection law in the Netherlands, reports in criminal cases and civil cases, the code of professional standards, complaints and disciplinary law).

Day 3: Family and juvenile law and mediation (parentage, adoption, authority and rights of access, mediation in criminal proceedings, a child-related parental plan).

Day 4: Actualities and Capita Selecta (the Guardian ad litem, the criminal law practice, Capita Selecta, actualities juvenile law, cases).213

The training is both theoretical and practical. The training is not a multidisciplinary training. There are only juridical professionals involved. The training includes a dimension of consultation assistance. There is no skills training involved in the education for youth lawyers on how to speak to minors and keep in touch with minors and young suspects.

Although special requirements have been set for training of lawyers, there is a difference between skills of youth lawyers and criminal lawyers. During the interviews with lawyers they mention that assisting children demands various skills. Skills like talking to children, making contact and listening to them are important. However lawyers learn these skills on the job. Furthermore, youth lawyers indicate that during education there is no special training which addresses the development of children and the way they should be interacted with. In addition to legal knowledge, training regarding the interaction of children and knowledge on the development of children, should be part of the specialisation of the youth lawyer.

---

210 [http://www.jraa.nl](http://www.jraa.nl)
211 [http://www.vjar.nl/index.html](http://www.vjar.nl/index.html)
212 [http://www.sdujuridischeopleidingen.nl/site/aanbod/detail/specialisatieopleiding-jeugdrecht.20074900.html](http://www.sdujuridischeopleidingen.nl/site/aanbod/detail/specialisatieopleiding-jeugdrecht.20074900.html)
213 [http://www.sdujuridischeopleidingen.nl/site/aanbod/detail/specialisatieopleiding-jeugdrecht.20074900.html](http://www.sdujuridischeopleidingen.nl/site/aanbod/detail/specialisatieopleiding-jeugdrecht.20074900.html)
Lawyer: It would be good if lawyers had more specific skills and take professional skills training in working with and talking to minors. This should be part of the obliged education system of the Legal Aid Board and the VNJA.

**Complaint mechanism in place to change lawyer**

The Dutch Bar Association\(^\text{214}\) publishes professional standards and a professional code for all lawyers. There are 11 districts with each a local Bar Association monitoring the lawyers in the region. This is also the complaint mechanism for clients.\(^\text{215}\) When lawyers act against the rules for lawyers they have to appear before a court of discipline. These sessions are open for the public. Verdicts can be read anonymised at [www.tuchtrecht.nl](http://www.tuchtrecht.nl).

However, at the prosecutor's level it is possible to complain about the behaviour of the prosecutor.\(^\text{216}\)

Lawyer: We are stuck with a ‘supervision gap’. There is no judicial review on the actions of the Public Prosecutor’s Office and no control by the bar.

6. **Relation youth lawyer - minor client**

In general minors, lawyers, the mother and caretaker are positive about the contact with and information given by the lawyer. Due to the tension and/or lack of time during the penal procedure communication can be difficult. But this does not have to harm the positive feeling that minors have in contact with their lawyer.

The feedback given on contact between lawyer and minor is mainly positive. The minors who were interviewed felt like their lawyer did do something extra for them and that they could trust them. Some minors mentioned that difficult words are used by the lawyer or judge. If they didn’t understand parts because the language was too difficult, lawyers explain well what is going on. Minors said their lawyer had enough knowledge to be able to help, advise and assist them. Although more time to talk would be better. When they were not positive about a lawyer, that was because he/she they did not make an effort to ask for less punishment. The language used and information given by police officers is less clear and not explained well enough. Minors recommend to make a good information package they can read when they are in police custody.

The meetings between the lawyer and the minor client are when possible at the office of the lawyer or by phone. They can easily ring the lawyer. The interviewees mention that they don’t mind visiting the office. When the minor is in (pre-trial) detention, the lawyer visits the institution. Some minors mention they can call and their lawyer will visit them the same day or the next day, and others say they would like to have contact more often with their lawyer, just to talk about what will happen. This is mainly the case when they have to wait a long period before going to court. Minors who are deprived of liberty appreciate to have contact with their lawyer.

Minor: I can trust my lawyer. I can mention everything and I get good advice on what to do.

Professionals mention there are different styles in representation. Some lawyers focus merely on penal law and are more likely to advise the minor to remain silent, where lawyers experienced in youth care cases prioritise talking and aim for youth care interventions.

Lawyers mention that youth cases are very intense, because so many stakeholders are involved and

---

\(^{214}\) De Nederlandse orde van advocaten (NOvA); https://www.advocatenorde.nl/251/consumeren/taken-van-de-nova

\(^{215}\) https://www.advocatenorde.nl/189/consumeren/problemen-met-uw-advocaat

\(^{216}\) https://www.om.nl/contact/klachten/
have to be spoken to during the procedure. They discuss the strategy directly with the minor. In youth cases it is important to decide between remaining silent and talking. The latter is often preferred by the lawyer, because it might lead to more understanding by the judge and prosecutor. When a minor talks about what happened it is more likely the judge will decide to help the minor and choose to intervene by a care programme, instead of a punishment like detention.

Lawyer: *Being a lawyer for young suspects is sometimes complicated because minors are strongly influenced by me as a lawyer, but also by their parents and other people and friends.*

Minor: *In court I was allowed to talk at the end and my lawyer spoke before me. The words used by the judge were difficult. My lawyer had to explain it to me several times.*

Mother: “*My son could generally understand what the lawyer was saying. But a wall did go up with him. And his ears were shut off by what happened, he had his head ‘stuffed with cotton padding’. It went past him. The lawyer was correct. He spoke in layman’s terms. My son understood it and so did I. But with my son, a lot just went past him.*”

Lawyer: *When there’s really something on the line, a life changer, when if convicted you’ll have to do time or get a PIJ-measure, then I might advise to call upon the right to remain silent. But that is not a wise tactic if the juvenile is a first offender for shoplifting. Then they’ll only start to worry and this might lead to an investigation by the Child Protection Board.*

Lawyer: *When I have spoken to a minor for half an hour, he or she will not remember in the end all I said. A folder or video where the information is repeated is important.*

7. **Relation youth lawyer - parents of the minor client**

Parents can be very involved in the procedure of their child as a person of trust. Upon arrest they have to be informed by the police and they can be present during police hearings together with the lawyer.

For the lawyer contact with parents can be difficult because for them their task is to represent the minor.

Lawyer: *Sometimes minors feel ashamed towards their parents about what happened, they don’t want to indicate what happened, while the evidence clearly tells the story. Or if parents don’t want to accept the facts. I don’t just build a foundation of trust with the minor suspect, but also with the parents. This is sometimes difficult because parents do not always understand that I am a lawyer for their child, and not for the parents. When I invite the parents I always explain that I will first discuss the contents of the case with their child. Afterwards, a joint conversation is possible.*

8. **Collaboration with other professionals**

See also Chapter D paragraph 1.1.

During criminal proceedings youth lawyers work with several professionals. From the interviews it becomes clear that during the procedure it is important to contact stakeholders such as the Council for Child and youth probation for information. This way it is also possible to discuss the plan for example release and an alternative sanction.

During the ZSM procedure the lawyer contacts the prosecutor. Lawyers would prefer to be present at
ZSM meetings as well. A pilot was held, from November 2015 to August 2015, in three regions,\footnote{Rotterdam, Oost-Nederland and Midden-Nederland.} where within the ZSM-methodology, a lawyer was automatically appointed during the first consultation (consultation assistance), prior to police interrogation, and during a second consultation, when the Public Prosecutor had decided to settle the case directly or after pre-trial detention (police custody). According to the final report it appears that suspects positively valued the ZSM- methodology in which the lawyer was automatically included. In addition, it is clear from this evaluation that the possibility to consult with a lawyer is more often invoked, when suspects are made aware that this possibility exists. Also, suspects who initially did not want any assistance, but later accepted it, valued the assistance positively. Within the pilot project more suspects made use of the right to legal assistance of a lawyer than within the current ZSM-methodology. This was for the most part evaluated positively.\footnote{Jacobs, G e.a. (2015), 'Eindrapportage Werkwijze ZSM en Rechtsbijstand', Rotterdam: RSM & WODC, p. 6 and 8. See also C. Grijsen, C, 'De pilot voorbij', Strafblad, 2015-57, p. 408.} According to a lawyer who participated in the pilot, the fact that fewer suspects – almost none of them - renounced their right to legal assistance, after they were made aware of this and advised during a consultation with a lawyer, shows that it is necessary that this information with regard to legal assistance is provided through a lawyer - and not through police and/or Public Prosecution Office.\footnote{Grijsen, 'De pilot voorbij', Strafblad, 2015-57, p. 408.} It appears that the Public Prosecution Office also considers the standard involvement of lawyers within the ZSM-methodology, a desirable improvement.\footnote{Barendse, A., Vegter, M. National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016, p. 47.} At the moment this has not been implemented in the ZSM procedure yet.

**Individual assessment**

Although there are several moments in the criminal procedure where the lawyer receives information about the child from professionals, it is not yet agreed upon whether this is sufficient to ensure that the specific needs of children concerning protection, education, training and social integration are taken into account and whether the Dutch system is in line with the right to an individual assessment to identify their specific needs (directive EU 2016/800).\footnote{Art. 7 directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.}

**9. The best interest of the child**

In criminal procedures of minors age and the best interest of the child have to be taken into account. During police custody policy rules state that a special police officer takes notice and responsibility for minors suspects and ensures that they will be treated according to their age.\footnote{Landelijk Reglement arrestantenzorg 2016 (Policyrules Police custody 2016).}

In cases of minor suspects judges apply the rule that they will not stay in pre-trial detention, unless...

In court cases the minor suspect has the right to speak and has the right to the “last word”.

Lawyers ensure that children’s rights and the Convention on the Rights of the child are mentioned so the judge will have to weigh these rights. However the judge has the task to officially check whether the relevant articles of the Convention on the Right of the Child have been taken into account.
E. Socio legal defence centers or equivalent for children

The work of Socio-Legal Defence Centres (SLDC) consists in actively offering children direct access to justice and corresponding quality social-legal support (including information provision, referrals to other service providers, and legal advice and representation - including in court). A SLDC is a place where children (individuals under 18 years old), as well as adults, who are confronted with children’s rights violations can walk in the door to a welcoming environment to report child rights violations (or threats thereto) and be assured of professional and child-focused assistance.223 In The Netherlands several institutions act as a social defence centre.

A special children’s Ombudsman has the task of ensuring that the rights of children and young people in the Netherlands are respected. The tasks of the Children’s Ombudsman are:224

- Advising the government and parliament, either at their request or on his own initiative, about matters related to the rights of young people up to 18 years of age. Examples include waiting lists in youth care, action taken to combat child abuse, and the position of the children of asylum seekers.
- Examining complaints about government bodies, but also about schools, day care centres, youth care and hospitals.
- Investigating possible violations of children’s rights in the Netherlands;
- Providing information about young people’s rights.

The Dutch NGO Coalition for Children’s Rights is a group of NGO’s working to enforce children’s rights, such as Defence for Children, UNICEF, the National Youth Council, Kinderpostzegels and Save the Children. The Coalition for Children’s Rights is consulted regularly by the State Secretary for Health, Welfare and Sport (VWS) especially in relation to important debates in parliament and reports to the UN Committee on the Rights of the Child.225

The Children’s Rights Shop (Kinder- en Jongerenrechtswinkel) is run by law students who support children in family and youth law matters.

The Advice and Complaints Bureau Youth Care (AKJ) helps children, parents and guardians by filing complaints about youth care.

Defence for Children The Netherlands provides social legal support by the Helpdesk. It consists of a team of lawyers who advise children, parents, lawyers, other professionals and policymakers about children’s rights.

Child friendly information

For a long period of time no child friendly information was made available by the government for children arrested by the police staying in police custody. Socio legal defence centres play an important role ensuring children and parents have access to child friendly information. In case of parents it can be said that they are not always informed well about the house rules at the police station and for example right to contact and visit their child.226 Defence for Children published a folder which is given to minors and/or parents at the police station. This folder is disseminated by the police and by lawyers.227 Control Alt Delete is an organisation giving advice to (young) suspects and publishes information on their rights with the emphasis on ethnic profiling.228

---

223 “Socio-Legal Defence Centres: A model to realize children’s rights” - Defence for Children
226 Art 490 and 45 CCP and art. 62 CCP
227 https://www.defenceforchildren.nl/images/70/1571.pdf
228 http://controlealtdelete.nl/
Minor: I like to have my rights on paper in a folder. They can tell me my rights, but to have it on paper is important. I only got a folder about my right to a lawyer, but you need to know more, for example why you have to have legitimation.

Overall, the right to information is taken more serious than before and police, lawyers, prosecution and courts now have information available for minor suspects. However, improvements concerning a child friendly language are necessary to make sure young suspects understand the information given.

229 Barendse, A. Vegter, M. National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016., p. 36
Conclusions and recommendations

1. Conclusions

The right of minors to a free lawyer and the right to access to information and translation have been implemented by several law changes. On 1 March 2017 for example, essential principles laid down in the Directive 2013/48/EU were integrated in the Dutch legal aid system. A new law and new policy rules came into effect regulating by law the right of minor suspects to consultation and assistance by a lawyer and a person of trust before and during police and court hearings.

But although the law of 1 March 2017 further implements the right of minors to legal assistance as stated in Directive implementing Directive 2013/48/EU, there are situations in which minors don’t have access to a lawyer, are not represented well, or are unaware of their right. Violations of this right are:

- Information about the right to a lawyer given by the police is not complete. Minors are not well enough informed about their rights.
- Minors who are arrested after 8 p.m. stay in police custody and wait till the next morning, to be able to be assisted by a lawyer instead of going home and return the next day to be interrogated.
- Minors a) under the age of 12, b) minors who are not arrested, but invited to come to the police station and c) minors suspected of misdemeanours and d) minors arrested after 8 p.m. which are send home do not get a “piket lawyer” free of charge, but have to call a lawyer themselves or their parents and might have to pay a contribution.
- During their education lawyers, prosecutors and judges do not (yet) get skills-training to work with minors aiming to better communicate and understand minors;
- Nor lawyers, the police or the prosecution have specific knowledge on minors and the behaviour of vulnerable groups, such as behaviour problems (autism or ADHD), low intelligence or children who do not speak the Dutch language.
- Although suspects have the right to receive a copy of their procedural file before police hearings (art 30 CCP), in practise a request can be denied. Suspects and lawyers do not always have the documents when hearings begin.
- During the ZSM procedure and when the prosecutor issues a community sentence or fine it can occur that young suspects do not have access to a lawyer. In these cases minors can be convicted without sufficient proof and without being well informed or assisted by a lawyer.
- Financial aspects due to which lawyers spend more hours on cases of minors than they get paid for lead to the absence of lawyers at police hearings and a lower number of well specialised youth lawyers.
- Parents more often have to pay a contribution when their child is in conflict with the law. This happens for example at the level of police hearings, but also at the end of the line when a minor or parents object against the prosecution taking DNA samples after a conviction.
- Translation is available in most cases, although the quality can be better monitored.

---

230 Wet van 17 november 2016, houdende wijziging van het Wetboek van Strafvordering en enige andere wetten in verband met aanvulling van bepalingen over de verdachte, de raadsman en enkele dwangmiddelen.
2. **Recommendations**

2.1. **Recommendations to policy makers**

Concluding that the right to a lawyer is not yet fully accessible for all minor suspects, the Dutch legal aid system needs some extra changes in law and practise.

- Withdraw the reservation to art 37 and 40 CRC that allows children not to have access to a lawyer in cases concerning a misdemeanour.  
  
- Implement the Convention on the Rights of the Child and the 4 EU Directives fully.

- Bring the Dutch system in line with the right to an individual assessment following Directive (EU) 2016/800. Examine what is needed to implement this right and ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

- Ensure all young suspects, including children below the age of 12, non-arrested children (children who are invited to come to the police station), and minors who are sent home during the night, have access to a lawyer free of charge (“piket lawyer”) and a person of trust before and during police hearings.

- Make access to a lawyer available 24 hours a day. Adapt the recently renewed article 491 CCP in line with this recommendation.

- Continue to let the prosecutor in youth cases concerning minor offences, when a lawyer is not necessarily present, only decide upon out of court settlements (transaction) that do not lead to a criminal record with consequences in the future.

- Guarantee a lawyer is present when a punishment order by the prosecution or a conviction by a judge will lead to the registration of a criminal record with consequences for the future career of the minor, for example when it is a threshold for obtaining a Declaration of Good Conduct (‘Verklaring omtrent gedrag’) which is often needed for study entrance or job applications.

- Provide special safeguards in policy rules and special training for judicial assistance for children and vulnerable groups (behavioural problems or a handicap).

- Reassure the payment of lawyers is in line with the time they spend on a case. When lawyers need to be present at extensive police hearings or have to come to the police station several times, they should get paid as such.

- Make judicial assistance available from the Advice and Complaints Bureau Youth Care when minors and/or parents file a complaint at the Commission for Police Complaints, for example about treatment.

- Assess the use of audio-visual recording in cases of minor suspects.

- Set a maximum period of time during which minor suspects can be prosecuted in a criminal procedure. Make possible for a lawyer to ask the judge to declare the prosecution inadmissible (niet ontvankelijk) when the procedure has exceeded a reasonable amount of time like more than 6 months.

- Ensure a good quality of translation, also for (partially) deaf minors.

- Ensure all documents that are supposed to be translated are being translated.

---

231 http://www.kinderrechten.nl/voorbehouden/


233 Advies en Klachtenbureau Jeugdzorg (AKJ), translated as: Advice and Complaints Bureau Youth Care

234 Barendse, A., Vegter, M. National research report The Netherlands - Procedural rights of juveniles suspected or accused in the EU, Defence for Children, Leiden 2016, p. 30
2.2. Recommendations concerning the police, ZSM procedure and the prosecution

➢ Give a lawyer access to the ZSM coordination meeting when necessary.
➢ Ensure that minors below the age of 12 and minors who are invited (not arrested) to come to the police station who will be heard by the police as a suspect receive proper information on how they can be assisted by a lawyer (possibly free of charge).
➢ Make sure a minor who is arrested after 8 p.m. can go home and see a “piket lawyer” at the police station free of charge the next day. Prevent that minors who are arrested after 8 pm have to stay a night in the police cell because there is no free lawyer available during night time.
➢ Don’t start police interrogations or a court session without a lawyer and, if needed, a person of trust present.
➢ In case of minor offences, a list of interventions of the police should make clear from which moment on a lawyer has to be present, for example when fingerprints are taken.
➢ Give lawyers an effective and more active role during police interrogations.
➢ Make sure children and lawyers can participate actively during the criminal proceedings.
➢ Make sure young suspects understand their rights. Make user-friendly information available. Develop a brochure explaining the criminal procedure in a common language with pictures, which is given to minors at police stations and in courts. Publish a book in child friendly language, for children in justice institutions aiming they can understand rights and responsibilities.
➢ Make a user-friendly information brochure for parents and persons of trust on how to assist a child.

2.3. Recommendations to and on behalf of youth lawyers

➢ Improve the information about access to a lawyer for minors under 12 and minors who are invited to the police station and cannot use the stand by duty arrangement (“piket centrale”) free of charge.
➢ Agree on the basic principles for a pedagogic approach for minor suspects. Make the differences between the “penal” and the “youth care” style of lawyers less visible and take the “best interest of the child” as a starting point.
➢ Include child specific skills training in the education for youth lawyers, focusing on the needs and communication level of minors, such as listening to and talking with minors aiming to improve contact and better understanding.
➢ Make access to a lawyer better available, so minors who arrested in the evening can see a lawyer free of charge immediately and go home directly. Prevent that minors who are arrested after 8 pm have to stay a night in the police cell because there is no lawyer available during night time.
➢ Make sure minor suspects have proper legal representation in line with their age and development. This includes extra time for explaining rights and responsibilities.
➢ Set up clear working standards with the police and prosecution about getting access to the file of the suspect in time. Make sure this request will not be denied by the police, since it is a right of the suspect (art 30 CCP).
➢ Ensure children can understand what will happen and what is said and when needed have access to translation.
List of Annexes

Annex 1 – International & Regional framework – Table of ratified Conventions (see point A1 & B1)

Testimonies of children, youth lawyers and other key actors are mentioned in the text

Bibliography

Literature


Brule, I. van den,, ‘Gezocht: rol voor de advocatuur bij ZSM’, PROCES, 2014-93

Brummelaar, ten, M., Kalverboer, M., Children, children’s rights and penal procedure . The best interest of the child during the penal procedure, Groningen University, October 2011


Knigge, G (advocaat-generaal), De Jonge van Ellemeet, C.H. (gerechtsauditeur), Beschikt en gewogen Over de naleving van de wet door het openbaar ministerie bij het uitvaardigen van strafbeschikkingen, Den Haag 2014


Policy documents

Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten

Advocatenwet, translated as Act on Advocates

Besluit aanwijzing Halt-feiten

Besluit vergoedingen rechtsbijstand

Brochure: Legal Aid Board, *Legal Aid in the Netherlands a broad outline – 2015*, Legal Aid Board: 2015
http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/legalaid-brochure_online--2015.pdf

Decision on arranging and keeping order police interrogation: Besluit inrichting en orde politieverhoor d.d. 26 January 2017 came into effect 1 March 2017.

Directive and framework for criminal procedure youth and adolescents, (Richtlijn en kader voor strafvordering jeugd en adolescenten), Stc. 2014, 8284.

Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt (2016R008))

Informatieblad Recht op bijstand van een advocaat voorafgaand aan en tijdens het politieverhoor en maatregel kostenverhaal draagkrachtige veroordeelden

Instruction assistance interpreters and translators

Annual report Prosecution 2015 (Openbaar Ministerie, Jaarbericht 2015)

Landelijk Reglement arrestantenzorg 2016 (Policyrules Police custody 2016)

Piket Rules (Reglement Piket)

Registration conditions lawyers 2016

Regulation on advocates

Policyrules Prosecution 1 March 2017 (See: Staatscourant 2017 nr 12009, OM-beleid per 1 maart 2017 inzake bijstand door vertrouwenspersoon bij verhoor minderjarigen en procedure bij afstand verhoorbijstand door minderjarigen)

Uitvoeringsregeling Subsidie Vertaaldiensten 2009

Wetsvoorstel duurzaam stelsel rechtsbijstand – consultatie
Annex 1 – International, regional and national Framework

1. International framework

1.1. Ratified Conventions

<table>
<thead>
<tr>
<th>Convention</th>
<th>Signature/Date</th>
<th>Ratification/Date</th>
<th>Adhesion/Date</th>
<th>Reserve(s)/Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICCPR</td>
<td>25-06-1969</td>
<td>11-12-1978</td>
<td>11-03-1979</td>
<td>Reservations:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 14</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 19</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 20(^{236})</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>And one declaration.</td>
</tr>
<tr>
<td>CRC</td>
<td>26-01-1990</td>
<td>06-02-1995</td>
<td>08-03-1995</td>
<td>Three reservations:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 26</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 37</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 40</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Also declarations:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 14</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 22</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Art. 38</td>
</tr>
<tr>
<td>Optional</td>
<td>Not signed.(^{238})</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protocol 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CRC</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **ICCPR**

The International Covenant on Civil and Political Rights (ICCPR) commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented.\(^{239}\)

The Netherlands signed the International Covenant on Civil and Political Rights (ICCPR) on 25 June 1969 and ratified it on 11 December 1978. The ICCPR entered into force on 11 March 1979. The Netherlands has withdrawn reservations to article 10, 12, 14, 19 and 20 and one interpretative declaration. Reservations to article 14:

- Par. 3 (d) The Kingdom of the Netherlands reserves the statutory option of removing a person charged with a criminal offence from the court room in the interests of the proper conduct of the proceedings.

\(^{236}\)https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en#34
\(^{238}\)http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx, lastly checked on 9 January 2017.
\(^{239}\)Compendium of standards, p. 4.
- Par. 5 The Kingdom of the Netherlands reserves the statutory power of the Supreme Court of the Netherlands to have sole jurisdiction to try certain categories of persons charged with serious offences committed in the discharge of a public office.

- Part. 7 The Kingdom of the Netherlands accepts this provision only insofar as no obligations arise from it further to those set out in article 68 of the Criminal Code of the Netherlands and article 70 of the Criminal Code of the Netherlands Antilles as they now apply. They read:

  1. Except in cases where court decisions are eligible for review, no person may be prosecuted again for an offence in respect of which a court in the Netherlands or the Netherlands Antilles has delivered an irrevocable judgement.
  2. If the judgement has been delivered by some other court, the same person may not be prosecuted for the same offence in the case of (I) acquittal or withdrawal of proceeding or (II) conviction followed by complete execution, remission or lapse of the sentence.240

- **CRC**

The Netherlands signed the Convention on the Rights of the Child (CRC) on 26 January 1990 and ratified it on 6 February 1995. The CRC entered into force in the Netherlands on 8 March 1995, and on the islands of the former Netherlands Antilles on 16 January 1998. On 17 January 2001 the CRC entered into force on Aruba. At the ratification of the CRC the Netherlands made three reservations, namely with regard to the application of adult criminal law on 16- and 17-year olds (Art. 37c CRC), legal aid and appeal in all cases (art. 40 CRC) and the right to social security (art. 26 CRC). Since the first of April 2014, sixteen and seventeen year-olds can be tried as adults.241

- **Optional Protocol 3 CRC**

The Third Optional Protocol allows bringing complaints before the Committee on the Rights of the Child regarding the violation of individual rights of the convention or the two Optional Protocols agreed on in 2000, with reference to the sale of children, child prostitution as well as related to the involvement of children in armed conflicts. The Dutch Government has not yet signed the Third Optional Protocol. The government is still considering whether or not to sign the protocol.242

1.2. **Soft law instruments**

<table>
<thead>
<tr>
<th>Beijing Rules and Havana Rules</th>
<th>Used as a guideline for the Youth Custodial Institutions Act (Beginselenwet Justitiële Jeugdinrichtingen).243 The educational approach of the juvenile criminal law in the Netherlands can also be found in the Beijing Rules. See: Directive and framework for youth and adolescents including criminal penalties HALT (Richtlijn en kader voor strafvordering jeugd en adolescenten inclusief strafmaten Halt - 2016R008).244</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riyadh Guidelines</td>
<td>The educational approach of the juvenile criminal law in the Netherlands can also be found in the Riyadh Guidelines. See: Directive and framework for youth and adolescents including criminal penalties</td>
</tr>
</tbody>
</table>


244 Appendix Kamerstukken I 2013/14, 33498, nr. F.
2. Regional framework

2.1. Ratified Conventions

<table>
<thead>
<tr>
<th>Convention</th>
<th>Signature/Date</th>
<th>Ratification/Date</th>
<th>Adhesion/Date</th>
<th>Reserve(s)/Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECHR</td>
<td>04-11-1950</td>
<td>31-08-1954</td>
<td>31-08-1954</td>
<td>Only declarations</td>
</tr>
<tr>
<td>European Union Charter of Fundamental Rights</td>
<td>12-12-2007</td>
<td>01-12-2009</td>
<td>/</td>
<td></td>
</tr>
</tbody>
</table>

- **ECHR**

The Netherlands signed the European Convention on Human Rights (ECHR) on 4 December 1950 and ratified it on 31 August 1954. The ECHR entered into force on 31 August 1954. The declarations concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands.  

- **European Union Charter of Fundamental Right**

The Charter was initially solemnly proclaimed at the Nice European Council on 7 December 2000. At that time, it did not have any binding legal effect. On 1 December 2009, with the entry into force of the Treaty of Lisbon, the Charter became legally binding on the EU institutions and on national governments, just like the EU Treaties themselves.

- **European Charter of social rights**


2.2. European Directives

<table>
<thead>
<tr>
<th>Directive</th>
<th>Transposition/Date</th>
<th>National Law</th>
<th>Opt out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dir. 2010/64/EU</td>
<td>Incorporated into national legislation on 28-02-2013.</td>
<td>- Code of Criminal Procedure</td>
<td>/</td>
</tr>
<tr>
<td></td>
<td>- Law on the surrender of persons</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

245 Appendix Kamerstukken / 2013/14, 33498, nr. F.
247 http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/declarations
<table>
<thead>
<tr>
<th>Directive</th>
<th>Incorporation Details</th>
<th>Relevant Laws</th>
</tr>
</thead>
</table>

- **Dir. 2010/64/EU**

The Directive was incorporated into national legislation on the 28th of February, 2013 through the law “Implementation of Directive Nr. 2010/64/EU of the European Parliament and of the Council of 20 October 2010 concerning the right to interpretation and translation in criminal proceedings (OJEU L 280)”\(^{257}\). This law came into effect on 1 October 2013.\(^{258}\)

- **Dir. 2012/13/EU**

The Directive was incorporated into national legislation on 05-11-2015 through the law “Implementation of Directive 2012/13/EU of the European Parliament and the Council from the 22nd of May, 2012 concerning the right to information in criminal proceedings (OJEU L 142)”\(^{259}\). This law came into effect on 1 January 2015.\(^{260}\)

- **Dir. 2013/48/EU**

The law “Implementation of Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and the right to have a third party informed of deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L294)” is adopted on 17 November 2016. The law came into effect on 1 March 2017.\(^{261}\)

- **Dir. 2016/800/EU**


---

\(^{253}\) Stb. (State Magazine) 2013, 85.

\(^{254}\) Stb. (State Magazine) 2014, 433.

\(^{255}\) Stb. (State Magazine) 2016, 475 and Stb. 2016, 476.

\(^{256}\) Stb. (State Magazine) 2016, 475 and Stb. 2016, 476.


\(^{258}\) Stb. (State Magazine) 2013, 85.

\(^{259}\) Stb. (State Magazine) 1014, 433.

\(^{260}\) Stb. (State Magazine) 2013, 85.

\(^{261}\) This is before the deadline of 27 October 2013 from article 9 Directive 2010/64/EU.
• Dir. 2016/01919/EU

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings has not been discussed in Dutch Parliament.\(^{262}\)

2.3. Soft law instruments

<table>
<thead>
<tr>
<th>Guidelines on a Child Friendly Justice of the Council of Europe</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Commission Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings C(2013) 8179/2 (^{263})</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings C(2013) 8178/2 (^{264})</th>
</tr>
</thead>
</table>

2.4. Jurisprudence of the ECHR and the EUCJ

No decision was found against the Netherlands, regarding to the right of a minor of access to and assistance by a lawyer.


\(^{263}\)https://www.eerstekamer.nl/eu/europeesvoorstel/c_2013_8179_aanbeveling/meta.

\(^{264}\)https://www.eerstekamer.nl/eu/europeesvoorstel/c_2013_8178_aanbeveling/meta.
### 3. National framework

<table>
<thead>
<tr>
<th>Law(s)</th>
<th>Name and reference of the law(s)?</th>
<th>Date of promulgation?</th>
<th>What does the law provide for? (briefly)</th>
<th>Derogations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.1 Juvenile Justice System</strong></td>
<td>Criminal Code and the Code of Criminal Procedure.</td>
<td>Title VIII A Criminal Code Article 486-505 Code of Criminal Procedure.</td>
<td>4 December 1925 Stb. 1925, 465.</td>
<td>See below (1.1.)</td>
</tr>
<tr>
<td><strong>1.1bis Age of criminal responsibility</strong></td>
<td>Code of Criminal Procedure.</td>
<td>Article 486 Code of Criminal Procedure.</td>
<td>4 December 1925 Stb. 1925, 465.</td>
<td>Minimum age of criminal responsibility</td>
</tr>
<tr>
<td><strong>1.3 Right of assistance by a lawyer</strong></td>
<td>Consultation and interrogation assistance: A legislative change d.d. 1 March 2017 implements Directive 2013/48/EU, with the right to consultation assistance and interrogation assistance 265 Policy rules Prosecution 266</td>
<td>Legislative change Article 28c and 489 Code of Criminal Procedure.</td>
<td>4 December 1925 Stb. 1925, 465.</td>
<td>See below (1.1.)</td>
</tr>
</tbody>
</table>

---

265 Stb. 2016, 475.  
266 Policy rules Prosecution 1 March 2017, State Newspaper (Stc) 2017 nr 12009, OM-beleid per 1 maart 2017 inzake bijstand door vertrouwenspersoon bij verhoor minderjarigen en procedure bij afstand verhoorbijstand door minderjarigen.
<table>
<thead>
<tr>
<th>1.4 Legal Aid System</th>
<th>Legal Aid Act and specific laws, for example the Instruction legal assistance police interrogation.</th>
<th>Chapter IV Legal aid in criminal cases (Article 43-44a) Legal Aid Act. Instruction legal assistance police interrogation.</th>
<th>23 December 1993 Stb. 1993, 775.</th>
<th>See below (1.2.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5 Appointment of a lawyer</td>
<td>Code of criminal procedure, added by the Legal Aid Board The Piket Rules (Reglement Piket), added by the Legal Aid Board</td>
<td>Article 489 and article 28 Code of Criminal Procedure. Article 37b Legal Aid Act and the “Piket Rules” (Reglement Piket)</td>
<td>4 December 1925 Stb. 1925, 465.</td>
<td>See below (1.3.)</td>
</tr>
<tr>
<td>1.6 Socio-legal defence centers</td>
<td>Law Children’s Ombudsman (Wet Kinderombudsman) Defence for Children Kinderrechtenhelpdesk Kinder- en Jongerenrechtswinkels</td>
<td>Law Children’s Ombudsman (Wet Kinderombudsman)</td>
<td>1 April 2011</td>
<td>/</td>
</tr>
<tr>
<td>1.7 National monitoring mechanism(s)</td>
<td>Council of Discipline (Raad van Discipline) Council for Case Law (Raad voor de Rechtspraak) The Dutch Bar Association (Nederlandse Orde van Advocaten)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
</tbody>
</table>

---

1.1 Juvenile justice system:

The Criminal Code includes special provisions for children and young adults.\textsuperscript{270} The general rule is that these provisions apply to children between twelve and eighteen years old.\textsuperscript{271}

Children under the age of twelve years are not prosecutable under Dutch criminal law.\textsuperscript{272} For them, there is an irrefutable presumption of incompetence. However, children under the age of twelve do not fall entirely outside of the scope of criminal law. Article 487 of the Code of Criminal Procedure provides that certain provisions of the Code of Criminal Procedure apply in the case of a child under the age of twelve if there is a reasonable suspicion that the child has committed a serious offence. This concerns a limited number of investigative powers and coercive measures that can be applied by the police and the judiciary. In short, these provisions specify that children under the age of twelve can be held, searched, questioned and stopped for the purpose of investigation or interview and that their items may be confiscated.\textsuperscript{273}

After the Salduz-ruling of the ECHR, the judgment of the Supreme Court of the 30th of June 2009 a large change occurred. The legislative change of the Code of Criminal procedure, to implement Directive 2013/48/EU, came into effect 1 March 2017. In the new legislative, a suspect has the right to consult with his lawyer before the first interrogation for half an hour. At the request of the suspect or the lawyer, the Public Prosecutor may extend this time, unless it is not in the interest of the investigation.\textsuperscript{274} The child is not able to waive this right.\textsuperscript{275}

In addition to consultation assistance, children also have the right to so-called interrogation assistance.\textsuperscript{276} A lawyer and / or a counsellor may provide this. This applies to all interrogations, not only the first interrogation. The police should advise the child of his rights. During the police interrogation, the lawyer and the minor suspect will consult about the necessity for the lawyer to be present at the interrogation. After that, the lawyer tells the Public Prosecutor about the result. On the request of the suspect or his parents or guardian, the lawyer will offer legislative assistance during the interrogation.\textsuperscript{277} It is preferred, that a lawyer assists children during the interrogation, but the child may choose to be assisted by a person of trust. The counsellor is allowed to attend the interrogation only if the child suspect requests for his presence.\textsuperscript{278}

A lawyer is only arranged for the arrested suspect, not when a child is called for interrogation.\textsuperscript{279}

A lawyer free of charge is also not arranged when it concerns a misdemeanour.\textsuperscript{280} In that case the suspect may call a lawyer himself.

A lawyer is arranged for the arrested suspect who does not have one when:

\textsuperscript{270} Titel VIII A CC.
\textsuperscript{271} Art. 486 CCP and art. 77a CC.
\textsuperscript{272} Art. 486 CCP.
\textsuperscript{273} Art. 486-509 CCP.
\textsuperscript{274} Stb. 2016, 475: art. 28c paragraph 1 CCP.
\textsuperscript{275} Stb. 2016, 476: art. 489 CCP.
\textsuperscript{276} HR 30 June 2009, ECLI:NL:HR:2009:BH3079, r.o. 2.6. As of recently, this interrogation assistance also applies for adults, see HR 22 December 2015, ECLI: NL: HR: 2015:3608 and the policy letter of the Board of Procurators General of the Public Prosecution Offices d.d. 10 February 2016 relevant “Raadsman bij verhoor per 1 March 2016”.
\textsuperscript{277} Stb. 2016, 476: art. 489 CCP.
\textsuperscript{278}The confidant should also be present within two hours after he is called. If the confidant does not have command of the Dutch language an interpreter does not need to be provided. A person who is above age may appear as a confidant, belong to the immediate circle of the suspect and evidently is not involved with the criminal offence.
\textsuperscript{280} The Legal Aid Board designates a lawyer; the suspect may express a preference.
- The public prosecutor wishes to impose community service in a punishment order as referred to in section 77f(2) of the Criminal Code and said service amounts to more than twenty hours;
- The public prosecutor wishes to issue a punishment order and the amount involved exceeds the amount of € 115;
- Prosecution, other than by means of a punishment order, has been instituted against him for an offence which is tried by the District Court, not being the single-judge division of the SubDistrict Court Sector, as court of first instance.  

1.2 Legal aid system:

There is a legal aid system put in place at the national level. The Dutch Legal Aid Board was instituted by the Minister of Justice (Lord High Chancellor). It provides legal aid to people of limited means. Legal aid in the Netherlands is usually provided by private lawyers/law firms that provide legal advice and represent clients in cases that deal with the major fields of legal aid. Lawyers will receive a monetary allowance (toevoeging). Applicants will pay part of the costs themselves. The size of the contribution depends on the height of the income of the applicant. This is different for children. For children, a lawyer shall be assigned ex officio. There is also legislative, the Legal Aid Act. The primary objective of the Legal Aid Act is to offer an accessible provision to clients that fall under the scope of the legal aid. The second objective is to offer sufficient high quality legal aid providers.

In the Netherlands the child is entitled to free representation from the moment he/she enter police custody to the end of his/her trial. This lawyer will be assigned to the child when remanded into custody. Lawyers at the police station are assigned on the basis of the so-called stand by duty arrangement. Children who are send home but are invited to come to the police station the next day, have to arrange a lawyer themselves. This may involve costs for parents. Further in the criminal proceedings, children are entitled to free representation. The Legal Aid Board adds a lawyer.

1.3. Appointment of a lawyer:

Minors are entitled to representation from the moment they enter police custody to the end of the trial. Lawyers are assigned on the basis of the so-called stand by duty arrangement. The stand by duty facility is open from 07:00 to 20:00 o’clock. Outside of these working hours lawyers are not called for consultation assistance. The child suspect, who does not have a lawyer, will be allocated one by the court. A lawyer is only provided for if the Public Prosecutor imposes community service of more than 20 hours or a fine of more than €115.

281 Art. 489 CCP.
282 On the basis of the policy from the Legal Aid Board, lawyers receive a compensation for rendered consultation and interrogation assistance.
283 Art. 38 CCP.
284 On the basis of the policy from the Legal Aid Board, lawyers receive a compensation for rendered consultation and interrogation assistance.
285 Notifications that are received after 20:00 are forwarded at 07:00.
286 Art. 489 CCP.
Coordination :

Défense des Enfants
DEI-BELGIQUE