UNIVERSITEIT LEIDEN

Verplichte (na)zorg voor kwetsbare jongvolwassenen?

Onderzoek naar de juridische mogelijkheden voor (verplichte) hulp aan kwetsbare jongvolwassenen na kinderbescherming

in opdracht van het Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Veiligheid en Justitie

ENGLISH SUMMARY

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Summary[1]

At the end of a child protection measure, there may be concerns about young adults who cannot function on a fully independent basis in society. This research focuses on the current legal framework on (compulsory) care for vulnerable young adults between the ages of 18 to 23 and will also look at the kind of possibilities this framework offers to support or treat these vulnerable young adults with a history in the child protection system, when they reach adulthood. Furthermore, this research investigates whether the current legal framework, on compulsory care for young adults, may be in need of revision.

The above mentioned questions will be answered using the following sub questions:

1. What is the current legal framework of (compulsory) care for vulnerable young adults (age of 18 to 23)?
2. How is this framework (to which groups and in what types of situations) applied in practice?
3. Is there any knowledge, in literature as well as in practice, about the experiences with its practical application? Are there any results available?
4. What kind of instruments work well, according to the literature and the people concerned, and what instruments work less for this specific group of vulnerable people in this context?
5. According to the people concerned, which short- or long term amendments could be implemented? Under what circumstances and conditions could these amendments be achieved?

General findings

This research provides an understanding of the current legal framework on compulsory and voluntary care for vulnerable young adults who have dealt with a child protection measure(s) in the past (sub question 1). The following matrix gives an oversight of the existing legal framework and the extent of application of the separate regulations (X) on children (< 18) or young adults (> 18). Also, there has been pointed out whether it is a case of compulsory or voluntary care, or a measure that will lead to deprivation of liberty.

	Rule of Law	18-	18+	voluntary care	compulsory care	detention
Placement under supervision	BW(Dutch Civil Code)	X			X	
Out of home placement	BW	X		X	X	
Placement in a closed youth facility	Jeugdwet (Youth Act)	X	Max. 6 months		X	X
Continued youth care	Jeugdwet		X	X		
Mentorship	BW		X		X*	
Guardianship	BW		X		X*	
Financial guardianship	BW		X		X*	
Placement in a psychiatric hospital	WetBopz	X	X		X**	X

* Even though this is compulsory care, there are still no legal possibilities to force the young adult to cooperate, when he or she refuses.

** This is only possible for young adults who cause danger, due to a mental disability.

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The overall conclusion of this research is that the current legal framework barely offers any possibilities to force vulnerable young adults, who have dealt with child protection measure(s), to accept the care they need after reaching the age of 18. It further appears that there is a clear dissatisfaction about the current legal framework and its application in practice. Nevertheless, the research shows that there has been poorly written about the application of the legal framework and its use in practice (sub questions 2-5). Despite the dissatisfaction, interviews with experts on this field did not provide any precise information about practical experiences with the legal framework. The experts were not able to give much insight into their experience with the law and regulations, the aspects that work well in practice and the specific aspects that might be in need of revision.

The most important findings, in regard to the existing legal instruments on (compulsory) care for vulnerable young adults (in the age of 18 to 23), are outlined below (sub question 1). Attention will also be paid to the results and the experiences within the use of this legal framework (sub questions 2-4). This summary will end with some proposals to improve the current legal framework and its application. These proposals will include several ways of thinking in improving the (after)care of vulnerable young adults (sub question 5).

Legal framework

Child protection measures end at the moment that a child reaches the age of 18. From that moment on, it is no longer possible to offer *compulsory* child protection measures. There is one exception to this rule; when the child is placed in a closed institution for youth care. This placement could be extended with six months, upon reaching the age of 18, but only under strict conditions. This kind of prolongation is at odds with international human rights, in particular with article 5(1)(d) ECHR (see below). As opposed to compulsory care, a young adult can receive *voluntary* aid until the age of 23. This research points out that only a very small group actually uses this possibility.

The existing measures of protection for young adults, like mentorship, guardianship and protective guardianship, offer in some cases the possibility of further protection for young adults after they reach the age of 18. However, there are some problems in reconciling these measures. It has been experienced as a problem that mentors and guardians do not have enough legal possibilities to protect the vulnerable young adults from themselves, when they do not accept help voluntarily. Only protective guardianship has been requested more and more over the recent years, mainly because of the problematic financial debts most of the young adults have. The cause of these debts lays, according to guardians, in the psychological problems of these young adults. Protective guardianship is mainly effective for young adults who are motivated to acquire financial skills. In the case of persons who have a mental disability, this measure is also well suited to offer – and maintain – stability in the financial status of these people.

Vulnerable young adults who suffer from a mental illness can be admitted to a psychiatric hospital under the Psychiatric Hospital (Compulsory Admissions) Act (hereafter: Wet Bopz). However, this act is only applicable to a very limited group of young adults. This is caused by two criteria used in the Act. First, there must be 'hazardous negligence'. This means that there has to be a potential danger, for the person itself or for others. However, danger is not something that is likely to appear in every case, even when the concerning young adult is still in risk and in need of help. The second criteria that limits the group of young adults is the causal link. This link requires a mental illness that will cause danger. In a lot of cases, the young adult is definitely suffering from a mental illness, but not causing any danger. This means that there cannot be offered any help under the regime of the Wet Bopz.

At this very moment there are two pending legislative proposals to replace the Wet Bopz: the proposal

for mandatory mental healthcare and the proposal for care and coercion. The proposal for mandatory mental healthcare applies to children and young adults who suffer from a mental illness. In this proposal, the requirement of 'causing danger' is replaced for the requirement of 'causing a serious disadvantage'. A major change of this proposal, opposed to the Wet Bopz, is the fact that this proposal is not limited to providing compulsory care within an institution. With this revision, it seems possible to offer compulsory care at an earlier stage, since it is no longer necessary to wait until the danger has come to such an extent that placement in a closed institution would be the only solution.

The other proposal, for care and coercion, focusses on young adults with a (minor) mental disability. This proposal works within the field of voluntary care. Compulsory care is only permitted when none of the less severe measures apply. So far, it seems that this proposal provides – under strict conditions – the possibility for the caretakers to offer (better) care to vulnerable young adults with a mental disability at an earlier stage. An example within this context could be ambulatory home care. On a concluding note, it can be said that there is a chance that both legislative proposals offer possibilities for compulsory care for young adults.

Aftercare in the juvenile justice system

In this research, attention has also been paid to the juvenile justice system. In this system there has already been a focus on (compulsory) aftercare for children in transition from childhood to adulthood. Children, who leave a detention center after a certain period of time, will become subject to compulsory aftercare. Even during their time in the detention center, they have already received counseling to help them adjust to the outside world. This kind of compulsory aftercare does not exist for vulnerable young adults who have been receiving youth care during their childhood years. Even though the juvenile justice system is fundamentally different from the youth protection system, the juvenile justice system could offer some insight in the ways of adjusting to the transition from minority to adulthood. Criminal law has been drawing attention to the vulnerable position of children in this transition for a certain period of time. This has led to a change in the laws and regulations, more awareness of the importance of aftercare and the realization that this has to be solved in practice. This is why the comparison with criminal law could contribute to finding solutions for problems with regard to vulnerable young adults outside the criminal law system. The experiences within the juvenile justice system show that compulsory aftercare is of major importance for young adults in the transition from minority to adulthood. To offer a proper guidance during this transition, all the concerned institutions have to cooperate both before reaching the age of 18 as well as after becoming 18.

The international legal framework

This study has also examined what the applicable provisions of international human rights law say on the protection of young adults, within compulsory and voluntary care. First of all, it has to be mentioned that it is not permitted under international human rights law to admit young adults to compulsory care, when this is on an educational basis ('educational supervision'). This is not compatible with article 5(1)(d) ECHR, which has also been concluded by Dutch courts. Human rights law only permits compulsory care (after 18) in very exceptional cases. A very severe mental disability could justify detention. When the mental disability of the young adult is not to such an extent that it causes danger, the government should come to a balanced weighing of interests. Therefore, it has to take the interest of the young adult in account, alongside the interest of the government itself in providing responsible care. There has to be a focus on the opinion of the young adult concerned, the quality of care and the possibilities to provide this care in an ambulatory manner. Both deprivation of liberty and restrictions of liberty should be accompanied by adequate guarantees, safeguarding their legality, which requires a basis in law, justified grounds for application, respect for the principles of subsidiarity and proportionality, and judicial oversight.

International regulations emphasize the importance of aftercare for young adults who have dealt with an out of home placement or a deprivation of liberty. Some very detailed recommendations have laid down how the aftercare should be properly organized. It is advisable to engage with these recommendations when it comes to improving the Dutch law- and regulations and policy around the care for vulnerable young adults that have dealt with measures of child protection.

How to move forward?

As mentioned above, this research shows that the current legal framework barely offers any possibilities to force young adults in accepting the aftercare they need after reaching adulthood. The legislative proposals on *mandatory mental healthcare* and *care and coercion* seem to broaden the possibilities to offer care without the necessity of a placement in an institution, to a certain extent. Besides this, the legislative proposal care and coercion has a specific focus on young adults with a mental disability. Despite these advances, there will still be a big group of young adults that runs the risk of falling between the gaps of the system. There have been some speculations in literature that plead for more possibilities for mentorship and a continuation of child protection measures after reaching adulthood. The continuation of child protection measures is not legally achievable in the current legal framework and therefore asks for a fundamental reconsideration of the age limit to adulthood and the foundation for parental responsibility. However, the recommendation that pleads for an increase of the possibilities within mentorship does seems to be achievable in the currently existing legal framework, whether or not together with some minor alterations. An example of a possibility could be a combination of a measure of mentorship for young adults alongside a conditional court order under the Wet Bopz. In that manner, young adults could be placed in a closed institution in case the instructions of the mentor were ignored. Another possibility could be to assign the mentor the authority to issue a designation order, even though we should not overestimate the added value of such an authority. The last possibility could be that the family supervisor/ youth protector will be appointed as mentor, but this asks for a revision of the rules with regard to territorial jurisdiction.

This report ends with a number of additional mindsets that could be engaged in discussing the next steps to be taken. First, it is of major importance to gain more knowledge of the group of young adults. Prior to revise the law and regulations, some important questions should be answered, after carrying out a thorough investigation. The questions concerned are: What kind of young adults are we talking about exactly?; How can we estimate the concerned risk in the most accurate way?; Which forms of compulsory (after) care are needed and what is the specific aim of this care? The answers to these questions are also essential to the question whether an interference of the government in the private life of the young adult could be justified.

In the second place, the vulnerable position of young adults in the transition from minority to adulthood cannot be improved in compulsory care without any significant modifications to the Dutch law and regulations. In that context, there should also be paid attention to the obligations rising from international law. The most important mindset is therefore in relation to the optimization of the framework in voluntary care. Within the voluntary framework, improvements should be developed to secure the possibility to (after)care for vulnerable young adults. In that way, we could think of the aforesaid proposals to expand the possibilities in mentorship, but the optimization of voluntary aftercare also asks for a well-coordinated cooperation between all the institutions concerned in the transition to adulthood of the young adult. Due to the Youth Act, the municipalities have a major role within this framework, also when it comes to funding. It is indispensable to constitute a continuum between the Youth Act and the Social Support Act (Wmo), in that manner young adults can smoothly transfer from the regulations under the Youth Act to the regulations under the Wmo after they turn 18. Furthermore, it could be advisable to lay down in statute the obligation to provide aftercare after a

child protection measure, as a duty towards the certified authority (responsible for the enforcement of child protection measures). This can contribute to a standardization in providing after care, as well as to the development of more after care programmes.

There are a few possibilities, within the field of voluntary care, to provide care between the ages of 18 and 23 to young adults that are not yet equipped to function on a fully independent basis in society. Within these possibilities, young adults could be guided in case they are in risk of damaging their own interests or the interest of others. A precondition to this sort of care would be a coordinated and financial collaboration between the institutions that are concerned around the age limit of 18 years. The possibilities to enforce aftercare are very limited in the current legal framework, due to strict requirements rising from international human rights law. In case the direction of enforcing aftercare will be chosen, the authors recommend further investigation into the characteristics of this specific group of young adults, the possibilities to assess the risks and the objectives of further guidance. This would be essential to the question whether, and in which way, intervention of the government could be justified. Anyhow, this kind of care still has a voluntary basis which we may not neglect, not only because of its effectiveness, but also because it is unavoidable, that there comes a point where we need to let go of these young adults.