
Summary

Background and research questions

In contrast to the European part of the Netherlands, there currently is no separate youth justice system in the Caribbean part of the Netherlands. The Dutch government aims to implement a youth justice system in 2020 on the Dutch Caribbean islands Bonaire, Sint Eustatius and Saba (known as the BES islands or the Caribbean Netherlands) by adding a new title to the Criminal Code BES with specific provisions concerning youth.1 The new youth justice system introduces youth detention as a custodial sentence for young offenders (i.e. under the age of eighteen at the time of the offence, also referred to as minors) and provides a legal basis for the use of diversion (out-of-court disposition). With the aim to explore the effectiveness and efficiency of the new youth justice system,2 the Ministry of Justice and Security has commissioned a study on the feasibility of and (pre)conditions for a quantitative and/or qualitative monitor3 in order to carefully follow the implementation of the system.

The overarching research questions of this study are:

- What is the registered crime rate of youth aged 12-18 years and young adults aged 18-21 years old who have been in contact with the criminal justice system in the Caribbean Netherlands in 2018,4 how were these cases handled and what has been officially registered about these cases?

- To what extent is it feasible to start a quantitative or qualitative monitor containing information about (registered) youth crime in the Caribbean Netherlands to provide insight into the implementation and use of the youth justice system as well as into the recidivism (rates) of minors? What are important preconditions to start a monitor, in light of the reliability and validity of the data, and what would such a monitor look like?

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1 TK 31.568, no. 209 as well as the appendix kst-31568-209 (big-868920).
2 Terms of Reference of this research project.
3 TK 31.568, no. 209.
4 This study has also examined a part of the cases registered in 2019 and included an exploration of the young adults (18-21 years old). Whereas minors are the focus of the study, the report describes the situation about young adults in less detail.
Methodology

Various research methodologies were used to answer the overarching research questions in this study. First, a legal analysis was conducted to compare the current and future (youth) justice system on the BES islands, also in relation to legislation in the (European) Netherlands, Aruba and Curacao. The legal analysis was based on legislation, parliamentary documents and policy documents. Attention was also paid to international children’s right instruments and literature concerning youth justice and youth justice systems. Secondly, 250 cases of a total of 105 children and adolescents who were in contact with the criminal justice system in 2018 (and a part of 2019) were examined. Information was collected about the criminal case (crime, sentence, procedure) and general characteristics of the young people (age, sex, education, employment, previous crimes). The quality of the registration data has also been examined (e.g. availability of the data, the system of registration) to explore the basic conditions needed to create a quantitative monitor on the BES islands. Thirdly, a total of 26 qualitative semi-structured interviews were conducted with 31 participants on all three islands, and one focus group was held on Bonaire. Participants were stakeholders working at a department under the scope of the National Office for the Caribbean Netherlands, including the Dutch Caribbean Police Force, the Public Prosecution Office, the Guardianship Council Dutch Caribbean, Youth Care and Family Supervision Caribbean Netherlands, and the Centre for Youth and Family. The interviews focused on the experiences of stakeholders in light of the soon to be implemented youth justice system, such as their expectations, preparations, and perceived obstacles. Finally, a focus group was organized with participants that were interviewed before. They were asked to reflect on some of the findings of the case files analysis and the individual interviews, and elaborate on important issues when considering the start of a monitor on the islands.

Findings

Part 1: Legal context & analysis

It has become clear that the introduction of the youth justice system will significantly impact the position of the young accused as well as the role and responsibilities of the stakeholders in the justice system. With the introduction of youth specific sentences, such as the youth detention and the penal treatment order for young offenders, the legislator aims to enable more tailored approaches to youth offending. At the same time, because of the legal time limits, the legislator wants to respect the principles that custodial sentences can only be used as a measure of last resort and for the shortest period of time, as prescribed by the UN Convention on the Rights of the Child (CRC). The new legislation additionally provides diversion measures – the police transaction and the public prosecutor’s transaction – with a legal basis, which connects to the international children’s rights.
standard that youth accused of committing offences should preferably be dealt with outside of the formal justice system (i.e. through diversion). Youth specific sentences and diversion are meant to promote young offenders’ reintegration and are therefore relevant for the realization of the pedagogical objectives of the youth justice system. In order to implement the new sentences and diversion measures, additional regulations are necessary, also to provide clarity regarding the role and responsibilities of the different stakeholders. In addition, it is vital that the stakeholders are sufficiently equipped to perform their task under the new youth justice system. The monitor, explored as part of this study, could be used to support this.

Part 2: Registered crime (quantitative case file analysis)

Different sources were used to describe the registered youth crime (rates) in the Caribbean Netherlands: police records, sentencing records, and records from the Guardianship Council Dutch Caribbean (responsible for the HALT programme, a diversion programme). Based on these records, 61 minors (12-18 years) and 44 young adults (18-21 years) were in contact with the criminal justice system in 2018; a total of 105 unique individuals aged 12 - 21 years. Basic information about age, sex, and crime turned out to be available for almost the entire group. For most background characteristics, however, only limited information is available, and only for a small group.

Minors who are registered in the police records of 2018 are on average 15.7 years old and are predominantly registered for theft or driving without a license. Information about previous crimes is available for almost all registered minors: slightly more than half is registered as first-offender, a third has been registered for one other crime before the year 2018, and the remaining part (approximately 15%) is registered for two to seven other crimes. Young adults who are registered in the police records of 2018 are on average 19.5 years old and almost half of the registered crime involves traffic offences, such as driving without a license and joyriding. Furthermore, violent crime, drug crimes, and theft can also be found in the registered crime for this group. Information about previous crimes is also available for almost all young adults registered in the police records: slightly more than half is first-offender and one fifth of the total is registered for one other crime. The remaining young adults has multiple registrations before 2018, mostly for theft. Based on police records, the registered minor or young adult is the only alleged offender in far majority of cases (so no sign of crimes committed in groups for example).

The minors (12-18 years) registered in the records of the Public Prosecution Service are on average 15.3 years old and the far majority of registered crimes concerns theft or driving without a license.
More than half of the cases result in a conditional dismissal of the case; a smaller proportion of the cases ends with a court disposition. Regarding some cases there is no information on the disposition. In contrast to the data available in the police records, information about previous crimes in the records at the Public Prosecution Service is only available for a very small group of cases. The young adults (18-21 years) that are registered in the records of the Public Prosecution Service are on average 19.4 years old and the far majority of registered crime involves theft or driving without a license (similar to the minors). In two thirds of the cases the public prosecutor (conditionally) dismisses the case, while in 25% of the cases a fine or transaction is offered. Information about previous crimes is available for almost a third of the young adults: half of these are registered as first-offender. There is not much that can be said about recidivism based on this information, because the numbers are (too) small. Also in the records of the Public Prosecution Service (similar to the police records), the registered minor or young adult is the only alleged offender in the far majority of cases.

Background characteristics of minors registered at the police and the Public Prosecution Service seem to be similar: on average the living situation of minors tend to be with four to five people in one household (including themselves). Based on information available for half of the population: most of the minors seem to be growing up in broken families, often under custody of mother. Fathers play a small or even no role. The majority of minors, regarding whom there is information available about school/education (i.e. less than half of the group), seems to be going to school.

**Part 3: Experiences of stakeholders (qualitative interviews and focus group)**

The findings of the interviews reflect a positive attitude of the stakeholders towards the introduction of the youth justice system in the Caribbean Netherlands. In general, they feel prepared to carry out their tasks within the youth justice system. There are some concerns though about the limited options for non-custodial (alternative) interventions for minors (such as the diversion programme HALT) and the limited number of available behavioural interventions, also in light of the small scale of the islands. Concerns are also being raised about the feasibility of the pedagogical approach with regard to youth detention and about how the intended separation of control and support in youth probation will work in practice. The collaboration between stakeholders is experienced to be effective in general, although there seems to be some problems in the area of the exchange of information and the way the school attendance officer (particularly on Bonaire) works. For example, reports of unauthorised absence in schools sometimes become formally available, well after various informal steps to assist the minor have already been taken.
Part 4: Setting up a quantitative and/or qualitative monitor

The desirability and viability of the development of a youth justice monitor in the Caribbean Netherlands have been explored on the basis of the findings from the legal analysis, the case file analysis, the interviews, and the focus group. All respondents seem to agree that such a monitor is needed. The data collected in the current study provide a baseline for registered youth crime in the Caribbean Netherlands. This can serve as a starting point to set up a monitor and to, for example, collect the same data each year. Through this way, one will be able to gain insight into registered youth crime and whether these figures tend to increase or decrease over time. Such a monitor also allows to gather and share information about the way cases are being handled and their time span. How the youth justice system will work in practice is a question that may be better answered by a more qualitative monitor, possibly in addition to the numbers in the quantitative monitor. The findings from the interviews provide insight into the currently experienced obstacles in the collaboration within and around the youth justice system. They also provide insight in the expected bottlenecks after enactment of the new law and could shed light on the way stakeholders have prepared for their (sometimes new) tasks. It could be beneficial to repeat these interviews with the same stakeholders (for example in two years’ time) to collect information about how the youth justice system is applied and works in practice, and which processes work as expected and which ones do not. This qualitative information can give meaning to the numbers and trends that the quantitative monitor aims to provide. It can also help to examine how the youth justice systems works in light of international children’s rights commitments.

Different aspects in relation to the viability of the creation of a monitor have been explored. It has become clear from the case file analysis that there is little to no registered information concerning minors and young adults and their background characteristics. For example, information about whether the individual is going to school and how he or she lives is only available for a very small group; the same is true for information about previous crimes. Starting a monitor which aims to collect this kind of information on a structural basis, implies that stakeholders should register information about these characteristics more and more accurate. On a more basic level, starting a monitor also requires that all stakeholders will have to work with a system that operates digitally (instead of manually). Furthermore, it seems imperative to create awareness about the need and importance of registering information about previous crimes or living situation. Through this, a more accurate and complete picture of the minors in the criminal justice system can be obtained, which goes beyond basic information about age, sex, and crime.
The establishment of a monitor should also take into consideration the small scale of the islands. This is particularly true for Saba and Sint Eustatius. Regarding some information, it will be difficult to include it in a publicly accessible monitor, since it would be clear which individuals it concerns. This means that the privacy of the minors as well of their families may not be safeguarded, which is problematic. Finally, it is important to consider the management and governance of the monitor, which ultimately revolves around the question who will be in charge of collecting the data needed for the monitor on a structural basis.

Concluding observations
Although the legal analysis shows some remarkable differences between the legal systems of the Netherlands, Aruba, Curacao and the Caribbean Netherlands, the new law will result in the existence of separate youth justice systems in all parts of the Kingdom of the Netherlands, including special regulations regarding diversion, youth sentences and a clear pedagogical orientation. This essentially contributes to the realization of international children’s rights and in doing so the Netherlands, and thus the Caribbean Netherlands, responds to the recommendations made by the United Nations Committee on the Rights of the Child, UNICEF and the Dutch Children’s Ombudsperson. This study moreover shows that the new legislation is warmly welcomed by the different stakeholders in and around the youth justice system. The different stakeholders very much look forward to operating within the new frameworks and to seeing some of their practices being formalized in law.

The findings of this study give furthermore reason to put some assumptions into perspective, albeit with caution because of the study’s limitations. The data seem to suggest that the young people who come into contact with the justice system are mostly first-offenders. They also suggest, unlike previous research on perceptions about youth crime, that there is no registration of serious crimes which relates to gangs or group crimes.

The study’s conclusions justify the development of a youth justice monitor with both quantitative and qualitative elements and to connect this monitor with already existing initiatives such as the Youth Monitor Caribbean Netherlands. It is also important to decide on the management and governance of the monitor. In case there is a certain reluctance to enact the new youth justice law due to uncertainty whether in practice the new system can be successfully implemented, this study shows that there is no need to wait. It is, however, important to keep an eye on important aspects such as the small-scale realities of the islands and the challenges in this regard concerning enforcement and privacy matters. It is also key not to overlook the significance of international children’s rights standards, including the
use of the youth justice system as a measure of last resort (and the prevention of net-widening), the pedagogical orientation of youth justice, the use of diversion, fair trial, effective participation of minors, the protection of private life and the need to prevent the use of custodial measures and sentences.