

Summary

Evaluation of adolescent criminal law A public policy multi-criteria evaluation

In the Netherlands, over 8,000 criminal cases against 18 to 23-year-olds for a crime were processed by the courts in 2019. Juvenile criminal law was applied in over 6% of these cases, compared to 0.6% of cases in 2012. The regular legal framework stipulates that criminal cases against young adults are dealt with under adult criminal law. The maximum age limit for application of juvenile criminal law was raised from 21 to 23 years on 1 April 2014 if the suspect or the circumstances of the offence give reason to do so (Section 77c of the Dutch Criminal Code; *Parliamentary Papers II*, 2012-2013a 33 498, no. 3). This change is based on the observation of immaturity in the neuropsychosocial development of young adult offenders that can contribute to the continuation of a criminal career. The policy rationale is that in the case of immature young adults, applying juvenile criminal law, because of its pedagogical approach and focus on re-education and rehabilitation, is more successful in reducing reoffending than sanctions under adult criminal law. With adolescent criminal law, more emphasis has been placed on the requirements issued by the Public Prosecutor and the advice from forensic experts from the Probation Service and the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP). This affords an insight into the circumstances of the offence, the (criminogenic) characteristics of the offender, which sanction and/or care may be appropriate and adequate and which sanctioning system will provide the best framework for doing this. The aim is that the enforcement of sanctions follows the applied system. This means that in case of application of juvenile criminal law, a juvenile sanction or guidance by Youth Probation will ensue so that use can be made of the pedagogic approach focused on re-education that applies in such cases (youth care). Central to adolescent criminal law is the ability to provide customised sanctions, including (youth) probation and (youth) care, which take into account the development of the adolescent in order to promote rehabilitation and ultimately reduce reoffending. This makes adolescent criminal law a development-oriented form of sanctioning.

A multi-criteria evaluation of adolescent criminal law

Seven years after implementation on 1 April 2014, this overarching study of the WODC Monitoring and Evaluation of Adolescent Criminal Law research programme evaluated the operation of adolescent criminal law. The focus is on the application of juvenile criminal law to young adult offenders (18 to 23 years) of a crime. Is there evidence for the policy rationale behind adolescent criminal law? How does adolescent criminal law work in practice for this target group? What assessments are made when selecting young adults? Is the approach effective in practice? What bottlenecks exist? In order to answer these and other questions, sub-studies were conducted in the years 2015 to 2020 as part of the Monitoring and Evaluation of Adolescent Criminal Justice research programme. In order to come to an overarching evaluation of the operation of adolescent criminal law, several evaluation criteria from *public policy evaluation* were used. Because adolescent criminal law intervenes in young adults who are still developing, some human rights-related

aspects such as transparency and equality in the criminal law approach to young adults were also studied.

Research questions

Three questions were central to this overarching evaluation.

- How does the separate treatment of young adults under juvenile criminal law work in the Netherlands and how effective is this separate treatment?
- What possibilities and bottlenecks are associated with the introduction of adolescent criminal law and in particular the application of Section 77c of the Dutch Criminal Code to 18 to 23-year-olds?
- What are the options for the future in dealing with young adult offenders of a crime?

Conclusion

Where does this multi-criteria evaluation take us in terms of adolescent criminal law for young adults in the Netherlands and what does it mean in practice? Do the findings provide a reason to stop applying juvenile criminal law to young adults as implemented in the Netherlands since 2014? Or is the development-oriented approach sufficiently promising to be able to contribute, with adjustments to the system and practice, to desistance from a criminal career for young adult offenders? The short answer is that although the development-oriented approach of adolescent criminal law is theoretically promising as a development-oriented form of sanctioning, and there are already signs that this is the case in practice, adjustments to the system and in that practice are needed to make it a success. This report makes the necessary recommendations.

This evaluation shows that it is still too early to draw definitive conclusions about the effectiveness of adolescent criminal law. This is not the only criterion on which the operation of adolescent criminal law has been evaluated. It is not surprising that the application of juvenile criminal law for young adults shows a varying effect on their reoffending rates, depending on the type of sanction (a negative effect for juvenile detention and community service taken together on recidivism, but a neutral effect for specific juvenile detention). After all, there are various bottlenecks in the administration and implementation of adolescent criminal law, as a result of which these strands are insufficiently coordinated. It should be borne in mind that a choice for juvenile criminal law often involves young adults with complex problems. With regard to administration, there are ambiguities concerning the target group that legislators and practitioners had and have in mind, and the selection of this target group. There is national variation in the advice on and application of juvenile criminal law to young adults and the youth care they receive. Various screening instruments are used which are only partially compatible and purchase of these instruments is not compulsory. In addition, professionals primarily work with adults and their experience in juvenile criminal law for young adults and knowledge of this branch of the law is limited. Experience is also often limited to a limited group of professionals, while assessments are made at an early stage of the prosecution and counselling process considerations are made as to whether a young adult is eligible for adolescent criminal law. Given the legal starting point of 'adult criminal law unless' and the decreasing influx of young adults into the criminal system, this experience with and application of adolescent criminal law will also remain limited.

Likewise in implementation, bottlenecks in the financing and availability of (out-patient and clinical forensic) youth care, partly as a result of decentralization of the system, mean that young adult offenders do not always get adequate forensic youth care, or do not get it in time. The Probation Service cannot sufficiently fulfil its advisory role prior to the adjudication in respect of which youth care is required because it cannot make referrals itself. The decentralized financing via municipalities and the limited availability of forensic youth care at local level for young adult offenders inhibits or impedes the provision of adequate help to get life back on track. We note that the bottlenecks in youth care are part of a broader problem of the system that also applies to minors.

However, the results also offer perspective for the application of juvenile criminal law to young adults. Despite the difficulties mentioned, the use of juvenile detention for young adults with complex problems shows no difference in reoffending rates compared to adult detention. Young adults who previously had a favourable income position (in the sense that they were working or doing education) are also better able to maintain that favourable position after juvenile detention. And that in turn has a discrete effect on reducing reoffending. This points to a possible indirect effect of juvenile detention via rehabilitation on reoffending in a specific group. The fact that the reoffending rate in more recent cohorts of young adults sanctioned with a juvenile sanction is lower than that of the group studied in the measurement of effect gives hope for the future. Furthermore, in recent years a lot of work has been done by and with practitioners to make youth sanctions and youth care accessible to young adult offenders. To the extent that data is available, it also appears that the predefined expectations regarding advice, requirements, adjudication and implementation are being met. Although this is still only a small part of all young adults where Section 77c of the Dutch Criminal Code is applied, specifically among 18 to 21-year-olds, the percentage is rising in contrast to the decreasing trends seen in offending among young adults. It makes clear that a group, albeit select but possibly growing, of professional practitioners feel that there is a need for development-oriented sanctioning for young adults. These results from the application of adolescent criminal law, as well as the neutral effects of juvenile detention, occurred in spite of the bottlenecks identified in practical application and implementation scenarios. Therefore, in addition to previous scientific research, they support the application of a development-oriented approach for adolescents to be promising, albeit for a specific sanction or group of young adults sanctioned by the judge. This underlines the importance of an adequate selection of the target group and offering appropriate sanctions, or having the ability to do so. Because it is difficult to access data at national level on how the sanction is implemented during detention and on the interventions or training programmes that follow, in practice, the operation of the sanction remains a 'black box' for the time being.

In conclusion, against the yardstick of different evaluation criteria, the overall picture is that the application of juvenile criminal law in young adults is *relevant* to the desistance of criminal careers and provides scientific evidence for the different assumptions behind such a development-oriented approach. It also shows the *impact* of adolescent criminal law in the sense that the application of juvenile criminal law is increasingly being used for young adults and the previously anticipated goals are (partially) achieved. However, there are several bottlenecks both at the system level and in practice that impede *effectiveness* and *efficient* implementation, and that may jeopardise observance of the general human rights of young adult offenders such as *transparency* and *equality*. The promising development-oriented approach of adolescent criminal law to young adult offenders, which

can help to desistance from their criminal careers, can only be realized if the identified bottlenecks and unintended consequences are addressed in systems and in practice. This evaluation offers several starting points for this.

Recommendations

The findings also provide starting points for the future. The following recommendations were made.

- Specify the target group and provide a screening instrument that can be used across the system to both reliably measure developmental delays and suggest the most appropriate (youth) care and that is consistently purchased.
- In addition to the Public Prosecutor, consider another actor in the initial phase of the criminal process who can play a role in the (youth) sanctions system to be applied, e.g. the examining magistrate at the arraignment.
- Strengthen the knowledge of professionals about the (characteristics of) young adults and the possibilities for this group under juvenile criminal law (and youth care).
- Strengthen collaboration among professionals working with young adults. Involve, for instance, the Child Care and Protection Board and legal professionals in the consultation structures concerning young adults.
- Justify the application of the sanctions system in the judgment.
- Improve the availability of forensic (outpatient and clinical) youth care for young adults, consider a referral role for the Probation Service so that help can be made available in time, and encourage inter-municipal cooperation in youth care for young adults.
- Guarantee funding for youth care for young adult offenders.
- Investigate whether the 'no, unless' principle is the most appropriate solution for desistance from their criminal careers for young adults and to counteract the overrepresentation of adolescents in crime. Internationally, alternatives have been found in the system (juvenile criminal law is the norm for young adults), in separate procedures or possibilities for mitigation of sentences for young adults. In such a review, it is important to take into account the perspective of young adult offenders as well as that of victims and society. After all, a sanction imposed in the interests of the young adult can be perceived as conflicting with the feelings and interests of victims, especially when serious offences are involved.
- Provide means of making data on offenders, their sanctions and interventions and the help they receive more readily available for scientific (phenomenological and evaluation) research.
- Evaluations of judicial policy should include not only actors in implementing agencies but also the offenders and victims themselves (and their experiences).