



Cahier 2024-5

Sentencing 16 to 23 year olds according to adolescent criminal law

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individuals sentenced according to
adolescent criminal law, and the
judge's motivation*

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Cahier

De reeks Cahier omvat de rapporten van onderzoek dat door en in opdracht van het Wetenschappelijk Onderzoek- en Datacentrum is verricht. Opname in de reeks betekent niet dat de inhoud van de rapporten het standpunt van de Minister van Justitie en Veiligheid weergeeft.

Summary

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Characteristics of (criminal cases of) individuals sentenced according to adolescent criminal law, and the judge's motivation

Adolescent criminal law emphasizes a flexible use of juvenile and adult criminal law for individuals aged 16 to 23 years old. Under certain conditions, it is possible to apply adult criminal law in cases where the adolescent committed the offense at the age of 16 or 17 years old (Article 77b of the Dutch Criminal Code), and juvenile criminal law to individuals aged 18 to 23 years old (Article 77c of the Dutch Criminal Code). Furthermore, the (juvenile) judge may choose to handle offenses committed during both minority and adulthood in one case and decide on sanctioning according to either juvenile or adult criminal law (Article 495, paragraphs 4 and 5 of the Code of Criminal procedure).

In this study, the application of adolescent criminal law refers to the flexible use of juvenile and adult criminal law. There is limited insight into characteristics of individuals aged 16- to 23-years-old sentenced according to adolescent criminal law, criminal case characteristics, and the extent of differences compared to individuals aged 16 to 23 years old who are sanctioned according to regular criminal law (i.e. juveniles according to juvenile criminal law and adults according to adult criminal law). Also, little is known about the judge's motivation to apply adolescent criminal law and the arguments of other professionals involved in the process, namely the public prosecutor, lawyer, and experts from the (juvenile) probation service, the Child Protection Council, and the NIFP (Dutch Institute of Forensic Psychiatry and Psychology) advocating or advising on the use of adolescent criminal law. Knowledge about the target group is important for imposing appropriate sanctions or interventions. Insight into the characteristics of criminal cases and the motivation for applied sanctions contributes to transparency in the criminal justice process concerning the application of adolescent criminal law and provides insights for equitable sanctioning of these young individuals.

The research questions are as follows:

- 1 What are the characteristics (if criminal cases) of 16 to 23 year old adolescents sentenced according to adolescent criminal law, and how do they differ from 16 to 23 year olds sanctioned under juvenile and adult criminal law?
- 2 What is the judge's motivation for sanctioning according to adolescent criminal law?
- 3 To what extent do the demands of the public prosecutor, the advice of experts, and the defence's position differ from the judge's decision regarding sanctioning according to adolescent criminal law or regular criminal law?

Method

For this research, criminal cases involving individuals aged 16 to 23 years old, sanctioned between 2017 and 2021, were studied. Four groups of criminal cases were examined: 1) cases involving 16 and 17 year olds sanctioned according to adult criminal law, 2) a comparable group of cases involving 16 and 17-year-olds sanctioned according juvenile criminal law, 3) cases involving 18 to 23 year olds sentenced according to juvenile criminal law, and 4) cases involving 16 to 23 year olds where Article 495, paragraphs 4 and 5 of the Dutch Code of Criminal Procedure was applied.

Results

The results show that juveniles who committed a crime at the age of 16 or 17 and were sanctioned according to adult criminal law receive the longest custodial sentences. At the time of sanctioning, all juveniles in this study are 18 year or older. The verdicts indicate that these young people often have a criminal history, and a criminal lifestyle is in various criminal cases related to the youth's own choice. Previous pedagogical interventions in the juvenile justice system have failed, and the judge, as well as other professionals, see insufficient opportunities to impose an appropriate sanction within the juvenile justice setting.

The most common sanction for 16 and 17 year olds sanctioned according to juvenile criminal law was a placement in a youth facility (in Dutch PIJ-maatregel). The majority of minors are sanctioned around the age of eighteen. The verdicts mention problems with behavioural skills. The behaviour of the young person is less attributed to the young person themselves and more attributed to contextual factors, and professionals still see possibilities for minors in the juvenile justice system.

In the verdicts of young adults sanctioned according to juvenile criminal law, problems with behavioural skills are often pointed out. Professionals often see possibilities for these adolescents in the juvenile justice system. The reason for sanctioning young adults according juvenile criminal law is mainly found in characteristics of the development of the young adult offender (including impulsivity, inadequate aggression regulation) as well as the presence of a developmental disorder and/or mild intellectual disability. The observation that suspects appear younger than their chronological age is also mentioned as reasons.

What does this comparison of different groups teach us about characteristics of 16 to 23 year old offenders and their criminal cases?

- For 16 and 17 year olds (age at the time of committing the offense) sanctioned according adult criminal law, the judge more often finds intent in the crime and unsuccessful treatment in the past, and pedagogical possibilities are mentioned less frequently compared to 16 and 17 year olds sanctioned according juvenile criminal law.
- For 16 and 17 year olds (age at the time of committing the offense) sanctioned according adult criminal law, a criminal lifestyle is more often related to their own choice and a criminal career with serious (violent) offenses is more often observed compared to 16 and 17 year olds sanctioned according to juvenile criminal law.

- For similar violent offenses, 16 and 17 year olds (age at the time of committing the offense) sanctioned according to adult criminal law receive longer custodial sentences, and a measure is less frequently imposed compared to 16 and 17 year olds sanctioned according juvenile criminal law.
- The processing time of criminal cases involving 16 and 17 year olds (age at the time of committing the offense) sanctioned according to adult criminal law is more than half a year longer compared to 16 and 17 year olds sanctioned according to juvenile criminal law. This indicates complex cases, not only regarding the problems of the suspects or the offense but also complex cases regarding investigation, advising, prosecution, and sanctioning.

In the case of 16 and 17 year olds (age at the time of the offense) sanctioned according to adult criminal law, three reasons for the flexible sanctioning can be distinguished: 1) shocking and violent offense, 2) a calculating attitude of the offender and the mature nature of the committed offenses, and 3) treatment (im)possibilities. In the verdicts of the comparison group, the above reasons also partly occur. An important reason for deviating from the regular sanction system for juveniles lies in the possibility of pedagogical influence. In the case of 16 and 17 year olds sanctioned according to adult criminal law, the judge, public prosecutor, and/or experts see no more opportunities for positive pedagogical influence in the juvenile justice system. These opportunities are reported for young people sanctioned according to juvenile criminal law.

In the case of young adults sanctioned according to juvenile criminal law, reasons include characteristics of delayed development and problems in various areas of life. A distinction can be made in the justification between judgments in which only the presence of the legal foundations, personality of the offender, and/or the circumstances under which the offense was committed are mentioned, and judgments in which the judge goes into more detail on sanctioning according to juvenile criminal law. The reason for sanctioning young adults according to juvenile criminal law seems to lie mainly in characteristics of delayed development. In addition, problems in various areas of life are often a reason to apply juvenile sanctions. These include, among others, the lack of meaningful activities, the presence of psychological problems, having debts, and the presence of a mild intellectual disability.

With adolescent criminal law, it is possible to simultaneously address offenses committed during both minority and adulthood in a criminal case (Article 495, paragraph 4 of the Code of Criminal procedure). In these cases, the (juvenile) judge must decide whether the young adult will be sanctioned under juvenile criminal law or adult criminal law (Article 495, paragraph 5 of the Code of Criminal procedure). For young adults sentenced according to juvenile criminal law, it is mentioned, among other things, that a youth sanction better suits the development and/or problems of the young adult offender. For young adults sentenced according to adult criminal law, the judge in various judgments explains why the main rule is not deviated from. Reasons include mentioning that a suspect would not benefit from the treatment model of a Youth Detention Institution (JJI).

For 16 and 17 year olds (age at the time of committing the offense) sanctioned according to adult criminal law, there is not always consensus among professionals regarding the applicable sanctioning system; however, prosecutors and judges often agree. The results indicate that in most cases (80%), there is agreement between the

prosecutor's demand and the sanctioning applied by the judge. The prosecutor mainly emphasizes the seriousness of the offense and its consequences for the victims. More variation is observed in the advice provided by the mentioned experts. In the judgments of the comparison group, we see agreement between the prosecutor's demand and the applied sanctioning system in most cases. Furthermore, experts do not deviate from the applied sanctioning system in their advice.

Similarly, in the case of young adults sanctioned according to juvenile criminal law, there is usually, but not always, agreement among different professionals. Both prosecutors and experts recommend juvenile criminal law in (almost) 45% of the criminal cases. If adult criminal law is demanded by the prosecutor or advised, the prosecutor mainly focuses on the severity of the offense and/or the circumstances under which the offense was committed. Experts often discuss the treatment (im)possibilities of the suspects.

Discussion

With the introduction of adolescent criminal law, under certain conditions, it is possible to apply adult criminal law in cases where the adolescent committed the offense at the age of 16 or 17 years old, and juvenile criminal law to individuals aged 18 to 23 years old (Article 77c of the Criminal Code). This provides for a tailored approach for adolescent offenders. Their chronological age has become less decisive in the choice between sanctioning according to juvenile or adult criminal law. Although the (lagging) development of adolescents and the relevance of pedagogical intervention from juvenile criminal law are emphasized, adolescent criminal law also maintains an existing exception for sanctioning 16 and 17 year olds according to adult criminal law. In practice, the application of adolescent criminal law is limited. In the years following the introduction of adolescent criminal law, adult criminal law was applied to minors approximately 5-14 times annually, and juvenile criminal law was applied to young adults annually between 465-587 times. This represents respectively less than 0.5% and around 4-8% of the total number of cases in these age groups.

The possibility of sanctioning 16- and 17-year-olds under adult criminal law has received criticism from, among others, the UN Committee on the Rights of the Child and the RSJ (Council for the Administration of Criminal Justice and Protection of Juveniles), as it goes against the International Convention on the Rights of the Child (CRC). The CRC obliges countries to have a separate juvenile justice system up to at least the age of eighteen. Pedagogical interventions and opportunities for resocialization for minors are important principles (Article 40 CRC), as well as the exclusion of placing minors with adults in detention unless it is in the best interest of the minor. Upon ratification of the CRC, the Netherlands made a reservation, so that after the application of Article 77b of the Dutch Criminal Code, placing juveniles with adults remains an option. The Committee on the Rights of the Child has repeatedly asked the Netherlands to withdraw the reservation. In the verdicts studied by us, after the application of Article 77b of the Dutch Criminal Code, minors were not placed together with adults by the judge. All adolescents sentenced according to adult criminal law were 18 years of age or older at the time of the judgment. Although absent in our study, this does not mean that minors and young adults are not placed together in an (adult) detention setting. Some recent verdicts not included in this study mention this possibility.

In this study, we find that pedagogical impossibilities are an important reason for sanctioning adolescents according to adult criminal law. However, it is questionable whether this is a sufficient argument to keep sanctioning juveniles according to adult criminal law possible. The sanctioning of juveniles according to adult criminal law is not only in conflict with the CRC, but there is also no scientific evidence that minors can be equated with adults or that it contributes to the development of adolescents. Young people are still developing and therefore cannot be held (fully) responsible for their behaviour. Although 16 and 17 year olds are capable of making rational choices, they are much more influenced by various (external) factors compared to adults. The calculating attitude of an offender and the adult nature of the committed crimes of 16 and 17 year olds do not mean that they can be equated with adults. The Council for the Administration of Criminal Justice and Protection of Juveniles also believes that 16 and 17 year olds cannot be equated with adults and that juvenile criminal law is sufficient, even in the case of (very) serious offenses.

In practice, pedagogical impossibilities are primarily seen as the reason why youths no longer fit within the setting of a Youth Detention and Rehabilitation Center (JJI). According to arguments in judgments, this is due, among other reasons, to the previous failure of judicial interventions, the lack of a learning attitude, and the potential negative influence on other youths in a JJI. Additionally, it concerns minors with psychological problems for which treatment is only available in an adult setting. Based on the judgments, it is not clear whether intensive forms of guidance through a measure in juvenile criminal law were considered, either because professionals were unfamiliar with them or simply because they do not exist. It is possible that professionals are insufficiently aware of existing possibilities for this group of offenders within the juvenile justice system. Therefore, it is important to increase knowledge among stakeholders about the possibilities within juvenile criminal law for this small group of offenders. In cases where appropriate guidance is not available, it is recommended to build more (scientific) knowledge about this group and which pedagogical and development-oriented guidance could be possible and effective for this small group of young offenders of serious offenses.

In conclusion, this study shows that in the sanctioning of adolescents, in addition to the committed offense, the development of adolescent offenders and the pedagogical (im)possibilities of punishment in the juvenile justice system play a relevant role. With adolescents sanctioned under adult criminal law, these possibilities in relation to their own development and career are often no longer considered, whereas they are considered in adolescents sanctioned according to juvenile criminal law. Given the continuing development of adolescents, it is recommended to explore the possibilities that may still exist (including in the literature) even for the group for whom pedagogical intervention no longer seems to be an option. This is more in line with current scientific thoughts on youth development and with those from a children's rights perspective. It also aligns with the concept of adolescent criminal law, which aims for a development-oriented sanctioning of adolescents.

Het Wetenschappelijk Onderzoek- en Datacentrum (WODC), Kennisinstituut voor de rechtsstaat, is een onafhankelijk kennisinstituut dat valt onder het ministerie van Justitie en Veiligheid. Het WODC draagt bij aan behoud en verbetering van de rechtsstaat via het (laten) uitvoeren van kwalitatief hoog wetenschappelijk onderzoek. En door het aanbieden van gevraagde en ongevraagde kennis, verbeterpunten en (waar mogelijk) denkrichtingen.

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