

***Recommendation from the Council for the Administration of Criminal Justice  
and Protection of Juveniles***

*- Summary -*

**Juvenile criminal proceedings: future proof!**

*Recommendation to the Dutch State Secretary of Security and Justice, dated  
14 March 2011*

The Council for the Administration of Criminal Justice and Protection of Juveniles has issued this recommendation on its own initiative. Two important cases formed the reason for this recommendation. Firstly, research has been performed in recent years into the biological and psychological development of young people. Said research shows that the development of adolescents generally continues until the age of 23. However, adult criminal law applies to this group after they have reached the age of 18. Secondly, the impression existed that juvenile criminal proceedings have deteriorated since the legislative amendment in 1995 and that the pedagogical nature of juvenile criminal law no longer receives the required attention as a result of this legislative amendment. The pedagogic aspect has formed the starting point of juvenile criminal proceedings since 1901. In its recommendation, the Council examines whether the pedagogic basis is sufficiently expressed in current Dutch juvenile criminal proceedings (and the law of juvenile criminal procedure) and, if not, how it can be better guaranteed.

The fact that our juvenile criminal proceedings have a pedagogical foundation means the following to the Council:

*that, as regards decisions about and actions towards the juvenile suspect, offender and convicted person, it has to be reassessed each time whether all the actions - accompanied by a sanction or otherwise - are aimed towards encouraging the development of the relevant juvenile, to (re)educate him, to resocialise him, to prepare him for a good future and to deter him from a further criminal career.*

When providing a (criminal-law) response to punishable behaviour on the part of a juvenile, it is important to take into account the insights obtained in recent research into the psychological and biological development of juveniles. Research not only shows that juveniles develop in phases and that said development continues until approximately the age of 23, but also that many of the offences committed by juveniles should rather be seen as age-related 'slip-ups' than as harbingers of a criminal career. Research also shows that juveniles with normal mental capacities below the age of fourteen are hardly able to grasp how criminal proceedings work and that they are incapable of correctly appreciating their position in that connection. They are therefore unable to fully cooperate in criminal proceedings. And finally, it is clear that not much should be expected of merely punishing with the aim of changing the juvenile's behaviour. Punishing only works with respect to people who are sensitive to punishment. A number of factors should be taken into account if a change of behaviour of the juvenile offender is to be achieved. In addition to insights from said research, it is also important to take into account the obligations arising for the Netherlands from the International Convention on the Rights of the Child. The Committee on the Rights of the Child issued a General Comment entitled 'Children's rights in juvenile justice' on 2 February 2007, which deals extensively with the manner in which juvenile criminal law should be shaped.

In this recommendation, the Council deals with the bottlenecks in current juvenile criminal proceedings in the Netherlands. In doing so, the Council assesses whether the pedagogical foundation is expressed sufficiently and takes into account the insights from research into the psychological and biological development of juveniles and the relevant

provisions of the International Convention on the Rights of the Child. The Council concludes that in future the pedagogic foundation in juvenile criminal proceedings should be better guaranteed. For this purpose, the Council makes 18 recommendations in this recommendation.

More attention for the pedagogic foundation in juvenile criminal proceedings does not detract from the fact that there should be attention for other interests, such as those of the victim or of society. Despite the fact that the victim and society may have different interests than the juvenile, the Council is of the opinion that a pedagogic response does serve the interests of society and the victim: after all, research shows that a pedagogic response and treatment provide better results in terms of reducing recidivism than a purely repressive response.

*The recommendation can be obtained from the secretariat of the Council  
PO Box 30 137  
2500 GC The Hague  
+31 (0)70 - 36 19 300,  
[www.rsj.nl](http://www.rsj.nl)*