



Summary

Advisory report on adolescent criminal law

Council for the Administration of Criminal Justice and Protection of Juveniles

On 2 November 2021, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as 'the RSJ') issued an advisory report on adolescent criminal law. The results of the evaluation of adolescent criminal law published earlier and the Minister's 23 June 2021 letter to the House of Representatives on the progress made in tackling juvenile crime have induced the RSJ to issue this advisory report on its own initiative.

The RSJ examined the bottlenecks existing in practice in the administration of adolescent criminal law, based on the evaluation research conducted by the Research and Documentation Centre (WODC). The RSJ recommends reversing the principle of 'adult criminal law, unless' to 'juvenile criminal law, unless', with the expectation that more young adult offenders may be eligible for the administration of juvenile criminal law.

Bottlenecks identified in the evaluation research on adolescent criminal law

Under the adolescent criminal law system, juvenile law may be administered to young adult offenders if the personality of the accused or the circumstances of the offence give reason to do so. Scientific research shows that young adults aged 18–22 are still in an 'immature stage of neuropsychological development'. A pedagogically oriented approach with an emphasis on re-education and resocialisation contributes to behavioural change and consequently to preventing recidivism. In 2019, juvenile criminal law was administered in just 6% of all cases involving young adult offenders.

Some of the bottlenecks in the administration of adolescent criminal law are:

- Ambiguities in the law and the explanatory memorandum on the target group and the concept of 'immature development'.
- Adolescent criminal law is not administered or hardly administered in the out-of-court settlements offered by the Public Prosecution Service for milder types of crimes.
- In the event of detention, the choice for juvenile or adult criminal law is already made at an early stage; the legal starting point is 'adult criminal law, unless'. The court may depart from the choice of the public prosecutor, but will adopt it in many cases.

RSJ advisory report: from 'adult criminal law, unless' to 'juvenile criminal law, unless'

The main cause of the limited administration of juvenile criminal law to young adult offenders almost certainly lies in the legal starting point of 'adult criminal law, unless' and the fact that the public prosecutor has already made a choice for either adult or juvenile

criminal law at an early stage. The RSJ believes that more young adults should be eligible for the sanctions and measures under the juvenile criminal law system and therefore recommends reversing the legal starting point of 'adult criminal law, unless' to 'juvenile criminal law, unless'. In addition, it must be clearly stated who is responsible for funding after-care.

Maximum sentences for 16 to 23-year-olds

In tackling juvenile crime, the minister is considering increasing the maximum sentences for 16 to 23-year-olds. The RSJ is not in favour of increasing the maximum sentences for minors and young adult offenders. In the juvenile law system, the pedagogical objective is the underlying principle. Practice shows that the sanctions under the juvenile criminal law system, such as detention and the so-called PIJ measure (placement in an institution for juvenile offenders, which is a treatment measure) suffice. Adult criminal justice can be administered to young adult offenders for very serious offences.

The RSJ recommends to fully comply with the provisions of the Convention on the Rights of the Child (CRC) for 16 to 17-year-olds. Raising the maximum sentences for minors is incompatible with the principle of the Convention that depriving minors of their liberty should be a measure of last resort and may only be applied for the shortest possible appropriate period. In addition, the RSJ believes that adult criminal law should not be administered to minors.

Recommendations

The RSJ has formulated the following recommendations:

1. When administering adolescent criminal law to young adult offenders, reverse the legal starting point of 'adult criminal law, unless' to 'juvenile criminal law, unless'.
2. Maintain the current maximum sentences in the juvenile criminal law system and, where appropriate, use the possibilities offered under the juvenile criminal law system, such as the PIJ measure, whether or not in combination with juvenile detention.
3. Abandon the reservation for Article 37(c), CRC, delete Section 77b of the Dutch Criminal Code (*Wetboek van Strafrecht*) and always try 16 and 17-year-olds under the juvenile criminal law system.

The full-text advisory report (in Dutch) is published on the RSJ website www.rsj.nl

