



## Summary

### A new perspective on diversion for young people

#### Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

##### Introduction

In this advisory report, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*; hereinafter referred to as 'the RSJ') reflects on the regulation and practice of diversion for youth in the Netherlands, from a children's rights perspective. Diversion involves youth justice cases being referred outside the formal criminal justice system, usually to activities or programmes like the Halt programme. The aim of diversion is to minimise the exposure of young suspects to the adverse effects of criminal proceedings, thus preventing stigmatisation and judicial documentation (a criminal record).

The RSJ has assessed diversion measures in the Netherlands against the principles of diversion as laid down in the International Convention on the Rights of the Child (CRC) and interpreted by the United Nations (UN) Committee on the Rights of the Child. The RSJ also discusses the rights and interests involved in these measures, which are sometimes conflicting, and the dilemmas that may arise from them.

The central question in this advisory report is: Which rights and/or interests play a role in the use of diversion in all phases of the youth justice process, do they influence the implementation of diversion measures, and to what extent should these rights and/or interests lead to adjustments in the way diversion measures are designed?

##### Findings

###### **System of diversion**

The RSJ notes that, from a children's rights perspective, the structure of the current system of diversion in the Netherlands is inadequate. The state of the Netherlands is not acting in accordance with the spirit of diversion as intended by the CRC. The available diversion measures are the police reprimand and the Halt measure. These can be classified as forms of diversion as intended by the CRC, but they have limitations:

- The target group is limited to first offenders;
- They are not available for young adults;
- They are not available for more serious offences;
- The available measures are limited to the preliminary phase of the criminal justice process; practice and regulations are not designed in such a way that it is possible to switch to diversion at any stage in the criminal justice process.

According to the CRC, the interests of the young person must be paramount when deciding whether a criminal case should be diverted from the formal criminal justice process. The possibility of diversion must be considered on a case-by-case basis, even in the case of repeat offenders and young people who are currently subject to more severe penalties imposed by the Public Prosecution Service or the court. In accordance with the system of adolescent criminal law, diversion should also be made available to young adults. In this context, the RSJ has previously advocated reversing the principle of “adult criminal law, unless” to “youth criminal law, unless”, in the case of young adults.

#### *Rights and interests of young suspects*

Regarding the rights and interests of young suspects who are subjected to a diversion measure, the RSJ has identified various bottlenecks in the current system.

##### *- Legal assistance*

Legal assistance safeguards the rights of young suspects. These rights include the right to a fair trial, the right to information and, in the case of very minor offences, the right not to receive any disposition, including diversion measures. This is important because, under the current system, diversion measures may still have criminal consequences at a later stage. For this reason, the RSJ considers it undesirable that there is no right to free legal assistance in decisions on certain diversion measures, including police reprimands. In addition, legal assistance is important in connection with the requirement that the young person confesses to the offence and the tension this may create with the presumption of innocence. It is very important for young people to avoid building a criminal record. For this reason, diversion is the most attractive option. However, the risk exists that young people may feel compelled to make a confession out of fear of building a criminal record. This also leads to tension regarding the voluntary nature of accepting a diversion measure.

##### *- Expertise*

The RSJ notes that organisations that decide on diversion for young people, in particular the police and the Public Prosecution Service, lack specific expertise in the field of youth cases. This expertise is crucial in order to be able to adequately inform young people and their parents and to make appropriate decisions in these cases.

##### *- Inequality*

Finally, the RSJ is concerned that not all young suspects have an equal chance in being diverted.

#### ***Victims’ rights and interests***

The provision of information to victims in the case of diversion is inadequate. The RSJ notes that there is a dilemma in cases where the victim invokes article 12 of the Code of Criminal Procedure: the “complaint against non-prosecution procedure”. This can result in a young person who has successfully completed a diversion measure still being prosecuted. In this situation the rights and interests of the young suspect and those of the victim clash.



### ***Other dispositions related to diversion***

In addition to diversion, there are some other dispositions that contain elements of diversion but which cannot be classified as such because they result in a criminal record of the young person. These include extrajudicial dispositions by the Public Prosecution Service and the declaration of closure, a new judicial decision the youth court can take. In addition, there is Mediation in Criminal Cases, which is a valuable provision within the youth justice system that can give substance to diversion. However, the Public Prosecution Service and the youth court still make little use of this option.

### **Recommendations**

Taking everything into consideration, the RSJ makes the overarching recommendation to take a new and broader look at the current system and existing interventions and to focus on customisation. This also requires a different way of looking at young suspects. The interests of the young person must always be paramount when considering whether diversion or a criminal procedure is appropriate.

The starting point should be to choose the least harmful option for the young person. It is well known that criminal prosecution causes harm to young people, but does not lead to favourable recidivism rates. This argues in favour of always investigating whether diversion is possible, even in the case of more serious offences, and how it should be organised. This requires a more varied and flexible range of diversion measures, which also means looking beyond the beaten track. Examples from other countries offer starting points for this.

In the advisory report, the overarching recommendation is elaborated in sixteen specific recommendations, the main points of which are outlined below.

- Ensure a broader and more varied range of diversion measures, within which customisation is possible. Also develop options for more serious offences that are not currently eligible for diversion; amend the regulations so that young adults are also eligible for diversion measures and do not limit these measures to first (or second) offenders.
- Organise the system in such a way that, throughout the entire criminal process, it is continuously assessed whether a youth criminal case can still be diverted away, even if the case is already before the youth court. Guarantee expertise at the Public Prosecution Service with regard to youth criminal cases. Ensure that a diversion measure by the Public Prosecution Service for youth does not (in principle) lead to a criminal record, or ensure that a record of certain (minor) offences is not taken into account when applying for a Certificate of Good Conduct (VOG).
- Make legal assistance free of charge for decisions on diversion, including police reprimands. Ensure that young people (and their parents) are adequately informed about the content and consequences of accepting a diversion measure. Legal assistance free of charge if desired, is important in this regard.
- Ensure that all young people have equal access to diversion and conduct research to find out how inequality can be prevented.
- Provide timely and adequate information to victims, both in diversion and extrajudicial dispositions.



The advisory report (in Dutch) is available on [the website](#) of the Council for the Administration of Criminal Justice and Protection of Juveniles.

