

# Young adult offenders' rights and restorative justice

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## **Introduction**

Criminological research shows that young adults are the age group with the highest risk of offending. The nature of that behavior is often temporary. Recent neurobiological research demonstrates that the brain of young adults continuously grows until the age of 25 and even beyond. This results in more attention for the group of young adults, often seen as the group between 16 and 25 years of age. Despite these developments the way young adult offenders are treated in policy and legislation does not seem very coherent yet. The UN Convention on the Rights of the Child is applicable for children and young people up to 18, resulting in many juvenile justice arrangements and systems based on a pedagogical approach limited to the age of 18. That leads to the question of what then is arranged especially for the group of young adults? And what can be learned from rules and regulations for minors?

Reactions on criminal behavior for young people include more and more restorative measures. What entails this trend and what are the core values of restorative justice for young adult offenders and victims? What practices and rules are in place and can be used for this particular group?

In this article we will explore and explain about the needs and possibilities of the use of restorative justice for young adult offenders. We will first go through relevant international and European standards on juvenile justice and restorative justice. What do they say about how states should deal with criminal behavior of youngsters and the rights of young people in conflict with the law? After that we will explore current research into brain development of young people that is relevant for their behavior. We illustrate practice with Dutch developments including the law for young adult delinquents and mention briefly developments in other jurisdictions. Then we continue explaining the main restorative justice principles and facts followed by a conclusion concerning the implementation of a restorative justice approach for young adults.

## International standards for young people

Young adults, and here we mainly focus on the group aged between 18 and 25 (Crone, 2008; Steinberg, 2009), who come in conflict with the law are not often mentioned in international human rights instruments. We thus have to look elsewhere to see what is relevant for them. What is laid down in the rules and regulations for children for example? The UN Convention on the Rights of the Child (CRC, 1989) is the most ratified binding international human rights convention. The general objectives are that the best interests should prevail in all decisions concerning children, that they should be listened to and that they should not be discriminated. In articles 37, 39 and 40, the CRC sets detailed standards for juvenile justice systems stating that “member states shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

The CRC describes in detail the standards and legal safeguards for juvenile justice. Article 3, the “umbrella” article, states that the best interest of the child is a primary consideration in every decision related to the child. This article is often applied in combination with other standards such as those for juvenile justice. Furthermore, the CRC states that everyone working with children in the penal system has to take pedagogical objectives, children’s development and evolving capacities of children into account. As children are continuously growing, improving their abilities and skills and further developing themselves, they need to be able to learn from their mistakes. (Liefwaard, 2008; Blaak et al, 2012).

The Convention on the Rights of the Child asks member states to implement special juvenile justice systems including special laws, procedures, authorities and institutions, as was also already the main goal of the Beijing Rules of 1985.<sup>1</sup> According to article 37 and 40 CRC children have a right to a fair trial and detention can only be applied as a measure of last resort and for the shortest appropriate period of time. Article 40 emphasizes that states should first aim to keep children out of the justice system, promote diversion and invest in alternative procedures and measures. Research results also show that diversion, including restorative or educational measures, are a meaningful and effective answer to juvenile first and second offenders. Juvenile court dispositions should be preserved for persistent or more serious offenders (Junger-Tas and Dunkel, 2009; Wolthuis, 2012; UNICEF, 2013; Pruin and Dünkel, 2015). According to article 39 victim protection is a state responsibility by taking all measures “to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts”. It also states that such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The Committee on the Rights of the Child gives a deeper understanding of the meaning of legal safeguards for children and adolescents until 18 year of age in its General Comment No. 10 Children’s Rights in Juvenile Justice (2007). The Committee is currently concerned with the rights of adolescents and recently launched a draft of General Comment No. 20 on the implementation of the rights of the child during adolescence, meaning young people between the ages 16-18. In the document the Committee acknowledges the challenging environment of this century for these young people. The Committee asks states for an investment aiming to strengthen the capacities of adolescents enabling them to overcome a range of risks, such as the challenges of a digital world, migration, trafficking, recruitment by armed groups, addiction to drugs, poverty, and living in a multi ethnic society. However, the definition of a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. The Committee sets no specific rules for young adults 18+ and does not go beyond the scope of its own age group.

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<sup>1</sup> UN General Assembly (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing

But, although the CRC and the General Comments of the Committee only refer to young adults aged 16-18, the UN Beijing Rules<sup>2</sup> (1985) and several European rules, that are non-binding, but form a clear set of recommendations, do make a specific reference to the use of the standards of juvenile justice in cases of young adult offenders aged 18+.<sup>3</sup> Rule 3.3. of the Beijing Rules states for example that: *“efforts shall be made to extend the principles embodied in the Rules to young adult offenders”*. And at European level the Council of Europe’s recommendation nr 20 (2003) on “new ways of dealing with juvenile delinquency and the role of juvenile justice” states in *Rule 11: reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as adults*”.

In recommendation 11 (2008) of the “European Rules for Juvenile Offenders subject to Sanctions or Measure” *Rule 17 states: young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly*.

In several European countries the criminal justice approach to responding to young adult offending implies the use of juvenile law in cases of adolescents aged 18-23. In Germany for example all young adults, aged 18-21, have been integrated into the juvenile justice system since 1953 and are transferred to the jurisdiction of the juvenile court. Other countries with special rules for young adult offenders are Austria (18-21, Croatia (18-21), England and Wales, the Scandinavian approach as seen in Finland and Sweden (18-21) and the Netherlands (18-23) (Pruin and Dünkel, 2015).

## Brain development research and Dutch law and policy

Like in other countries, in the Netherlands several scientists undertook longitudinal research concerning the brain of young adults. Crone’s<sup>4</sup> neurobiological research shows that the brain is only fully developed from 23-25 years of age (Crone, 2008). When young adults grow older their decisions are less impulsive and they become more empathic with other people. Doreleijers<sup>5</sup> states that the brain of young people above 18 is still fully developing. He wonders why the latest insights about the brain are not better used in the care and penal system. According to Doreleijers, young people should not be held in youth custodial institutions away from their own environment. Recidivism appears to be less when young offenders are treated in a daily program nearby such as forensic day care. Over 80% of the adolescents in prison also have behavioral disturbances such as autism or ADHD. Police and justice officers are not fully aware of this (NRC news paper items, 2007 and 2009).<sup>6</sup>

Prior and colleagues state by looking at international research that “young adults, like juveniles, must be considered less culpable than older adults due to their psychosocial immaturity” (Prior et al, 2011). Pruin and Dünkel conclude in their recent research on European responses to young adult offending: “the sum of interdisciplinary research strongly suggests that young adulthood is a crucial and sensitive period in the life-course that is characterized by wide-ranging changes and transitions, the (non)accomplishment of which appears to have a significant impact on life trajectories and criminal careers. Against this back drop, adapting the way in which the state responds to young adult offending would be a justifiable solution.” They thus plea for specific state attention for this age group.

Such research results and insights led to a political discussion in the Netherlands on new rules for adolescents and young adult offenders. The new “Adolescent law” was adopted on 1 April 2014. It

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<sup>2</sup> UN General Assembly (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, A/RES/40/33, (Beijing Rules)

<sup>3</sup> Beijing Rules: rule 3.3. *“efforts shall be made to extend the principles embodied in the Rules to young adult offenders”*.

2003 Rec 20 on “new ways of dealing with juvenile delinquency and the role of JJ”. *Rule 11: reflecting the extended transition to adulthood (...). young adults under 21 should be treated in a way comparable to juveniles and be subject to the same interventions(...)*

2008 Rec 11 “European Rules for Juvenile Offenders subject to Sanctions or Measures”. *Rule 17: young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly*.

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<sup>6</sup> <https://www.nrc.nl/nieuws/2007/03/09/angsten-en-wanen-in-een-kale-gevangeniscel-11288272-a493539>.

<https://www.nrc.nl/nieuws/2009/04/01/zijn-wij-in-nederland-allemaal-gek-geworden-11706291-a150549>

applies to adolescent and young adult offenders between 16 and 23 years of age. According to the new law, juvenile justice can be applied in cases of young adults until the age of 23. However, due to a reservation of the Netherlands to article 37 CRC adolescents aged 16 to 18 can be transferred to the penal system and tried according to adult law. In 2013 a total of 56 minors (age 16-17) were convicted under adult law. (Jaarbericht Kinderrechten 2016, Defence for Children - Unicef Nederland, p. 22) Data for 2014-2016 on cases from adolescents and young adult offenders are not yet available for The Netherlands. An evaluation study of the new law is currently carried out by the Dutch research institute of the Ministry of Security and Justice WODC.<sup>7</sup>

Furthermore, the Dutch Ministry of Security and Justice is starting pilot projects named “small-scale provisions” beside the youth justice institutions.<sup>8</sup> Due to the low number of adolescents staying here - a maximum of eight young offenders - a more individual approach can be used. These regional small-scale institutions are more open, which means that adolescents can attend school or work and continue most of their daily life while they serve their sentence in the facility. This is in line with the recommendations Doreleijers made.

## **Restorative Justice developments for children and young adults**

Although comprehensive rules at international and national level are not specifically developed for young adults aged 16 to 25, restorative justice is becoming more and more an important part in a human rights based approach in penal cases of this age group.

There is not one clear definition of restorative justice; it is a broad ‘umbrella’ concept. However, the general notion is that it focuses on the harm caused by conflicts or criminal offences. In the words of Nils Christie, it is about giving back the conflict to its owners: an offender and the victim, and often also the community as a third party in stead of the state and criminal justice system having that task or ownership (Christie, 1977). Responsibility and participation are other important notions. The main principles of restorative justice are voluntariness (to participate), neutrality and confidentiality. Initiatives in this field often started with juvenile offenders. This is considered an easier group to relate to for governments as well as for victims because of the notion that they should be allowed to learn from their mistakes (Walgrave, 2000; Vanfraechem 2007; Wolthuis, 2012).

The most common forms of restorative justice are victim-offender mediation and forms of conferences with more affected people present, such as family group conferences which are lead by an independent and specially educated mediator. Most of the time it is intended to create an actual meeting with the parties involved in the conflict, but sometimes indirect forms are used, for example sending a letter or that messages are communicated by the mediator. The history of such initiatives goes far back. Often referral is made to forms of justice used by indigenous peoples, for example the Maori in New-Zealand and the Inuit in Canada. Also concepts like ubuntu in South Africa are forms of local ways to deal with conflicts by talking publicly about them, often led by an elder person of the community. (Johnstone and Van Ness, 2007). Until the Middle Ages such participatory forms of finding solutions for conflicts were used also in Europe. They were lost afterwards and the government took over the role of conflict-solver. Recently, since the nineties, we can see a rise in interest in such concepts, through alternative sanctions, development of children’s rights, alternative dispute settlement and emancipation of victims. (Wolthuis, 2012).

Developments with restorative justice programmes for children and adolescents are found in many parts of the world. It is for example at the heart of the juvenile justice system in New-Zealand: Family Group Conferences have since 1989 been the first option in the law (Morris and Maxwell, 2001). It is explicitly developed on the basis of Maori tradition, and it is now a national system and all partners in the penal chain know it. Also in Europe we see many initiatives such as in Northern Ireland, Austria, Belgium and Hungary - just to mention a few. By now almost all European countries have restorative

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<sup>7</sup> WODC, Onderzoeksafdeling Criminaliteit, Rechtshandhaving en Sancties (CRS), Monitoring and Evaluation Adolescent penal law. A research program (2014-2019). <https://www.wodc.nl/onderzoek/onderzoeksprogramma/adolescentenstrafrecht/>

<sup>8</sup> <https://www.rijksoverheid.nl/actueel/nieuws/2016/11/02/groningen-en-nijmegen-openen-kleinschalige-voorzieningen-voor-justitiele-jeugd>

justice projects, although the implementation and the practical way of working can differ a lot. (Vanfraechem et al, 2010). These days restorative justice can be called an international movement with active organisations, such as the EFRJ: European Forum for Restorative Justice ([www.euforumrj.org](http://www.euforumrj.org)) and the IIRP: the International Institute for Restorative Practices (<http://www.iirp.edu>).

'Does restorative justice work?', is a question that is often asked. Meta-studies from different continents do indeed show high satisfaction rates among victims, offenders and professionals. The feeling of justice increases, participants feel that they are being taken seriously the aspect of taking responsibility is appreciated. It also shows that most of the times less recidivism is measured and there is no study that shows higher rates afterwards (see for example: Sherman and Strang, 2007; Shapland et al, 2008 and Claessen et al, 2015). Even though such a meeting is a one day event, for many people it is a moment of change, a new beginning. On the other hand, there are also many who are not interested in taking part, while good information and a solid preparation make more victims and offenders interested. (Vanfraechem et al. 2010; Laxminiaram, 2014).

There are a number of international (human rights) standards drafted on the theme, for example the 1999 Council of Europe Recommendation No. R (99) 19 on mediation in penal matters, the 2001 EU Council Framework Decision on the standing of victims in criminal proceedings and its successor, the 2012 Victim Directive<sup>9</sup> that entails rights on restorative justice for victims, including the necessary protection. Also the 2002 UN Basic Principles on the use of restorative practices provide countries worldwide with tools for a broader development of those practises. They promote the use of restorative justice in all kind of cases, from so-called less serious offences cases till even murder. The Convention in the Rights of the Child with its launch in 1989, had not yet used the term restorative justice, but all Juvenile Justice instruments that have been launched since 1996 make reference to the term and it is seen as a priority in reaction on crime, as was also confirmed by the Committee on the Rights of the Child in its General Comment no. 10.<sup>10</sup>

Restorative justice can be applied in all stages of or before or after a criminal procedure, thus including: (1) the prevention phase; (2) the arrest and investigation stage – police; (3) the prosecution stage; (4) during a court session; (5) while serving a sentence and finally (6) after serving a sentence. It differs per state and region what is used most. (Wolthuis, 2012).

## Developments in the Netherlands

In the Netherlands initiatives started in the nineties with victim-offender mediation (VOM), conferencing and several pilots with juveniles (evaluated in 2006: Steketee et al, 2006). After an experimental stage the main focus became victim offender conversations outside of the criminal justice system, even though outcomes can be send to the public prosecutor. An organisation was established called Victim in Focus, which now does more than 2000 such conversations per year.<sup>11</sup> In the last few years pilots at court level, police level and probation have been carried out and positively evaluated. (Dierx and Van Hoek, 2012; Cleven et al, 2015). It was hoped that the court pilots will be changed into a permanent way of working, but the minister of Security and Justice has concluded differently in October 2016 and there is no more funding allocated to the mediation bureaus at the courts. Lobby to change this is initiated by mediators, scientists and others active in the field. At the same time restorative justice in juvenile detention centres and youth protection is developing. There is, in general, more attention for victims, initiatives in neighbourhoods and by citizens themselves influenced by politics but also active organisations like: Restorative Justice Nederland (RJN), Eigen Kracht, associations for mediators, and sometimes schools, play a role. There is an article in criminal

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<sup>9</sup> The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice.

<sup>10</sup> UN Committee on the Rights of the Child, General Comment 10 (2007), Children's rights in juvenile justice, CRC/C/GC/10, par 10 en 27.

<sup>11</sup> Jaarverslag 2015, Slachtoffer in Beeld.

procedure law on victims and mediation (mentioned above) and the full criminal procedural law is currently being re-drafted that also may include more restorative justice rules.

## Conclusions

Criminological and brain research show that there is an evidence base for applying juvenile law in the period of young adulthood. International human rights standards point out that states cannot avoid taking into consideration the specific needs of this age group who goes through a very important stage of transition during these years.

At the same time there is a base in the international standards for the use of restorative justice in cases of adolescents and young adult offenders. The use in general is an obligation under EU law (Victim Directive), with strong moral support by the Council of Europe and the United Nations. Diversion and restoration are key principles of comprehensive juvenile justice systems. In many countries modern restorative justice practices started with pilots and projects for children and adolescents in conflict with the law. As they make use of a pedagogical approach and the evolving capacities of children, using restorative practices is an important step towards the development of child-friendly policies and a further implementation of the principles of the Convention on the Rights of the Child. This is embedded in international and European instruments dealing with juvenile justice and restorative justice.

We believe that young adults in conflict with the law should, just like children and adolescents under 18, have the right to a specific approach taking into account their age and stage of development. Where the principles of a children's rights based approach should be applied to young adults, they should be able to receive the merits of juvenile justice systems, guaranteeing easy access to restorative justice practices as well.

Experience shows that young adults are still often a forgotten group, and it appears that a specific approach in cases of adolescents and young adults is needed. It is a need and challenge to develop and implement restorative justice practices further for the age group between 16 and 25 in the coming period. This should include lobby for specific UN rules for young adult offenders, more research on good practices and involving young adults themselves.

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## References

Blaak, M., Bruning, M., Eijgenraam, E., Kaandorp, M. and Meuwes, .S. (2012). *Handboek Internationaal jeugdrecht*, Leiden: Defence for Children International, p. 820 and 910.

- Claessen, J, Zeles, G., Zebel, S. and Nelen, H. (2015). Bemiddeling in strafzaken in Maastricht II, Onderzoek naar de samenhang tussen bemiddeling en recidive, *NJB*, afl. 29, p. 2015-2025.
- Cleven, I., Lens, K. M. E. and Pemberton, A. (2015). *De rol van herstelbemiddeling in het strafrecht, Eindrapportage onderzoek pilots Herstelbemiddeling*, WODC, Intervict - Tilburg University.
- Christie, N. (1977). Conflicts as property, *British Journal of Criminology* (1977) 17 (1): 1-15.
- Crawford, A. and Newburn, T. (2013). *Youth Offending and Restorative Justice, Implementing reform in youth justice*, Routledge.
- Crone, E. A. M. (2008). *Het puberende brein: over de ontwikkeling van de hersenen in de unieke periode van de adolescentie*, uitgeverij Bert Bakker.
- Defence for Children en Unicef Nederland, Jaarbericht Kinderrechten 2016, Leiden/Den Haag.
- Dierx, J. And Van Hoek, A. (eds.) (2012). *Mediation in strafzaken - De praktische toepassing van restorative justice en herstelrecht*, Den Haag: SDU uitgevers.
- Johnstone, G. and Van Ness (eds) (2007). *Handbook of Restorative Justice*, Devon UK: Willan Publishing.
- Junger-Tas, J. and Dünkel, F. (eds) (2009). *Reforming Juvenile Justice*, Dordrecht: Springer.
- Laxminarayan, M. (2014). *Accessibility and Initiation of Restorative Justice*, Leuven: European Forum for Restorative Justice.
- Liefaard, T. (2008). *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards* (diss. Amsterdam VU), Antwerp/Oxford/Portland: Intersentia.
- Pruin, I. and Dünkel, F. (2015). *Better in Europe? European responses to young adult offending*, Universität Greifswald.
- Shapland, J., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008). *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*, Ministry of Justice Research Series 10/08, Centre for Criminological Research University of Sheffield.
- Sherman, L. and Strang, H. (2007). *Restorative justice: the evidence*, London: the Smith Institute.
- Steinberg, L. (2009). 'Adolescent Development and Juvenile Justice', *Annual Review of Clinical Psychology* 2009-5, p. 459 – 485.
- Steketee, M., Woerds, ter, S., Moll, M. and Boutellier, H. (2006). *Herstelbemiddeling voor jeugdigen in Nederland, Een evaluatieonderzoek naar zes pilotprojecten*, Utrecht: Verwey-Jonker Instituut.
- UNICEF, *Promoting Restorative Justice for Children* (2013). SRSG on Violence against Children, New York: UNICEF.
- Vanfraechem, I. (2007). *Herstelgericht groepsoverleg: een constructief antwoord voor ernstige jeugddelinquentie* (diss. Leuven), Brugge: die keure.
- Vanfraechem, I. Aertsen, I. and Willemsens, J. (eds.) (2010). *Restorative Justice Realities, Empirical Research in a European Context*, The Hague: Eleven International Publishing.

Walgrave, L. (2000). *Met het oog op herstel, Bakens voor een constructief jeugdsanctierecht*, Leuven: Universitaire Pers Leuven.

Wolthuis, A. (2012). *Herstelrecht, een kinderrecht, Voorstellen voor integratie van herstel*, Den Haag: Boom Lemma uitgevers.