



Access to justice for children

Country fact sheet: **Belgium**¹



Overview

Country size: 30 689 km²

General Population: 11,5 million

Number of Children: 2,56 million
(0-19 years old in 2018)

Date of ratification of the Convention on the Rights of the Child:
15 January 1992

Date of abolition of the death penalty: 10 July 1996

Minimum ages

Minimum age of criminal responsibility ("MACR"): There is no minimum age for criminal responsibility. Under the Belgian system, criminal responsibility starts as from 18 years old.

Age of imprisonment: 18 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Belgian legal system is based on the civil law system.

Specialisation of the system

Belgium provides for several specialised institutions and professionals including:

- Child prosecutor's office / child prosecutors
- Child courts / child judges
- Child social work services / child social workers
- Child probation services / child probation officers
- Specialised units in hospitals

Child-specific legislation

The child justice system in Belgium concentrates on child protection rather than punishment. The laws governing this are enacted on a federal level, and through Community Decrees.

- *Federal law:* The Belgian Constitution contains a provision that children are entitled to have their moral, physical, mental, and sexual integrity respected and be protected from discrimination. In addition, articles of the *Judicial Code* address children's courts and various codes within Belgium's criminal law (*Youth Protection Act of 1965* as modified by the *Act of 15 May 2006*, *Criminal Instruction Code*, and *Criminal Procedure Code*), address children in contact with the law. The *Law of 1 March 2002* is relevant regarding the temporary placement of minors who have committed an offence. Federal law defines delinquent behaviour, sets forth measures to take in relation to said behaviour, and regulates the process of children involved in the justice system.
- *Community Decrees:* Various decrees have been entered separately by the French, Flemish, and German speaking Communities. These address matters such as help for child victims, youth assistance, child delinquency, youth and child rights policy, and child protection. The Flemish Community created the Flemish Office of the Children's Rights Commissioner and the Flemish and French Communities have adopted decrees on child protection (Flemish Community – Decree dated 7 March 2008 on special assistance to youth; and French Community – Decree dated 4 March 1991 on youth assistance). The Community Decrees regulate the implementation of the federal law, including legal measures and institutions that provide services to children.

¹ The Information used to compile this fact sheet is based on responses to the questionnaire received in February 2020.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings is transposed in Belgian law and the *Youth Protection Act of 1965*, *Criminal Instruction Code*, and *Criminal Procedure Code* have been amended accordingly.

Cross-cutting safeguards

- Belgium has a separate justice system for children below 18 years old. Individuals who are at or above 18 years and who are alleged to have committed an offence while below 18 years, will be treated as if they were still children. Acts which qualify as “offences” will be heard before the Youth Tribunal or Child Court.
- The parents or the legal guardian of children should be present during all stages of the proceedings. See *Youth Protection Act of 1965*, Article 51.
- Generally, children have the right to effective participation during all stages of the proceedings. However, there is an exception if the child is below 14 years old and he/she is not accompanied by a parent, a tutor, or a person having custody. In this case, the child will be entitled to attend hearings only for the instruction, and the judgement; or when he/she is requested to attend in person or assist as a witness. See *Youth Protection Act of 1965*, Article 52ter.
- Trials are public, but the judge can decide to order a “huis clos” or “behind closed doors” to preserve the child’s privacy. This is assessed on a case-by-case basis. See *Youth Protection Act of 1965*, Article 57.
- Equal treatment and protection from discrimination is guaranteed by the Belgian Constitution.

Specific Procedural Measures

- Belgian law foresees that children who have been in detention (public youth protection institutions or hospitals), will be under the Child Court’s surveillance until they reach 18 years of age. The surveillance may be performed by the competent social service. See *Youth Protection Act of 1965*, Article 42.

- Divestment procedures (“*Procédure de dessaisissement*”), which operate to refer a child out of the Child Court, may also be used for children over 16 years old. If the Child Court determines that custody, preventative, or educational measures would be inadequate, it may send the case to the criminal court. The Child Court does not make a determination about the child’s guilt. The Child Court must order a social study and psychological assessment of the child before divesting itself and must verify that protection-related measures have already been imposed on the child or that the alleged facts present a certain degree of seriousness (e.g., rape or torture). See *Youth Protection Act of 1965*, Articles 57bis and 125.

Diversion and alternatives to detention

- Belgian law requires detention of children to be a measure of last resort, applied for the shortest, appropriate, period of time. See *Law of 1 March 2002 on the temporary placement of minors who have committed an offence*, Article 4.
- Diversion may be initiated at the prosecution-level, where the prosecutor may mediate or drop the case while issuing a written warning. Diversion may also occur at the court-level. See *Youth Protection Act of 1965*, Articles 45ter and 45quater.
- Children with mental illness may be placed in a closed institution if no alternative and appropriate treatment exists, and if the child puts his/her health and security at risk or represents a serious danger to the life or integrity of others. Fees associated with placement in a closed institution will have to be paid by the child or his/her parents or guardians unless they cannot afford to. See *Youth Protection Act of 1965*, Article 43.
- There are several alternatives to detention, including a child staying with a legal guardian, surveillance by the social services, or required work hours. During the sanction phase a judge can decide among a wide range of sanctions, including (i) restorative offer, (ii) project proposed by the child, (iii) assistance while staying in his/her living-environment, (iv) placement in open facility and, as last resort, (v) placement in a closed facility. See *Youth Protection Act of 1965*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May, 2020, Belgium has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Belgium for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Belgian law provides several rights to victims and witnesses, but they are not child specific. These include the right to legal assistance in all phases of the criminal

proceedings, right to have one's parents/legal guardians present during proceedings, right to avoid contact with the offender, right to psycho-emotional and other assistance, right to be treated with dignity and compassion, right to be informed in a manner he/she can understand, and the right to be heard and to express views and concerns,

- The French community has additional protections for child victims and witnesses, including help for child victims of mistreatment. See *Articles 35, 51 and 122 Decree dated 18 January 2018 on the Code for youth aid prevention and protection* and *Decree dated 12 May 2004*.

Focus on status offences

As detailed below, status offences for children in Belgium are treated in the following manner:

- Disobedience, behaving badly with parents or at school, and being beyond the parent's control – If the matter cannot be addressed by measures implemented by the parents or the school, and the child's health, security, morality or educational conditions are put at risk, the public prosecutor can request the Child Court to take educational assistance measures. These measures include: (i) surveillance of the child; (ii) educational or medical instructions from an educational orientation or mental health centre; (iii) regular attendance to an ordinary or specialized establishment; and (iv) exceptionally, placement in an appropriate establishment.
- Roaming the streets – If this is an offence under municipality law, the child will be sanctioned directly by the municipality.
- Romantic Relationships between peers – The age of sexual majority is 16 years old. If two children below the age of sexual majority have a sexual relationship, with or without consent, both children are committing an infraction and the Child Court may impose a measure on both of them.

Sanctions exist for parent/guardians but not for children for offences such as truancy, running away from home, and begging.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of the non-governmental organisations (NGOs) include aiming to ensure that justice is made more accessible and understandable to children and providing trainings to professionals working in the child justice sector (including training on restorative justice). A list of relevant NGOs will be made available upon request.