



# Access to justice for children

## Country fact sheet: **The Netherlands**<sup>1</sup>



### Overview

**Country size:** 41 543 km<sup>2</sup>

**General Population:** 17,2 million

**Number of Children:** 3,8 million (under 20 years)

**Date of ratification of the Convention on the Rights of the Child:**  
6 February 1995

**Date of abolition of the death penalty:** 1870 (1983 constitution abolished the option of reintroduction)

### Minimum ages

**Minimum age of criminal responsibility ("MACR"):** 12 years

**Age of imprisonment:** 12 years

**Age until juvenile justice legislation is applied:** 18 years

### Type of legal system

The Dutch legal system is based on a civil law system.

### Specialisation of the system

The Netherlands provides for several specialised institutions and professionals including:

- Child police stations/ units / child police
- Child court / child judges
- Child social work service / child social workers
- Child legal aid / child lawyers and paralegals
- Child probation service / child probation officer
- Child Care and Protection Board (*Raad voor de kindbescherming*)

### Child-specific legislation

The Constitution of the Netherlands does not contain any articles specifically referring to children. However, the following child specific legislation exists:

- [The Child and Youth Act](#) – provides for specialized and preventive care and support by municipalities for children with mental health problems and other disorders.
- [Dutch Criminal Code](#) – includes provisions addressing criminal responsibility of children and punishments for crimes against children. [English version](#).
- [Dutch Code of Criminal Procedure](#) – contains provisions for procedural safeguards for children in contact with the law throughout all stages of the criminal proceedings. [English version](#).

The [Convention on the Rights of the Child](#) is directly applicable in the Dutch justice system.

<sup>1</sup> The information used to compile this fact sheet is based on the 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 suspected or accused persons in criminal proceedings was transposed thanks to the *Act of 15 May 2019* amending the *Code of Criminal Procedure* and the *Surrender Act*.

## Cross-cutting safeguards

- Children above the minimum age of criminal responsibility (MACR) cannot be prosecuted for crimes allegedly committed while they were below MACR. Children aged 16 or 17 may be tried as adults, but lifelong imprisonment cannot be imposed. See *Criminal Code, Articles 77a, 77b and 77c*.
- Children have the right to free legal assistance at all stages of criminal proceedings. However, this right does not apply if: the child suspect has not been detained; the child suspect is at home and is summoned by letter; the child suspect is detained after 8 p.m. in the evening and does not have to report for questioning until the following day; and a child under the age of twelve is being questioned by the police. See *Code of Criminal Procedure, Article 489*.
- Children have the right to have their parent or legal guardian present at all stages of legal proceedings, however, their presence can be denied in certain circumstances by the Public Prosecutor. See *Code of Criminal Procedure, Articles 488aa, 488ab, 491a, 493a, and 496*.
- While proceedings involving children are normally behind closed doors, there are certain exceptions. These include granting access to the victim or the victim's next of kin to attend the hearing or finding that the importance of the public nature of the trial outweighs the importance of protecting the child's privacy. See *Code of Criminal Procedure, Article 495b*.
- Equal treatment and the protection from discrimination is guaranteed by the Dutch Constitution.

## Special procedural measures

- The Child Care and Protection Board carries out a multi-disciplinary individual assessment of the child. The Child

Protection Board submits a recommendation to the court for the measures to be implemented for the child. The recommendation submitted by the Child Protection Board must be supported by at least one behavioural expert. See *Criminal Code, Sections 77o, 77w, and 77wb*.

- *Bureau Halt* is a Dutch organization with a national network of offices which aims to prevent and combat child crime. *Halt* is also responsible for the enforcement of alternative punishment given to children under 18. In some cases, police may decide to send a child to *Bureau Halt*. With a *Halt* punishment, children can rectify what they have done wrong, without having a criminal record.
- Another remedial measure may exist through the Child Protection Council (*Raad voor de Kinderbescherming*). Police inform the Child Protection Council as soon as a child has been arrested. The Council may conduct an investigation and visit the child at the police station. The Council drafts a report and advises what punishment, if any, should be imposed. This report is provided to the public prosecutor and to the court.

## Diversion and alternatives to detention

- Detention of a child should be used as a last resort and for the shortest period of time. See *Code of Criminal Procedure, Articles 67a and 493*.
- As an alternative to post-trial detention for children, three main penalties are used. These include child detention, community service and fines. Community Service is performed through the Child Protection Council.
- As described above, the *Halt* penalty is an intervention tailored to the offence and to the child. A *Halt* penalty ensures that young people learn to take responsibility for their actions and is considered a restorative justice-based measure.
- Children have the right to be detained separately from adults. See *Code of Criminal Procedure, Article 488aa*.
- All criminal punishments (including alternatives to detention) are registered in the justice records.

# Child victims and witnesses in criminal proceedings

## Implementation of EU Directive 2012/29

**EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime has been transposed into Dutch law by the Act of 8 March 2017 implementing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards for the rights, support and protection of victims of crime and replacing the Framework Decision 2001/220/JHA.

## Cross-cutting safeguards

- There is no explicit right to privacy for child victims or witnesses, however, the privacy interests of victims must be considered in press releases; the victim should be informed, and the press release should not contain any victim identification data.
- Procedural safeguards and rights for victims included in Dutch law include the right to free legal assistance, right to an individual assessment, right to participate in the proceedings and decision-making process, right to be informed in a manner he or she can understand, right to avoid contact with the offender, and right to protection during legal proceedings.

## Focus on status offences

Failure to attend school regularly may result in a judge sentencing a child, age 12 or older, to community service or a suspended prison sentence of up to 1 month. In addition, the child's parents may be held criminally liable and fined.

A child who is in possession of alcohol will also be dealt with through the criminal justice system.

A child who is begging may be dealt with through the social welfare system and child protective services may become involved.

## Other relevant information

*Civil Society* – There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include providing free legal advice to children and young people and working to reintegrate children after their release from detention. A list of relevant NGOs will be made available upon request.

*Protection from Discrimination* – The Dutch Constitution states that all people should be treated equally under the law and prohibits discrimination based on religion, belief, political opinion, race, gender or on any other ground. Furthermore, as the Convention on the Rights of the Child is directly applicable in the Dutch justice system, children are protected from discrimination pursuant to Article 2 of the CRC.

*Treatment of International Treaties* – Article 94 of the Dutch Constitution states that treaties have a direct effect in the Netherlands and can be invoked by individuals (including children) where treaty provisions accord individuals direct rights.