Young Adults in the Justice System: The Interplay between Scientific Insights, Legal Reform and Implementation in Practice in The Netherlands

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Abstract
In recent years, there has been increased attention for the position of adolescents and young adults in the justice system. The Netherlands implemented the Act on Adolescent Criminal Law in 2014, making it possible to sentence young adults up to the age of 23 at the time of the offence as juveniles. This article addresses the most recent Dutch reforms in order to identify key challenges to consider when accommodating young adults in the justice system. It is aimed to highlight the important lessons to be learned from the Dutch experience with a flexible approach to sentencing adolescents and young adults.

Keywords
adolescent development, adolescents, children’s rights, juvenile justice, sentencing

Introduction
In recent years, age limits in juvenile justice have attracted increased attention from academics as well as from international organisations, national governments, policy makers and civil society organisations (see, for example, Cipriani, 2009; CRC Committee, 2019; McDiarmid, 2013). This attention concerns both the minimum age of criminal responsibility (MACR) and the upper age limit of the juvenile justice system. Research into the neurological as well as the psychological development of adolescents has shown that legal age limits do not always align with the capacities of adolescents to take responsibility for offending behaviour (Loeber et al., 2012a). In most countries, the upper age limit for children to be dealt with in the juvenile justice system coincides with the age of majority (i.e. mostly 18 years of age; CRC Committee, 2018), whereas the MACR differs...
substantially per country and even within countries (see Cipriani, 2009). Yet, recently, some countries have decided to make changes to the applicable upper age limits, either to better accommodate adolescents in the transition from childhood to adulthood in the justice system (with reference to insights from developmental or neurological research), or to apply adult criminal law to juveniles (e.g. 16- or 17-year-olds) as part of a more repressive approach towards juvenile delinquency (see, for example, the Juvenile Justice (Care and Protection of Children) Act of 2015 in India and similar debates in Brazil).3

One of the countries that has implemented changes regarding the upper age limit of the juvenile justice system is the Netherlands. Under Dutch criminal law, the possibility to apply juvenile sentencing to young adults from the age of 18 up to 21 already existed, but in 2014 the upper age limit was extended to the age of 23 (Act on Adolescent Criminal Law [Wet adolescentenstrafrecht]; article 77c of the Dutch Criminal Code (DCC)). The possibility to sentence 16- and 17-year-olds under adult criminal law, which has existed since the introduction of the juvenile justice system at the beginning of the 20th century, was retained in article 77b of the DCC. The Act is based on the idea of providing maximum flexibility in sentencing adolescents just below and above the age of 18 (see Dutch House of Representatives, 2012: 1–2) and its core notion was to approach adolescents as a ‘separate’ target group in the Dutch justice system (Dutch House of Representatives, 2012: 1). As a result, the Netherlands has developed a flexible system for the sentencing of 16- to 23-year-olds by making available the sentences from both the juvenile, and the regular ‘adult’ criminal law system, for all individuals in this age cohort.

To sketch the context: in the Netherlands, like in other Western European countries, juvenile delinquency rates have declined sharply over the past 10 years (see also McAra and McVie, 2018: 74, 77–79). Since 2007, police statistics show a drop of around 65 per cent in the number of juvenile suspects between the ages of 12 and 18 at the time of the alleged offence. This drop can be observed across all types of crimes, among both boys and girls and among juveniles with different ethnic backgrounds (Berghuis and De Waard, 2017; Smit and Kessels, 2018). In 2017, a total of 19,000 juveniles were registered by the police as juvenile suspects (Smit and Kessels, 2018). For both 15- to 17-year-olds and 18- to 24-year-olds, 20.8 persons per 1,000 were registered as suspects in 2017. Adolescents in these age categories are therefore represented most in the crime statistics, compared with all other age groups (Smit and Kessels, 2018).

Hence, the identification of adolescents as a separate group within the criminal justice system was felt necessary because of their overrepresentation in crime statistics (see Loeber et al., 2013). In addition, recent scientific insights concerning adolescent (brain) development played an important role (Dutch House of Representatives, 2012: 1–2, 12–13; Kempen, 2014: 2; Uit Beijerse, 2016: 5). These insights made it clear that development into adulthood is not completed by the age of 18, but rather continues until (roughly) the age of 25. The Dutch legislator recognised the relationship between the incomplete development of adolescents and (a large share of) criminal offences committed by this group, the so-called ‘adolescence-limited crime’ (Dutch House of Representatives, 2012: 12–13; see also Moffitt, 1993). However, while it has been noted that the legislative reforms of 2014 ‘make the Dutch system a leader in raising the age’ (Matthews et al., 2018: 7), compared with other countries in Europe, it turns out in practice that juvenile criminal
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sentencing is rarely applied to young adults (Liefaard and Rap, 2018: 370; Pruin and Dünkel, 2015: 62). Moreover, research has shown that among professionals in the criminal justice system, no uniform approach exists as far as the sentencing of adolescents is concerned (see, for example, Mijnarends and Rensen, 2017a: 60–62; Reijntjes-Wendenburg, 2015: 212, 214; Weijers, 2018).

The law reform in the Netherlands is in line with the aforementioned growing awareness that the position of adolescents in transition from childhood to adulthood requires special attention. In this article, the Dutch reforms and implications for practice are discussed in order to identify key challenges that ought to be considered when adapting the criminal justice system to the needs, interests and rights of adolescents, while not disregarding the interests and rights of others (e.g. victims, society). To provide the background to the recent legal changes, first the scientific insights that have led to the increased awareness around the transition from childhood to adulthood are described. This section is not aimed at providing a comprehensive and detailed analysis of the insights from neuroscience regarding the developments taking place in adolescence, but rather serves to provide general background information emanating from this vast field of study. This is followed by a description of the increased attention for this issue at the international level of human rights law, standards and policies. Subsequently, the focus is shifted to the Netherlands through an analysis of the legal amendments made and their implications for practice. The article concludes with a discussion of some key issues arising from the Dutch example, which relate to the consequences of a flexible approach to the sentencing of young adults. Ultimately, the question is: what can be learned from the Dutch experience for the accommodation of young adults in the justice system?

Scientific Insights into Adolescent Development

It is well-known that the prevalence of offending and delinquent behaviour increases during adolescence. A peak in crime rates occurs around the ages of 15 to 19 and then declines in the early 20s (the so-called ‘age–crime curve’). Research shows that 40 to 60 per cent of juvenile delinquents stop offending by early adulthood (Loeber et al., 2013). For most juveniles and young adults who are in conflict with the law, delinquent behaviour is a one-off incident and not a persistent way of life. They will ‘age out’ of delinquent behaviour and do not display severe personality disorders (Casey et al., 2017). These figures also show that offending does not necessarily stop at the age of legal majority (in most countries, and in the Netherlands, 18 years). Neurobiological and psychological research has shown that adolescent development, both cognitively and emotionally, also continues after the age of 18.

In adolescence, the abilities and skills of individuals develop significantly. Logical reasoning skills and abstract reasoning develop increasingly and formal intellectual abilities (such as IQ) are mostly matured around the age of 16 to 18. Although IQ does not change notably after the age of 18, the reasoning skills of adolescents do not yet function at the same level as those of adults. In addition, in recent decades, a vast body of research evidence has indicated that a ‘lesser maturity of adolescents’ decision-making capacities may be linked to brain structures that also have not yet reached adult maturity’ (Weijers and Grisso, 2009: 64). Adolescents differ in their ability to make judgements as a
Consequence of less matured emotional and social skills, which makes them, for example, more vulnerable to peer pressure, less able to oversee long-term consequences of choices and perceive risks differently; in addition, they have less life experience and therefore less knowledge to draw from when making decisions (Loeber et al., 2012b; Scott and Steinberg, 2008b; Steinberg and Schwartz, 2000). Moreover, the psychosocial immaturity of adolescents influences the manner in which decisions are taken. This means that even though the formal cognitive capacities of adolescents are mature, their decision-making might not be due to deficiencies in their social and emotional capabilities to make decisions (Cauffman and Steinberg, 2000; Scott and Steinberg, 2008b; Steinberg and Scott, 2003). Psychological functions that are relevant in the context of criminal culpability and responsibility, such as inhibition (constraining impulses) and the suppression of interferences (risk-taking behaviour), are not fully developed until after the 20th year of life (Doreleijers and Fokkens, 2010: 24). The higher executive functions of the brain, such as planning, verbal memory and impulse control, are only fully developed around the age of 25 (Loeber et al., 2012b).

As a consequence of the characteristics of adolescent development as outlined above, adolescent decision-making is influenced by the lesser capability to control impulses, a higher level of risk-taking behaviour and higher susceptibility to peer pressure (Steinberg, 1999, 2011; Steinberg and Cauffman, 1996). Impulsivity gradually declines until the age of 30. Sensation seeking increases between the ages of 10 and 15 (Steinberg, 2011). Hormonal and physiological changes taking place in the second half of adolescence partly explain the inadequate impulse control and the lack of systemic behaviour among adolescents and young adults (Steinberg and Cauffman, 1996; Steinberg and Scott, 2003). Research in which neuroimaging techniques have been used, has shown that adolescents’ behaviour is led by the part of the brain that responds to direct rewards, the nucleus accumbens. On the other hand, the brains of individuals over 25 years of age show more activity in the amygdala and the prefrontal cortex when they are in dangerous situations, which means that they take into account the long-term consequences of decisions (Doreleijers and Fokkens, 2010). Adolescents also engage in more risk-taking behaviour (such as drug use, violence, risky sexual behaviour and risk-taking while driving), which can bring them in conflict with the law. Research suggests that adolescents take more risks not because they do not perceive them, but because they invariably underestimate the risks attached to certain behaviour, particularly in the long-term. Older adolescents are better able to assess risks and look ahead to see the likely consequences of different behavioural choices (Greene et al., 2000; Schmidt et al., 2003; Steinberg and Cauffman, 1996; Steinberg and Scott, 2003). Moreover, adolescents show an increased interest in socialising with their peers (Steinberg, 2011) and acceptance from peers is of great importance to them (Crone and Dahl, 2012; Warr, 2002). Susceptibility to peer pressure peaks sometime between the ages of 12 and 16, and declines gradually thereafter (Scott and Steinberg, 2008b; Steinberg and Cauffman, 1996). The tendency to take risks is not only a consequence of spending more time with friends, but also of the inability to resist peer pressure and sensitivity to rewards such as peer approval and the fear of being excluded by peers (Blakemore and Mills, 2014; Gardner and Steinberg, 2005; Steinberg, 2011). Research shows that conformity to peers is especially high with regard to antisocial behaviour and among boys (Steinberg, 1999). Recently, McGloin and Thomas (2019) have concluded on
the basis of a review of existing literature that there is quite compelling evidence that peers play a causal role in delinquent behaviour.

Indeed, insights from neuroscience show that different regions of the adolescent brain develop along distinct timelines, resulting in asymmetry among different brain systems. This means that emotional centres develop relatively early and the regions that regulate, for example, self-control lag behind. As a consequence, in certain situations, the regions of the brain that promote rational behaviour can be overpowered by the emotional centres of the brain (Casey et al., 2017). This has been called the maturational gap or maturational imbalance between the brain’s socio-emotional reward system and the cognitive control system (Albert et al., 2013; Scott et al., 2016). Another way in which these asynchronous developments have been described is as a ‘dual-systems model’ of adolescent brain development, ‘with an early maturing, limbic, affective-motivational system and a relatively late developing, cortical, control-system’ (Van Duijvenvoorde et al., 2016: 409).

These findings have implications for crucial criminal law concepts, such as culpability and responsibility, in the context of adolescent development. Adolescents have increasingly been singled out as a specific category in the justice system, with reduced culpability and responsibility due to their immaturity and thus – as a category – deserving more lenient punishment than their adult counterparts (Scott and Steinberg, 2008b; Steinberg and Scott, 2003). Indeed, as mentioned earlier, these findings have started to stimulate recent developments with regard to the position of adolescents in the justice system in the international arena.

**International Attention for Adolescence in Law**

Increased awareness has been noted, both in the United States and in Europe, for the position of 18- to 25-year-olds in the justice system. Matthews et al. (2018: 1) speak of ‘a developmentally distinct group worth special treatment at the hands of the justice system’. They refer to several arguments for this proposition: statistics indicating overrepresentation of young adults in arrest and incarceration rates; statistics indicating higher post-prison recidivism rates for this group compared with other age cohorts; neurobiological and psychological findings similar to those mentioned in the previous section; and finally sociological research regarding the prolonged transition into adulthood, with milestones such as marriage and employment being attained at a later age than in the past (Matthews et al., 2018: 1–2).

Since 2005, interesting developments have taken place in the United States, where the Supreme Court has issued several judgements relating to the special position of minors in the justice system (Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 560 U.S. 48 (2010), J.D.B. v. North Carolina, 564 U.S. 261 (2011), Miller v. Alabama and Jackson v. Hobbs, 567 U.S. 460 (2012)). These judgements were based, to a large extent, on factors related to the development of adolescents as demonstrated by scientific research. Based on these factors, the Supreme Court reinforced the developmental perspective on the culpability of, and punishment suitable for, adolescents (Cohen et al., 2016: 774). While these judgements concerned minors, it has also been noted that ‘[m]ore recently, reformers are also making the case for a rehabilitative, developmentally informed
approach to young adult offenders’ (Cohen et al., 2016: 787). Matthews et al. (2018) discuss recent justice reforms regarding young adults, including proposals of several state legislatures in the United States to raise the age of juvenile jurisdiction for most offences. This indicates that the sentencing of young adults under the adult criminal justice system is currently being reconsidered as ‘sanctioning them like fully mature adults could have life-long consequences that harm the youth and communities and impinge upon public safety’ (Matthews et al., 2018: 2–3).

In Europe, more extensive experience has already been obtained with a specialised treatment of young adults in the juvenile justice system. For example, in Germany, the handling of cases of young adults in the juvenile justice system is a long-standing and common practice, and the jurisdiction of the juvenile court is extended to young adults up to the age of 21 (Dünkel and Heinz, 2017; Pruin and Dünkel, 2015). In Austria and Croatia, young adults who have committed offences before their 21st birthday are also handled by special youth courts (Pruin and Dünkel, 2015: 47, 49). In Austria, the age of young adults is generally recognised as a mitigating factor for sentencing, while in Croatia, it means that juvenile sentences can be applied (Pruin and Dünkel, 2015: 47, 49). Matthews et al. (2018) identified international human rights standards as ‘catalysts’ for European youth justice reforms (p. 6). Indeed, reference to the position of young adults in the juvenile justice system can be found in several of these international instruments.

The United Nations (UN) Convention on the Rights of the Child (CRC) sets out the rights of the child, which, in principle, have implications for ‘every human being below the age of eighteen years’ (article 1 CRC). According to the CRC Committee, the body that monitors the implementation of the CRC and provides interpretative guidance through ‘General Comments’, children who commit offences before their 18th birthday fall under the protection of the CRC, in particular of articles 40 and 37 on juvenile justice, fair trial, sentencing and deprivation of liberty (see Liefraard, 2020). In its original General Comment on children’s rights in juvenile justice (General Comment No. 10), the CRC Committee (2007) ‘notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception’. In the recently amended version of this General Comment (General Comment No. 24), the Committee commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.

This explicit acknowledgement of the importance of scientific evidence is new, although the Committee had already pointed out the developments taking place during adolescence more generally in their earlier work. In the General Comment on the implementation of the rights of the child during adolescence (General Comment No. 20), for instance, the CRC Committee (2016) points out that adolescence is a critical period of transition (para. 11) and that rapid development takes place during this phase (para. 9). With regard to the justice system, the Committee underscores the need for states to introduce comprehensive
juvenile justice policies that focus on rehabilitation and reintegration (para. 88). It should be noted, however, that General Comment No. 20 does not provide a definition of adolescence, but instead focuses on the period between 10 and 18 years of age (para. 5).

In other international instruments, an even stronger endorsement of a special position for young adults in the justice system can be found. Already in 2003, the Committee of Ministers of the Council of Europe adopted a (non-legally binding) recommendation in which it was mentioned that

[r]eflecting 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 to 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 full adults (Committee of Ministers of the Council of Europe, 2003).

In 2008, another recommendation was passed, in which it was stated that ‘[y]oung adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly’ (Committee of Ministers of the Council of Europe, 2008). The Council of Europe has found it to be ‘an evidence-based policy’ to deal with young adults under the juvenile justice system given their prolonged transition to adulthood and the more appropriate and constructive responses that are possible within this system (Pruin and Dünkel, 2015: 37–38). Thus, similar to the developments in the United States, the development of international standards is based on scientific research, too, and builds on examples of specific approaches for young adults at the domestic level. As young adults are found to be less mature and responsible for their acts and can be dealt with more effectively in the juvenile justice system, extending the upper age limit of the juvenile justice system is encouraged in these standards.

**The Netherlands**

**Background and development of the legal reforms**

As mentioned in the ‘Introduction’ section, in the Netherlands, the Act on Adolescent Criminal Law was proposed in 2012 and entered into force in 2014. The core aim of this Act was to provide ‘an effective and offender-oriented manner of sentencing which does justice to the offence that was committed and which takes into account the personal circumstances of the offender, including his developmental phase’ (Dutch House of Representatives, 2012: 2). The legislator sought to increase the flexibility around the age limit of 18 years, which separates the juvenile justice system from the adult (or general) criminal justice system and to make available the sentences from both the juvenile and the adult criminal law system to all individuals ranging from 16 to 23 years of age at the time of the offence (Dutch House of Representatives, 2012: 2; Kempen, 2014). The central notion behind this is that the offender-oriented and pedagogical juvenile justice system is more effective, in terms of reintegration into society and prevention of re-offending, for (some of the) young adults (Dutch House of Representatives, 2012: 1; Van der Laan et al., 2016: 38).
The Dutch proposal to treat adolescents as a specific group in the justice system was not new. Since the 1950s, the idea that young adults could be dealt with more effectively under the juvenile rather than under the adult justice system has been discussed in policy documents. In 1982, the Anneveldt Committee (which was established by the Dutch government to review the juvenile justice system) made comments that were remarkably similar to the discourse surrounding the introduction of the Act on Adolescent Criminal Law. The Committee noted that the sanctioning of juveniles should be based on the recognition that their psychological and social development has not been completed yet – meaning there should be a greater focus on reintegration than in the general criminal justice system (Anneveldt Committee, 1982: 13; Liefaard, 2012: 161). The Committee proposed to apply juvenile sanctions also to young adults up to the age of 24 as this group was responsible for a significant share of criminality, mostly in the form of ‘age-related behaviour’ that they would desist from eventually (Anneveldt Committee, 1982: 15–16). The Committee ‘stressed that the path towards adulthood is a gradual process and as a consequence there is a need for a transitional legal system that serves as a bridge between the juvenile justice system and the adult criminal justice system’ (Liefaard, 2012: 163–164). Through proposing the application of juvenile sanctions to this group, the Committee sought to promote specific facilities for adolescents, in which the flexible execution of the sanctions would be possible (Anneveldt Committee, 1982: 15, 61). The Committee did not itself provide recommendations for the execution of sentences for juveniles and young adults (Liefaard, 2012: 164). While the Minister of Justice at the time agreed with the Committee that young adults between the ages of 18 and 24 form a specific group, a separate justice system was not deemed to be feasible; the existing legal provisions and possibilities for the execution of sentences were assumed to allow for the tailoring of the sanctioning of juveniles and young adults. Thus, these recommendations of the Anneveldt Committee were not implemented (Liefaard, 2012: 164). Nevertheless, over the years, several initiatives have been undertaken in practice (i.e. in the penitentiary system and the probation service) to work more specifically and effectively with young adults. One of these initiatives was the establishment of specific prison departments for vulnerable young adults between 2002 and 2008, aimed at limiting the potential damage of detention and preventing criminal contamination (Liefaard, 2012: 188; Van der Laan et al., 2016: 26). However, these goals were not attained in practice and the departments were eventually abolished.

From the late 1990s until the early 2000s, new interest arose in the causes of and effective responses to juvenile delinquency (Uit Beijerse, 2016: 3–4). Based on the findings of scientific research as mentioned above, it was argued by academics and professionals that young adults should be given a special position in the juvenile justice system (Council for the Administration of Criminal Justice and Protection of Juveniles, 2011: 35; Doreleijers and Fokkens, 2010: 41). Indeed, in 2011, the Secretary of State for Security and Justice introduced his initial proposal for the so-called ‘adolescent criminal law’ [adolescentenstrafrecht]. As mentioned in the ‘Introduction’ section, the proposed legislative changes were based on the overrepresentation of adolescents in crime statistics as well as the emerging scientific insights into adolescents’ (brain) development. This proposal was criticised because the different age limits that were proposed, were not sufficiently
substantiated and the choice for and benefits of a flexible system of age limits were not very well explained (Liefaard, 2011: 2499–2500). The Council for the Judiciary (2012), speaking on behalf of the Dutch judiciary, noted that an unambiguous and coherent view on the juvenile justice system was missing. Similarly, Liefaard noted that there was no clear vision as to what a separate justice system for adolescents should entail, and on which theoretical (and dogmatic) foundations this should be based (Liefaard, 2011: 2502).

Subsequently, a renewed – and final – legislative proposal was presented in which some significant changes were made. In this renewed proposal, presented in 2012, the biological age of the accused at the time of the offence was once more deemed to be indicative (although not decisive) for the sentence to be applied (Dutch House of Representatives, 2012: 19). In the initial proposal, judges were placed under the obligation to justify their decision not to apply juvenile sentences to a young adult between 18 and 23 years of age (Kempen, 2014: 2–3). In the renewed proposal, however, the legislator was explicit in mentioning that young adults will generally be sentenced under the regular, ‘adult’ criminal law provisions and that deviation from this will only take place exceptionally (Dutch House of Representatives, 2012: 19). The general obligation to justify the decision not to apply juvenile sentences to a young adult was thus left out and replaced with a more central role for the public prosecutor during the first phase of the judicial proceedings, which will be further explained in the next section.

This change in approach towards the inclusion of young adults in the juvenile justice system is noteworthy, given the aforementioned idea that the juvenile justice system could be more beneficial to young adults and, as this may reduce recidivism, also to society as a whole. The approach taken by the Dutch legislator is neither very well substantiated nor in line with the research findings that are said to have informed this legislative amendment. Practical considerations, such as the potential increase in the workload of the judiciary and of the reporting agencies (e.g. the probation service), seem to have influenced the changes in the legislative proposal to a greater extent than scientific insights (see, for example, Dutch House of Representatives, 2012: 6). Moreover, it can be questioned to what extent the political will to sentence, as a general rule, every young adult accused according to the juvenile criminal law, really existed. The proposal was framed as being part of an effort to protect society against crime and making it a safer place to live, especially with regard to the punitive elements that were foreseen for the 16- and 17-year-olds (see further below). This rather punitive narrative is likely to have influenced the final outcomes for young adults as well (Liefaard, 2011). The absence of a clear vision on a separate justice system for adolescents also becomes clear when one assesses which adolescents would fall within the scope of this system. According to the explanatory memorandum of the Act, both young adults who commit serious offences or who re-offend and young adults who suffer from mental disorders or intellectual limitations were singled out as a potential target group for the application of the juvenile criminal law (Dutch House of Representatives, 2012: 21–22). However, the Secretary of State also pointed out that the seriousness of the offence and the interests of victims and their relatives may lead to the conclusion that application of juvenile criminal law is not suitable in a particular case (Dutch House of Representatives, 2013: 5). Thus, despite the legislator’s seemingly commendable intentions, the practical and political dimensions seem to have weighed heavily
on the final content and interpretation of the Act on Adolescent Criminal Law. Moreover, the legislator turned out to be rather ambiguous about the specific target group of the Act.

**The Act on Adolescent Criminal Law**

The 2014 Act mainly focused on expanding the scope of the provisions that provide the legal basis for the application of juvenile sentences to young adults. Previously, article 77c DCC allowed for the application of juvenile sentences – based on the personality of the accused or the circumstances under which the offence was committed – to young adults up to the age of 21 at the time of the offence. The Act on Adolescent Criminal Law has extended this age limit to 23. The relevant procedural provisions were not altered by the Act, meaning that juveniles fall under the provisions of juvenile criminal procedural law (i.e. a trial in juvenile court behind closed doors, among others), while (young) adults mostly fall under the provisions of adult criminal procedural law. In practice, this means that juvenile sentences can be imposed on young adults by a regular criminal law court and adult sentences can be imposed on juveniles by a youth court.

With the legislative changes of 2014, the public prosecutor was given an important role in already selecting cases that qualify for sentencing according to the (adolescent) criminal law system during an early phase of the proceedings. To this end, article 63 of the Dutch Code of Criminal Procedure (DCCP) was adjusted to provide the public prosecutor with the possibility to already state his or her intention to request the application of article 77c DCC when ordering pre-trial detention (i.e. within 90 hours after the young person has been arrested and taken into police custody (article 59a DCCP)). In this manner, (behavioural) advice on whether sentencing should take place under juvenile or adult criminal law provisions can be obtained in an early phase and the judge can take this advice into account. Moreover, in such a case, the young adult can be held on remand in a juvenile institution and, as with juveniles, the investigative judge has to investigate whether conditional suspension of pre-trial detention is possible (Kempen, 2014; Liefaard and Rap, 2018).

While the changes mentioned above are the most important ones, the Act on Adolescent Criminal Law resulted in other changes to the (juvenile) justice system as well. For example, juvenile probation services can now supervise young adults, while 16- and 17-year-olds can now be supervised by adult probation services (Dutch House of Representatives, 2012: 45–46). In addition, some juvenile sentences have been modified – that is, hardened – in line with the argument that society should be better protected and interests of victims should be safeguarded sufficiently (Kempen, 2014). This explains why the Act proposed to introduce more punitive responses, such as the provision that courts can no longer only impose a community sentence in cases of serious sexual or violent offences committed by a juvenile (article 77ma DCC) and, at least initially, to raise the maximum duration of juvenile detention for 16- to 23-year-olds from 2 to 4 years. In addition, the legislator decided to allow the juvenile treatment order \[PIJ\-maatregel\] to be converted into an adult treatment order \[TBS\-maatregel\] in the cases of the most serious offences and dangerous individuals (article 77tc DCC). In theory, this means that juveniles can be deprived of their liberty for a very long period of time if not indefinitely, even though both the
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juvenile and the adult treatment orders have to be reviewed periodically by a court (articles 77t and 38d DCC, respectively). The Council for the Administration of Criminal Justice and Protection of Juveniles (2012) was also critical of these legislative changes and concluded that overall, the pedagogical basis would no longer be the leading principle of the juvenile criminal law system in the Netherlands.

**Dutch Adolescent Criminal Law in Practice**

*The application of the adolescent criminal law in numbers*

To assess the practical implications of the amended legislation, it is important to have a look at the number of young adults that has been affected by this law. This is monitored extensively by the Scientific Research and Documentation Centre [Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC] of the Ministry of Justice as well, which has been commissioned by the government to evaluate this law from 2014 until the end of 2019 (see Barendregt et al., 2016, 2018; Prop et al., 2018; Van der Laan et al., 2016, 2021).

As noted in the introduction, the number of young adults sentenced under juvenile criminal law has remained rather low since the entry into force of the Act; it has increased from 1 per cent in 2012 to 5 per cent in 2016 (Barendregt et al., 2018; Van der Laan et al., 2016). The increase is predominantly attributed to the group of 18- to 21-year-olds and does not affect the 21- and 22-year-olds to the same extent. This may have to do with the ambiguity about the target group of this legislation (see also further below). Moreover, professionals may question the suitability of juvenile justice services and institutions for the older group of young adults (see Liefaard, 2011).

The Act has also affected the population of the youth custodial institutions in the Netherlands. In total, 1,434 juveniles and young adults were admitted to a youth custodial institution in 2017. This number has hardly changed since 2013. The vast majority of these young people are in pre-trial detention (1,165/81% in 2017). The number of young adults, who are 18 years or older, has increased, from 51 per cent in 2007 to 71 per cent in 2017. Similarly, the number of young adults in general prisons has decreased significantly; the number of 18- and 19-year-olds decreased by 55 per cent and the number of 20- to 22-year-olds by 39 per cent. These changes have been ascribed to the entry into force of the Act of 2014 and the low number of younger juveniles being held in juvenile detention (Correctional Institutions Service, 2018; Smit and Kessels, 2018).

**The approach of professionals**

In practice, there does not seem to be a uniform approach to applying article 77c DCC by the judicial professionals involved in these cases. Both public prosecutors and judges play an important role in the decision to apply these provisions. As mentioned before, the public prosecutor can already state his or her intention to request the application of the juvenile criminal law in the case of a young adult early in the proceedings. However, research has shown that knowledge of the Act on Adolescent Criminal Law is lacking among
public prosecutors, especially those who work in the area of adult criminal law and who are generally not specialised in juvenile criminal law (Mijnarends and Rensen, 2017a: 61). The public prosecution service has developed a list of indicators that can be used as a basis for the decision whether or not to request the application of juvenile criminal law for young adults (Mijnarends and Rensen, 2017a: 60–61). Criteria that need to be met in order to ask for a juvenile sentence, are that the young adult is still living at home, is going to school, needs support because of mild intellectual disabilities and is open to educational support (Board of Prosecutors General of the Public Prosecution Service, 2018). Both the content of this list and its application in practice can be criticised. As for the content, it is notable that two of the contraindications for requesting the application of the juvenile criminal law are the seriousness of the (alleged) offence and the criminal record of the young adult. Moreover, while the seriousness of the offence is used as a contraindication for requesting the application of juvenile criminal law, public prosecutors are also reluctant in requesting the application of the juvenile criminal law for less serious offences, as the investment of an advisory rapport by the probation service is seen as disproportionate in these cases (Mijnarends and Rensen, 2017a: 61). This leads to the question, which young adults are then considered as the target group for the application of the juvenile criminal law system by the public prosecution service? This lack of clarity in practice is not surprising, given the ambiguity surrounding the legislator’s proposals in this regard.

In addition, the list of indicators seems to be ‘hardly used’ in practice, with public prosecutors mostly relying on their intuition and experience (Mijnarends and Rensen, 2017a: 61). Intuition seems to guide public prosecutors in stating their intention to request the application of juvenile criminal law at an early stage in the process, instead of general knowledge of the level of development of adolescents. These requests are thus perhaps not made as objectively as the legislator had envisaged. This might be a reason why the group of 22- and 23-years-olds in practice hardly falls within the scope of the adolescent criminal law, since these young people have a greater chance of living by themselves and working instead of being in education. Moreover, for these young people, educational support within the family is not suitable anymore. It has therefore been questioned whether young adults in the criminal justice system are currently receiving the attention they deserve (Mijnarends and Rensen, 2017a: 62). One of the ways in which this attention could be increased is by considering a more automatic manner in applying juvenile criminal law to an accused in this age category (Mijnarends and Rensen, 2017a: 62). This would be in line with the original proposal to, in principle, apply juvenile sentences to young adults, unless the court were to judge otherwise.

The dominant position of the public prosecutor in practice has also been noticed, with judges often following the public prosecution’s lead with regard to the application of the juvenile criminal law system (Mijnarends and Rensen, 2017a: 63). In the end, however, the decision to apply the provision of article 77c DCC rests with the courts. With regard to the application of juvenile criminal law to young adults, Reijntjes-Wendenburg (2015) has noted that the grounds on which this decision can be based (i.e. the personality of the accused or the circumstances under which the act was committed) grant the judge much freedom to reach a decision. Moreover, the interpretation of these criteria varies among judges. With regard to the personality of the accused, judges are most often guided by
expert opinions. If such an opinion is not provided, the judge’s observations during the hearing – concerning the impression of the development of the accused, and also the statements made by him or her, his or her attitude towards the alleged offences and the seriousness of the alleged offences – seem to be crucial. However, ultimately, it is difficult to determine exactly what underpins the decision of courts regarding the application of article 77c DCC. Judges are not required to fully justify these decisions – and in fact, often do not provide well-reasoned judgements, making it difficult to distinguish the factors determining these decisions (Reijntjes-Wendenburg 2015; Struijk, 2017).

Discussion

The experience in the Netherlands as described above gives rise to interesting questions with regard to the adaptation of the criminal justice system to adolescents in transition from childhood to adulthood. Admittedly, such an adaptation is not an easy task, as it must take both the interests of the adolescents and the interests of society as a whole into account. The Dutch legislator seems to have tried to resolve this by taking a flexible approach, providing some broad guidelines, but leaving much discretion to the professionals dealing with adolescents in practice.

However, the assessment of practice in this article has established that more extensive guidance from the legislator is called for, as it is not clear which adolescents qualify for the application of juvenile criminal law, and how the selection of adolescents can be justified (De Jong, 2015; Mijnarends and Rensen, 2017b). From the analysis it becomes clear that both adolescents displaying severe problems in various life domains and adolescents who do not display any other problems, besides committing the alleged offence, are not found to be eligible for a special juvenile treatment and sentence. Moreover, the target group of young adults qualifying for juvenile sentences as indicated by the legislator does not seem to be in line with the scientific knowledge that supposedly informed the legislative reforms; that is, serious offences and recidivism are not typical for ‘adolescence-limited crime’. Indeed, the legislator’s lead has not necessarily been followed in practice, with professionals often seeing serious offences and recidivism as a contraindication for applying juvenile criminal law. The unclarity surrounding the target group can also be seen in the low number of young adults that has been sentenced according to the juvenile criminal law so far.

Moreover, no consensus seems to exist on this issue among professionals. This problem is amplified by the fact that the decision-making process led by the prosecution service is not transparent enough (De Jong, 2015; Mijnarends and Rensen, 2017a, 2017b). Different assessment and screening tools are used by different actors, and considerable room for discretion is given to professionals in the application of the Act on Adolescent Criminal Law (Prop et al., 2018). Both the lack of legislative guidance and a lack of sufficient knowledge regarding adolescent development and of the juvenile sentences among judicial professionals presumably play a role in this regard (Mijnarends and Rensen, 2017a, 2017b; Weijers, 2018). This raises the question whether the proposed ‘tailored approach’ in practice results in a lack of legal certainty and perhaps even a lack of legal equality for adolescents (see also Prop et al., 2018: 35).
In addition, the seriousness of the offence plays an ambiguous role in the decision to apply juvenile sentences to young adults. On one hand, the seriousness of the offence is said to be used – and indeed, often seems to be used in practice – as a contraindication for the application of juvenile sentences to young adults (Weijers, 2018). On the other hand, research has shown that in practice, juvenile criminal law is nonetheless applied relatively often by the Dutch courts in cases concerning serious offences committed by young adults (Prop et al., 2018; Weijers, 2018: 742–743). This issue relates to the question of criminal responsibility of adolescents and proportionality of sentencing: should young adults be held fully criminally responsible when they have committed a serious offence and therefore treated as an adult? And how should the seriousness of the offence be taken into account in sentencing? Indeed, an approach in which the seriousness of the offence is used as a contraindication for the application of juvenile sentences to young adults does not seem to be in line with the large body of research indicating that young adults are not yet fully matured (see above). For this reason, in Germany, alleged serious offending by young adults is in 90 per cent of the cases dealt with in the juvenile justice system (Dünkel, 2014; Dünkel and Heinz, 2017). This is also explained by the fact that in the German adult criminal justice system less possibilities exist to deviate from minimum and maximum sentences, which makes sentencing more restricted for young adults compared with sentencing in the juvenile justice system. The latter is deemed more proportional for young adults (Dünkel and Heinz, 2017; Dünkel and Pruin, 2010: 1571). In the Netherlands, it was decided not to change the maximum detention sentences under the juvenile criminal law and it remains unclear to what extent this influences the limited application of juvenile sentences to young adult accused. Lynch (2018) has argued that in the case of a lack of a principled response to serious, violent offending by young people, punitiveness can thrive. She describes how the dominant approach, at least in Western common law countries, is to waive the young person to the adult criminal justice system where exponentially more punitive sentences may be imposed (Lynch, 2018: 155–156). As an alternative to this approach, she recounts how in New Zealand the number of waivers of young persons to adult courts reduced significantly after raising the maximum custodial sentence possible under juvenile law. This is in line with European research, which showed that countries either have low maximum penalties for juveniles (below age 18) and apply, in certain circumstances, adult criminal sanctions to juvenile defendants, or they have sanctions for juveniles that are not all too different from what their law provides for adults (Killias et al., 2012: 315).

In addition to raising the maximum custodial sentence possible under juvenile law, Lynch also points out the significance of clear legislative maxima set on the custodial sentences that may be imposed on young accused (Lynch, 2018: 169). In the Netherlands, the seriousness of the offence plays an ambiguous role in the decision-making process and it is recommendable that the legislator takes a clear and principled stance towards this issue – taking account of the relevant scientific evidence and international standards – in order to maintain legal certainty for young adults who are in conflict with the law.

At this point, an in-depth study of the notions underlying the Dutch (juvenile) criminal justice system, relating to criminal culpability and responsibility, proportionality and the
aims of the juvenile justice system, would be beneficial. This is especially important in light of the fact that no considerable changes can be observed in practice. On a positive note, the attention for and discussion surrounding the legal amendments are constructive and, potentially, beneficial to adapting the criminal justice system further to adolescents. First, this attention means that professionals are more aware of the specific characteristics of this age group and the developmental phase they find themselves in. Second, in the cases where juvenile sentences are applied to adolescents, this group can potentially benefit from the reintegrative aims of these sentences. This means that stigmatisation can be avoided to a larger extent and effective interventions – that connect to the developmental level of the adolescent and facilitate a smooth transition into adulthood – can be applied to increase resocialisation and prevent re-offending (Loeber et al., 2012a; Scott and Steinberg, 2008a). Third, the thorough monitoring and evaluation of the legal reforms that is being carried out is promising. The recidivism rates of young adults sentenced under juvenile criminal law are being closely monitored (Van der Laan and Leertouwer, 2014: 18). When these results are available, more solid claims can be made regarding the effectiveness of the sentences that can be applied to adolescents in the Netherlands.

Conclusion
This article reviewed the legislative reforms in juvenile justice with regard to the inclusion of young adults in the Dutch system. These reforms were directly informed by scientific insights concerning the development and maturation of adolescents. To date, however, the legislative changes have not led to fundamental changes in the sentencing of young adults. Therefore it can be questioned whether the objectives of the Dutch legislator are and will be realised by the changes made in the legislation. When taking stock of current scientific knowledge, the application of juvenile criminal law as a default option for young adults seems recommendable, as was originally proposed and has also, to a certain degree, been advocated internationally. However, in law and practice, it was eventually transformed into the exceptional measure that it currently is, which has resulted in discretion for professionals and confusion in practice. The Dutch example shows that a thorough reflection on both the objectives and the theoretical foundations of a justice system for adolescents is indispensable before proceeding to the implementation of such a system. In addition, the Dutch experience confirms that a flexible criminal justice system for children and young adults in transition from childhood (i.e. young people between 16 and 23/25 years of age) can only work if the way the justice system organises itself around this age cohort in practice is given due consideration as well. Furthermore, the professionals involved should be sufficiently knowledgeable about adolescent development and the options available within the juvenile justice system. So far, unclarity and inconsistency remain regarding the applicable target group, type and severity of offences. The proposed flexible system does not seem to match the manner in which services (e.g. probation, deprivation of liberty) are organised in practice. The lack of legislative guidance has transformed the proposed flexible system, with ample discretion for the professionals involved, into a system in which uncertainty and inequality can prevail.
Acknowledgements
The authors are grateful to the anonymous reviewers and W.H. Rodger, MA, for their helpful comments on earlier drafts of this article.

Funding
The author(s) disclosed receipt of the following financial support for the research, authorship and/or publication of this article: This research was made possible through funding provided by the Dutch Research Council (NWO), grant number 406.18.503.

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Notes
1. It is chosen to refer to ‘children’, ‘juveniles’ or ‘minors’ interchangeably when referring to persons below the age of 18 (in line with article 1 UN Convention on the Rights of the Child (CRC)) and to ‘young adults’ when referring to persons between the ages of 18 and 23 (in line with article 77c of the Dutch Criminal Code). ‘Adolescents’ is used to refer to all 16- to 23-year-olds, as persons from this age cohort can be subjected to both juvenile and regular, ‘adult’ criminal law sentences in the Netherlands and thus fall within the scope of the Act on Adolescent Criminal Law that is central to this publication.
2. For an overview, see CRIN.org, https://archive.crin.org/en/home/what-we-do/policy/stop-making-children-criminals/states-lowering-age-criminal-responsibility.html (last visited 28 March 2019).
3. The background and development of this Act are discussed in the ‘Background and development of the legal reforms’ section. At this point, it should be noted that after an initial outline of the plans in 2011, a legislative proposal (with significantly amended plans) was submitted in 2012 and implemented in 2014.
4. No changes were made to this provision by the Act on Adolescent Criminal Law; therefore, an extensive discussion of this provision falls outside the scope of this publication. It should, however, be noted that the CRC Committee has criticised the Netherlands repeatedly for the possibility to sentence 16- and 17-year-olds under adult criminal law, as this is at odds with the CRC (CRC Committee, 2009: 14; 2015: 13–14). More generally, the CRC Committee has addressed this issue in its initial General Comment on children’s rights in juvenile justice (General Comment No. 10), paras. 36 to 38, and in its new version of this General Comment (General Comment No. 24), paras. 29 and 30. For research on the waiver of juveniles to adult court in the Netherlands, see Weijers (2006).
5. For adults, the same drop in crime rates can be observed, albeit to a lesser extent; that is, a drop of 36 per cent in registered offences and a 47 per cent drop in the number of suspects between 2007 and 2017 (Smit and Kessels, 2018).
6. In 2016, 2.2 million children and young adults between the ages of 12 and 23 lived in the Netherlands, 54 per cent of whom are 12 to 18 years old (Van der Laan and Beerthuizen, 2018).
7. It is interesting to note that, unlike in the draft General Comment No. 24 and General Comment No. 10, the CRC Committee no longer refers to the age range of 18 to 21 years in this regard, which seems to suggest that it also welcomes the application of the child justice system to young adults who are 21 and older. It is up to States parties to define which young adults fall within this category.
8. Even in the draft version of General Comment No. 24 that was introduced in 2018, this was not yet included (see CRC Committee, 2018).
9. It should be noted that these categories (seriousness of the offence, mental disorders, etc.) were not further defined by the legislator and were left open for interpretation by the professionals involved.
10. Although it should be acknowledged that such a change of policy would imply a fundamental shift in how criminal justice systems around the world tend to be organised and it would require a change of mind-set among governments and professionals working in practice.
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