



**STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN**

# Pre-Trial Detention of Children

*Children's Rights, Welfarism and Control*

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# Pre-trial detention of children

*“The Committee notes with concern that, in many countries, children languish in pre-trial detention for months or even years.”*

(General Comment No. 10)

*“The Committee is concerned about: (...) High numbers of children in pre-trial detention in judicial youth centers for lengthy periods of time.”*

(Concluding Observations NL 2015)



# Pre-Trial Detention

- Coercive measure in pre-trial stage of criminal proceedings
- For the purpose of moderating the immediate risk that the accused:
  - frustrates the process of truth finding;
  - absconds;
  - commits another crime; or that
  - his release causes disorder in society.
- Not a punishment (presumption of innocence)

*Cf. Art. 5(1)(c) jo. (3) ECHR and ECtHR case law.*

# Pre-trial detention of children – IHRL standards

1. *“pre-trial detention of minors should be used only as a measure of last resort and for the shortest possible period”*

(ECtHR 19-01-2012, *Korneykova v. Ukrain*, par. 44; cf. Art. 37(b) CRC)

2. *“[pre-trial detention] cannot be used to anticipate a custodial sentence”*

(ECtHR 13-11-2012, *J.M. v. Denmark*, par. 54)

3. *“The use of alternatives must be carefully structured to reduce the use of pre-trial detention [of minors], rather than ‘widening the net’.”*

(CRC Committee, *General Comment No. 10*, par. 80; cf. Art. 37(b) CRC)

# Case study: The Netherlands



# Research I

## Pre-trial detention in Dutch juvenile justice *Law and practice in light of children's rights standards*

➤ Court observations (N=225) + interviews (N=71):

	The Hague	Amsterdam	Almelo	Breda	Lelystad
Initial pre-trial detention hearings	20	20	10	10	10
Subsequent pre-trial detention hearings	61	48	10	21	17
Interviews judges	6	5	4	2	3
Interviews prosecutors	3	2	1	1	3
Interviews defense lawyers	2	2	2	2	2
Interviews Child protection agency	2	2	3	2	2
Interviews Youth probation officers	2	2	2	2	2
Interviews Youth custodial centers	2	2	2	2	2



# Research II

- Quantitative, explorative study:
  - Population characteristics juveniles
  - Judicial PTD decisions
- 250 case files, three courts:
  - District Court of Rotterdam: 124
  - District Court of Midden-Nederland: 71
  - District Court Gelderland: 55
- Multivariable regression analyses:
  - Pre-trial release decisions
  - Relation between PTD and sentencing decisions



# Pre-trial detention in practice

## Key findings:

1. Interconnection PTD – custodial sentence
2. Pre-trial release decisions – disparities
3. Net-widening alternatives (conditions)

➤ *PTD in Dutch juvenile justice not CR compliant*



# 1. Pre-trial detention and sentencing

- Strong correlation PTD and custodial sentence
  - Pre-trial detainees more likely to get custodial sentence after conviction
- “I truly believe in the principle that it is better to detain juveniles directly after they have committed an offence than to wait six months until the final conviction. That’s not effective. The idea of early intervention is of particular importance when juveniles are concerned. Therefore, using pre-trial detention for that purpose can be justified.” (*Interview judge C*)
  - 1 in 10 not convicted!

## 2. Pre-trial release decisions

Multivariable regression analysis: which factors can be significantly related to the outcomes of judges' decisions on conditional suspension of PTD?

Significant factors (selection)	Likelihood of release
Young age (12-14)	+
Non-Dutch background	-
Low IQ (below 70)	-
No school or other daytime activity	--
Positive advice child welfare agency	+++

# 3. Net-widening effect alternatives

- Ordering pre-trial detention for the mere purpose of suspending it under conditions
- Wide use of pre-trial release conditions (i.e. suspension conditions)
- Alternatives can be intrusive too!

# Driving forces PTD decision-making?

## 1. Welfarist interventionism

- PTD “for your own good”
- Release conditions for welfare purposes

## 2. Culture of control

- Risk aversion: PTD as the “safe option”
- Release conditions for control purposes
- Disparities: minorities stereotypically perceived as more dangerous?

(Cf. Garland 2001)

# Pre-Trial Detention: CR implementation

## Tensions between discourses:

- Children's rights: protection of child *against* State intervention
- Welfarism: protection of child *by* State intervention
- Culture of control: protection of society against child offender

# Pre-Trial Detention: CR implementation

- Implementation in domestic laws and policies
- Decision-making at the domestic/local level
  - Abstract principles > concrete guidelines
  - Guidelines: adjustable to local realities > discretion

# Pre-Trial Detention: CR implementation

## Efforts at international CR level:

1. More attention to public safety concerns
  - Cf. Culture of control
  - Revision of General Comment No. 10
2. Substantiate claim “detrimental consequences” of PTD
  - Welfarist believe in positive effects PTD as early intervention
  - UN Global Study on Children Deprived of Liberty

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