Annexe to question 31: Response to previous recommendations

(59a) further amend the laws related to the juvenile justice system in order to ensure that all children below the age of 18 years are treated under the juvenile justice laws irrespective of the gravity of the charges pressed upon them;

- The point of departure for children under the age of 18 is the juvenile justice system. With regard to children who are over the age of sixteen, but who have not yet reached the age of eighteen, the court can apply an adult criminal justice system (Article 77b of the Penal Code), if the court believes there are grounds for doing so based on the gravity of the crime committed, the personality of the perpetrator, or the circumstances in which the crime was committed. This only occurs in very exceptional circumstances and is used only rarely.

(59b) review the application of PIJ measures and ensure that deprivation of liberty of any child below the age of 18 years be used as a measure of last resort only and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it;

- With regard to the USB bill which is under consultation and which also proposes a change and streamlining with regard to placement in a juvenile detention centre measure (PIJ measure), it has been decided to arrange this part in separate legislative processes. The aim is to clarify the assessment framework of the PIJ measure for the practical situation and to make it easy to apply them, perhaps with a comprehensive regulation. The recommendations and responses of the stakeholders have been combined and will be included in this.
- The system review of juvenile detention is facilitating various levels of security within that same system. The aim of this is to offer tailor-made care and security and therefore minimise the length of stay in a high security institution.

(59c) promote alternative measures to detention, such as diversion, probation, mediation, counselling, or community service, wherever possible;

- Excellent alternatives are available thanks to the emergence of alternatives for placement in juvenile detention centres (JJIs), such as interventions within the framework of a suspended sentence or conditional suspension of the period spent in custody, the behavioural measure and secure residential youth care. The emergence of small-scale facilities is also a good alternative to placement in juvenile detention centres. The result is that children can stay close to home, continue to attend their own school and receive care and help from their own family/network in a low-security environment.
- 'With regard to restorative justice a policy framework for restorative justice provisions during the criminal proceedings was established on 8 January 2020. This also focuses special attention on promoting restorative justice in the juvenile justice system.'

(59d) In cases where detention is unavoidable, including in police custody, ensure that the children are not detained together with adults and that detention conditions are compliant with international standards, including with regard to access to education and health services.

- The point of departure is 'no children in a police cell', unless it is unavoidable and then it should be for as short a time as possible. While being detained in connection with an investigation and/or detention the police must never place juveniles in a police cell together with adults. Exercising should never take place with adults either. Juveniles are

to be detained as much as possible in child-friendly cells, unless the cell complex does not have any.

- During each shift a detainee carer or an operational coordinator will be present who will pay special attention to, and have particular responsibility for, juvenile detainees. This person is responsible for ensuring that the treatment of juvenile detainees takes account of the different (age) categories. A doctor is to be actively informed if a juvenile with behavioural complications has to spend the night in a police cell. What is more, each juvenile will be given a verbal and written explanation by the police about his or her rights. This will also include an explanation about certain obligatory procedures such as searches.

(59e) Ensure that no children below the age of 18 years are held in adult penitentiary institution irrespective of the nature of convictions.

- The state avails itself of the reservation in the UN Convention on the Rights of the Child. This means that 16- and 17 year olds who are tried in accordance with the adult criminal justice system can be held in an adult penitentiary institution. This will only be done in very exceptional circumstances and only rarely.

(59f) Ensure the provision of qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings;

- Since 1 March 2017 juveniles aged 12 and older are entitled to legal aid prior to and during police interrogations. What is more, juveniles can no longer relinquish their right to assistance related to consultation and interrogation (Article 28c in conjunction with 489, paragraph 1 of the Code of Criminal Procedure [Wetboek van Strafvordering] (Sv)). In addition, legal aid prior to (consultation assistance) and during the police interrogation is obligatory in all cases. It has also been arranged that if the arrested juvenile suspect is released in the evening due to a lack of available lawyers, with notice simultaneously being served that the suspect will still be interrogated the next day, this suspect can claim subsidised legal aid (Article 489, paragraph 3 of the Sv). Juveniles aged under 12 are not entitled to a lawyer because they cannot be prosecuted.
- In the investigation report of the Council for the Administration of Criminal Justice and Protection of Juveniles [Raad voor Strafrechtstoepassing en Jeugdbescherming] (RSJ) into 'juveniles in a police cell' the Council argues in favour of extending the right to free legal aid beyond the current arrangements in Article 489, paragraph 3 of the Sv. The government still has to take a position on this.

(59g) Provide regular and systematic training on children's right to the police and prosecutor's office;

- The national report on care for detainees by the Inspectorate of Justice and Security, which was published in 2016, reveals that attention is also being paid to measures for juveniles. The police are focusing attention on a child-oriented approach which is in accordance with children's rights and this is also an aspect which receives attention during (specialist) police training. This training also includes, for example, a module entitled 'Dealing with and identifying vulnerable people' [Omgang en herkennen van kwetsbare personen].[1]
- The Public Prosecutor's Office is giving public prosecutors training in juvenile law. Since 2015 they have been obliged to obtain a training certificate before they can become involved in juvenile cases.

[1] Report: inspectie-jenv.nl/publicaties/rapporten/2016/01/26/arrestantenzorg-nederland---landelijke-rapportage, p. 11. Police education report [Politieonderwijsverslag] 2016, p. 14

- For the Careful Quick Customisation [Zorgvuldig Snel Maatwerk] (ZSM) working environment this means a one-day training course. For single and multiple cases this will require 2 training courses lasting 3 days each.
- Children's rights form a separate part of all 3 training courses.

(59h) Eliminate the practice of DNA testing of children in conflict with the law and erase the criminal record of children who are acquitted or have finished their sentence.

- On the grounds of the Code of Criminal Procedure [Wetboek van Strafvordering] or the DNA Testing (Convicted Persons) Act [Wet DNA-onderzoek bij veroordeelden] (Wet DNA-V), cell material may be forcibly taken from a juvenile suspect or convicted person in order to carry out DNA analysis if the conditions in the code have been fulfilled. The DNA profile extracted from that cell material is to be stored in the DNA database for criminal cases. The practice developed at the various courts with regard to the application of the Wet DNA-V constitutes the reason to amend the regulation it contains on one point regarding the obligatory taking of cell material in the case of convicted juveniles. That amendment implies that cell material can no longer be taken from juveniles who have been sentenced to community service for up to 40 hours. An assessment is currently being carried out to determine whether that amendment should also apply to first offenders and repeat offenders. The Wet DNA-V continues to apply in full to a convicted juvenile who has been sentenced to community service for 40 hours and more, or who has been given a prison sentence, or sentenced to detention in a youth custody centre. In those cases the taking of cell material and the storing of the DNA profile is regarded as proportional given the seriousness of the sanction.
- Notwithstanding the amendment to the Wet DNA-V outlined above, the intention for the legislation is to be amended in such a way that the retention periods of retained biometric, criminal and judicial data from juvenile suspects and convicted juveniles are to be halved so that those retention periods are more proportional.[2]

[2] https://zoek.officielebekendmakingen.nl/kst-31415-20.html