

Summary

Evaluating the implementation of juvenile law for young adolescents

In April 2014 Adolescent Criminal Law (ACL) came into effect in the Netherlands. ACL allows more flexible use of juvenile and adult criminal law sanctions against 16 to 23-year-olds. That said, the primary focus of ACL is the use of youth sanctions against young adults from 18 to 23 years old (i.e., article 77c of the Dutch Criminal Code). Prior to ACL youth sanctions were only allowed against 18 to 21 year old young adults. Hence, there is special treatment of young adults in the Dutch criminal justice system.

Whether or not juvenile sanctions are imposed, instead of adult sanctions, is dependent on the characteristics of the suspect/offender, and the circumstances in which the crime was committed. For example, when young adults exhibit an incomplete or delayed development. These individuals are thought to be better off with a youth sanction, which focuses on treatment and rehabilitation. In adult criminal law, the focus is more on retaliation. In supplementary documents describing the thought process behind ACL, an incomplete or delayed development is characterized as immature emotional, social, moral and/or intellectual development.

ACL also emphasizes forensic assessments of the developmental age of suspects/offenders. Public prosecutors, probation officers and forensic experts each have their distinct role in the criminal justice process concerning young adults. For instance, the public prosecutor needs to decide whether he wants to prosecute according to juvenile or adult criminal law. In this decision, (clinical) assessments by probation officers and forensic experts can provide arguments in favour or against.

Objective and research questions

The objective of the current research is to review the special treatment of young adults in the criminal justice chain from the implementation of ACL throughout the year 2017. Multiple phases of the criminal justice process are examined, i.e., forensic assessment, prosecution, trial, verdict and execution. Furthermore, potential variation by judicial district is examined as well. Lastly, the situation in the field is compared to the principles of ACL as written in legislation.

The three research questions are:

- What happens at what step in the criminal justice chain when young adults are tried and sanctioned according to juvenile criminal law?
- Is there variation by judicial district in how and how often young adults are tried and sanctioned according to juvenile criminal law?
- Is the practical implementation of ACL in accordance with the principles as written in legislation?

The current research is one of the products of the programme Monitoring and Evaluating Adolescent Criminal Law, which runs from 2014 through 2019. For more

information on the entirety of the research programme, visit <https://english.wodc.nl/research/research-programme/index.aspx>

Method

Interviews

Interviews were held with employees of the Publication Prosecution Service, the (Youth) Probation Service, the Dutch Institute of Forensic Psychiatry and Psychology (DIFPP), the courts, juvenile correctional facilities and a youth protection service called the William Schrikker Group. In total 62 individuals were interviewed, with approximately 10 individuals per organization.

Prosecution registration data

Registration data regarding criminal cases against young adults were obtained from the database RAC-min, which contains information on verdicts in the first instance. This data was used to examine any potential variation by district in the prevalence of young adults sanctioned with youth sanctions.

Results

Two phases of the criminal justice process are distinguished: (1) prosecution, including (clinical) assessment by the Probation Service and the DIFPP, and (2) trial, and execution by the Youth Probation Service.

Prosecution

Public Prosecution Services

- Most public prosecutors are unfamiliar with ACL and with prosecuting young adults under juvenile criminal law, due to the fact that such cases are relatively far and few between.
- Most prosecution decisions regarding the regime of juvenile or adult criminal law are made without extensive information on the suspect/offender.
- Regime considerations by public prosecutors are mostly implicit and in accordance with criteria lists meant for evaluating suitability for juvenile criminal law. However, these considerations are not in accordance with the guidelines of the Public Prosecution Service.
- Severity of the crime is for some prosecutors an indication in favour of juvenile criminal law (as suggested in the supplementary documents regarding ACL), while other prosecutors consider it a contra-indication.
- Many public prosecutors mention that their regime claim holds up in court.

Probation Service

- It's not feasible to have every young adult assessed by probation officers when they enter the criminal justice system. Thus, the Probation Service cannot always provide extensive information early on. Much of the needed information is only provided later, oftentimes after a regime decision by the public prosecutor is already made.
- The overall stance of probation officers is 'prosecute according to juvenile criminal law, unless ...', contrasting the views of many public prosecutors.
- Determining whether an incomplete or delayed development is present is mostly done pragmatically by probation officers.

- An incomplete development is considered an illusive concept by many probation officers (as well as psychiatrists and psychologists of the DIFPP).
- When considering juvenile or adult criminal law, probation officers use the criteria provided in the before mentioned lists, but also use extra contra-criteria not mentioned in these lists.
- The assessment process by probation officers is more intensive when young adults are to be tried under juvenile criminal law, compared to adult criminal law.
- Arranging financial and practical means to provide young adults with youth services is difficult.
- A standardized instrument to determine incomplete or delayed development in young adults is (still) lacking.

DIFPP

- The process by which young adults are assessed by the DIFPP is the same for those that will be tried according to juvenile or adult criminal law.
- DIFPP psychiatrists and psychologists conceptualize an incomplete or delayed development by using their own professional background and frequently use measures that provide partial insight into the developmental age of the suspect.

Trial and execution

- The courts usually sanction young adults according to the regime proposed by the public prosecutor (i.e., juvenile or adult criminal law).
- An incomplete or delayed development is considered important by judges for determining the regime. Information regarding this development is provided by probation officers, psychologists and psychiatrists. However, it's unclear whether probation officers and clinical experts have similar views on what constitutes an incomplete development.
- Judges sometimes impose adult sanctions, even though assessments suggest that juvenile sanctions would be more suited, due to financial issues with providing treatment or crime severity.
- In principle, in youth correctional facilities young adults are treated the same as minors. However, the rehabilitative focus is on autonomy, independency and self-sufficiency.
- There is little experience in youth correctional facilities with young adults sanctioned according to juvenile criminal law.
- Providing youth services to young adults is difficult due to discrepancies between the chronological age of the offender and age ranges stipulated in youth laws and legislation.

Regional variation

The Dutch national average of juvenile criminal law cases approximates 5% of all cases against young adults, since the implementation of ACL. There is, however, variation between court districts. The districts Northern Netherlands, Rotterdam and Eastern Netherlands exhibit higher percentages than the national average. Contrastingly, it is applied less often in Amsterdam, North Holland and The Hague. When controlling for other factors, the predictive value of district weakens, with age of the offender being the strongest predictor. Young adults closer to 18 years old are significantly more likely to receive a youth sanction than their older counterparts.

Limitations and recommendations

Due to the limited scope of the number of Probation Service interviewees, and the period of observation, any situations or changes in practise and policy outside of this scope cannot be commented on with the current research. That said, some recommendations are in order:

- A standardized instrument to assess incomplete or delayed development in young adults is needed. The concept of an incomplete development is still illusive for many, or is viewed differently by different professionals in the criminal justice chain.
- Work towards a better understanding of the opportunities juvenile criminal law offers young adults amongst prosecution and court professionals.
- Work towards a criminal justice policy where juvenile criminal law is considered the 'standard' in cases against young adults, instead of adult criminal law.

Conclusion

Since the introduction of ACL in April 2014, approximately 5% of all criminal cases against young adults concerns youth sanctions. The current research suggests that the implementation of ACL is largely according to how legislators envisioned ACL in practise. Furthermore, this suggests that practical progress is being made regarding juvenile criminal law for young adults. That said, some issues with the implementation are also present.

Firstly, the regime choice is made very early during the criminal justice process, during a time when developmental information regarding suspects is scarce. More extensive information only becomes available later and might thus explain the relatively low percentage of juvenile criminal law cases against young adults. Secondly, there is a discrepancy in the (contra-)criteria used by different individuals and organizations to determine whether young adults should be tried according to juvenile criminal law. Thirdly, obstructing factors exist that make the application of juvenile criminal law difficult. Assessment of young adults to be tried according to juvenile criminal law is more intensive, compared to when adult criminal law would be applied. Also, it is difficult to provide (adequate) youth services for young adults. Moreover, professionals in the field working with young adults are mostly familiar with adult criminal law, but not necessarily with juvenile criminal law, thus unaware of the opportunities that juvenile criminal law can offer.