

SUMMARY

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Delayed development

The concept 'incompleted development' in the application of adolescent criminal law

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Delayed development**The concept 'incompleted development' in the application of adolescent criminal law**

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Summary, conclusions and discussion

Adolescent criminal law (ACL) was implemented in the Netherlands on April 1, 2014. Since then, the application of sanctions from juvenile and adult criminal law for persons between the ages of 16 and 23 has become more flexible. In the prosecution and trial of a young adult the application of both a sanction from juvenile criminal law and a sanction from adult criminal law are possible. The choice depends on the conditions 'person of the perpetrator' and 'circumstances in which the offense was committed'. For people aged 18 to 23 who are suspected of a criminal offense, the question is to what extent the young adult has an 'incompleted development'. According to the 'memorandum of explanation' of the law, in case of 'incompleted development' a sanction from juvenile criminal law is preferred instead of a sanction of adult criminal law. The operationalization of the concept 'incompleted development' became the task of the Dutch institutions involved in criminal law. In practice, however, uncertainty remains as when to speak about 'incompleted development'. In individual cases this complicates the choice of applying sanctions from the juvenile criminal law or sanctions from the adult criminal law.

The aim of the current research was to provide more clarity about the concept 'incompleted development' and how it can be used in the application of adolescent criminal law. Below we discuss the main findings, conclusions and discussion points.

The concept 'incompleted development'

The first research question was:

What are the relevant current scientific insights regarding the concept of 'incompleted development'?

To answer this question, the literature on developments in adolescence has been explored. The results of the literature study, presented in chapters 3 and 4, support the assumption behind the introduction of the ACL: the development of adolescents is still continuing at and after the age of eighteen. Many aspects of the biological, cognitive, social-emotional and moral development of adolescents continue to develop up to the age of 25. Also after the age of 25, there are still developments, albeit that the changes are smaller than in the period before. There are large individual differences, both in terms of the age at which certain levels of development are reached and which levels can be reached at maximum.

The term 'incompleted development' is not used in the scientific literature about the changes specific to adolescence. However, there are several 'developmental dimensions' that can be distinguished. Developmental dimensions are aspects of psychosocial functioning in which certain changes can occur. These 'biopsychosocial' changes affect an adolescent's thoughts, feelings and behavior in different circumstances

The results of the literature search were presented to a panel of seven scientists specialized in (bio-) psychosocial development of young people and young adults and risk assessment of juvenile and (young) adult offenders. After integrating the feedback from the scientists, the results were presented to two expert forums with practitioners in the field of (risk assessment of) juvenile and young adult offenders. The two expert forums included a total of twelve representatives from seven institutions who are involved with the application of the ACL: the Public Prosecution Service, the Child Protection Board, the Dutch Institute for Forensic Psychiatry and Psychology, the courts, the juvenile correctional facilities,

the adult correctional facilities and forensic mental health care. The Dutch probation organizations were not represented; four experts from the probation organizations gave feedback after the expert forums.

Representatives from science and the institutes agreed that the concept of 'incompleted development' is not appropriate: it is more a matter of continuous development. The representatives advised that the concept of 'incompleted development' in the context of the ACL should no longer be used. It seems better to speak of a *developmental delay* or a *delayed development*. Compared to peers some young adults are in some aspects behind in development. For some adolescents, certain developments take place somewhat later, some adolescents have a lower ceiling in certain areas of development. The latter applies, for example, to persons with a mental disability and/or a mental disorder.

The findings and conclusions of the current study raise the discussion whether in applying the ACL the average development of young adults or the individual developmental delay of a young adult compared to peers should be considered. The maturation of some crucial brain functions continues for most young adults till around 25 years. In this sense, the development of the average young adult at the age of 18 to 23 has not yet been 'completed'. Young adults at this age are still developing and therefore have an increased risk of delinquent behavior and recidivism. The fact that - on average - all young adults are still developing, would mean that juvenile criminal law should be applied to all young adults. This is in line with the principle of 'juvenile criminal law unless', as it is used in Germany for 18 to 21-year-olds. For this age group in particular, most if not all the scientists and practitioners consulted in this study supported this premise. In addition, they advocated in applying ACL to look primary at the extent to which a young adult is delayed behind compared to peers and to what extent there are opportunities to reduce this lag. It is important to investigate whether the young adult can benefit more from juvenile criminal interventions than from adult criminal interventions. Within the juvenile sanctions system, there are more opportunities to stimulate the development of young adults than within the adult sanctions system.

In conclusion, it is important to consider both the average development of young adults and individual developmental delay.

Operationalization

The second research question was:

Based on relevant contemporary scientific knowledge, how can the concept of incompleted development be operationalized for the screening of young adults by institutions?

Several *dimensions of development* have been distinguished based on literature research and on the basis of knowledge and insights from scientists and practitioners. When looking for the dimensions of development, the connection with delinquent behavior and the risk of recidivism was important. A sharp distinction between different dimensions proved to be difficult due to mutual overlap. Dimensions have been chosen with as little overlap as possible.

The dimensions were presented successively to the earlier mentioned seven scientists (science panel) and sixteen experts (expert forums and Probation Service). The feedback from scientists and practitioners has led to a rearrangement of the dimensions and an improvement of some formulations. In the end, thirteen dimensions were distinguished. These dimensions can be divided into four categories and are described in detail in chapter 4. Table 1 contains the definitions of the four categories and thirteen dimensions.

Table 1: Categories, dimensions and definitions

Categories/dimensions	Definition
1) Cognitive and adaptive skills	cognitive skills are intellectual skills and executive functions; adaptive skills are practical, conceptual and social skills required to function in everyday life
a) mental functioning	a combination of cognitive and adaptive skills
b) cognitive flexibility	adapting behavior or thoughts to changing demands, priorities or different perspectives
c) planning and decision making (looking at consequences)	setting a goal and taking and following steps to reach the goal considering different behavioral strategies or actions and the expected outcomes to reach a decision
2) Social skills	communicating with others, adapting to the social environment, dealing with others, avoiding and resolving conflicts
a) communication skills	conversation skills used in verbal and non-verbal communication with others
b) resisting the influence of others	making your own choices when influenced by others and following through on your own choices
c) building and maintaining relationships	building and maintaining relationships with other people of the same and opposite gender
3) Moral development	reasoning and judging about situations and behaviors in terms of good and evil and experiencing the appropriate emotions
a) perspective taking	assessing attitudes, thoughts, feelings and intentions in others, being aware that there may be alternatives to the perception of a situation
b) moral reasoning (without thinking errors)	reasoning and judging whether certain behavior is good or bad (thinking errors are reasons people give to justify their own behavior, minimize the consequences of the behavior and/or to put the responsibility and guilt outside themselves)
c) showing empathy	mirroring feelings that suit the other person's situation. This can be either cognitive (understanding) or affective (compassionate)
d) guilt and shame	guilt: feeling 'small', worthless and powerless, (wanting) to hide or escape (feeling focuses on the person); shame: feeling responsible for the behavior and its consequences (feeling focuses on one's own behavior)
4) Self-control	controlling your own thoughts, feelings and behavior.
a) emotion regulation	influencing which emotion you feel, when you feel it and how you experience and express that emotion
b) impulse control	having control over different impulses
c) controlling sensation seeking	having control over looking for new, exciting experiences that may pose risks

Dimensions are aspects of development with a sliding scale from more 'incompleted' to 'completed development'. The more incompleted pole of the dimension can be seen as a signal of a developmental delay. Instruments have been sought to measure the level of a young adult on the various dimensions. For each dimension, one or more validated tests or questionnaires (self-report and assessment others) were found. Most instruments can only be used and/or interpreted later in the criminal proceedings and by behavioral experts, for example by psychologists from a juvenile correctional facility or the Dutch Institute for Forensic Psychiatry and Psychology. This is not always possible and not always necessary. In

many cases, the choice between juvenile or adult sanctions can also be made based on *signals of developmental delay*. The researchers formulated thirteen signals of developmental delay based on the descriptions of the more incompleting pools of the thirteen dimensions. These formulations have been presented to the practitioners and, based on their feedback, improved. Table 2 shows the final formulations of the signals.

Table 2: Dimensions and signals of developmental delay

<i>Dimensions</i>	<i>Signals of developmental delay</i>
Cognitive and adaptive skills	
• mental functioning	education level \leq primary school or school for children with a (mild) mental disability and/or signals of (mild) mental disability at the SCIL ^{*)}
• cognitive flexibility	has great difficulty in changing own behavior if this is expected by the environment
• planning and decision making (looking at consequences)	usually does not think about different possibilities and consequences
Social skills	
• communication skills	generally expresses himself unclearly, verbally and non-verbally
• resisting the influence of others	is usually easily persuaded by others (for example in group offense(s))
• building and maintaining relationships	has no permanent prosocial partner and no/few prosocial friends
Moral development	
• perspective taking	usually thinks from his own perspective
• moral reasoning (without thinking errors)	makes many thinking errors: egocentric thinking, justifying, blaming others and/or assuming the worst
• showing empathy	shows little/no empathy for victims/injured persons
• guilt and shame	shows hardly any regrets
Self-control	
• emotion regulation	shows little/no restraint on emotions such as anger
• impulse control	usually says and does something without thinking
• controlling sensation seeking	is looking for excitement and sensation and/or sensation was the motive for the crime

*) SCIL = Screener for Intelligence and Learning Disabilities (SCIL). The SCIL is an instrument to determine whether there are indications of a (mild) mental disability.

The advantage of the formulation of signals is that practitioners in the field of child protection and probation who are not a psychologist or psychiatrist can also make statements about signals. Signals indicate that there may be a delay in development; if desired, further assessment can be carried out.

In Chapter 5, the thirteen dimensions and signals obtained in this way were compared with the items from instruments that have been used in the Netherlands since 2014 when weighing up the application of juvenile criminal law or adult criminal law: the *Public Prosecution Service Indication List for 18- to 23-year-old suspects*, the *Weighting Framework for Adolescent Criminal Law 18–23 years* of the Dutch organizations for probation and the *Weighting List Adolescent Criminal Law* of the Dutch Institute for Forensic Psychiatry and Psychology. The Weighting Framework and Weighting List are very similar, but are not quite the same. The Weighting Framework and the Weighting List contain largely the same items and largely the same formulations and explanations for the items.

Comparing the items of the three instruments with the thirteen dimensions and signals yielded that more than three quarters of the thirteen dimensions and signals could not be found in the items of the three instruments. According to the consulted representatives of the institutions of the criminal justice chain, the thirteen dimensions and signals provide a better representation of relevant developments in the young adulthood than the items from the current instruments.

The conclusion is that it is possible to formulate dimensions of development and to derive signals of developmental delay from them. To make a good estimation of developmental delay in young adult suspects of criminal offenses, adjustment of the existing instruments is necessary. The dimensions and signals drawn up in this study offer a good starting points for this.

During the formulation of the dimensions and the signals and in the choice of instruments to measure the dimensions, a few discussion points arose. A first point of discussion concerns the choice of dimensions. Various classifications were made during the investigation. Dimensions have been added to the list and removed again. Each classification led to a new discussion about overlap and whether or not certain dimensions are relevant. Still, strong consensus and agreement emerged with the final list of four categories and thirteen dimensions presented above. Most of the discussion has been on 'communication skills' and 'self-reliance'. Communication skills (verbal and non-verbal) are strongly related to some of the other dimensions, such as mental functioning, perspective taking, showing empathy and planning and decision making. This raised the question of whether a separate dimension is justified. A complicating factor in this discussion is that some young adult suspects seem to have excellent communication skills, while there still may be a developmental delay in dimensions that affect communication skills. The majority of scientists and experts consulted nevertheless was in favor of maintaining the dimension, because the assessment of communication skills is important for the question whether someone can develop further and is willing and able to benefit from a pedagogical approach.

Self-reliance has been dropped as a dimension because many of the skills required for self-reliance have been incorporated into other dimensions such as mental functioning, cognitive flexibility, planning and decision making, communication skills, resistance to the influence of others and impulse control. The degree of self-reliance can be seen as a result of these dimensions. However, it was argued that the lack of self-reliance in areas such as finance, social relationships, housing, education/work can be seen as an important signal of developmental delay on various dimensions. Problems in these areas can also be associated with the risk of delinquent behavior and recidivism. Problems and skills deficits in the areas of finance, social relations, housing and education/work seem to be important to address for the counseling and treatment of young adults. Having a permanent and stable place of residence, prosocial friends, a prosocial partner, education/work, adequate finances and leisure activities are related to a smaller chance of delinquent behavior and recidivism.

A second point of discussion is whether or not to use instruments for measuring the dimensions. The measurement instruments found are generally tests that the young adult does or questionnaires that the young adult completes himself or that are completed by other persons. The results depend on the type of instrument. Test results will never be able to predict real life behavior with 100% accuracy, especially when stress and other emotions are involved. The results of tests or questionnaires provide at most an indication with which certain behaviors or underlying (cognitive) processes can be interpreted. Future tests using 'virtual reality' may provide more reliable results. Moreover, not all instruments have cut-off scores. Without cut-off scores, individual scores are more difficult to interpret. Finally, the practical experts warned against too many checklists with scores,

because they can disturb the relationship between signals or dimensions and the overall image of the person.

Better coordination between the instruments and between the institutions

The third research question was:

In which way the coordination between the current instruments for the selection of young adults and the cooperation between the institutions involved can be improved, so the right adolescents will be selected for juvenile or adult criminal law?

To answer the third research question, the two aforementioned expert forums were organized with twelve representatives from seven involved institutions: the Public Prosecution Service, the Child Protection Board, the Dutch Institute for Forensic Psychiatry and Psychology, the courts, the juvenile correctional facilities, the adult correctional facilities and forensic mental health care. Four representatives of the Dutch probation organizations responded to the results of the expert forums afterwards. Possible solutions have been sought with the representatives of the institutions for the main bottlenecks with regard to (the use of) the current instruments for the application of the ACL.

Several wishes for improvement have been mentioned. After discussion, a number of suggestions for improvement were broadly supported by all the representatives of the institutions consulted. Below are the main suggestions for improvement with regard to 1) the instruments, 2) the use of instruments in criminal proceedings and 3) amendment of (the explanation of) the law.

Instruments

- Choose clear concepts and definitions that will be used in the same way by all institutions in the criminal justice chain.
- Supplement the question of developmental delay with a question of responsiveness: is someone learnable and willing to participate in a pedagogical approach aimed at change? The items 'pedagogical influenceability' from the existing instruments require further elaboration and clarification.
- Consider various aspects of development so that an integrative picture of the young adult can be created. If the goal is determination of the developmental delay and growth potential of a young adult, more is needed than just the result on a test or questionnaire. Try to map developmental delay and growth potential using the following questions:
 - On what dimensions of development is there a delay?
 - To what extent is further development possible on these dimensions? To what extent can the young adult be influenced/changed?
 - What is necessary for the young adult to be able to develop further, to reduce the risk of recidivism and for safety in the society?
 - Which package with sanctions (juvenile criminal law or adult criminal law) is the most appropriate?
- Remove the contraindications which are included in the current instruments. According to the consulted representatives of the institutions, these contraindications do not arise from (the intention of) the law. The contraindications with regard to the seriousness of the offense and mental disorders are in contradiction with the explanatory memorandum to the ACL and may lead to unjustified exclusion of young adults.

Use of instruments in criminal proceedings

- Answer the question whether a young adult is eligible for the application of juvenile criminal law or adult criminal law step by step. Where possible, answer the question on the basis of signals and where necessary on the basis of psychological or psychiatric assessment. An advice on the basis of signals is possible from the preliminary hearing to the court hearing; advice based on psychological or psychiatric assessment is usually only possible at the court hearing. At the beginning of the criminal trial, little information is available. At the most, there is insight into signals of developmental delay. If it is necessary to make more substantiated statements about the possible delay in the development and the potential for development of the young adult, diagnostic assessment can be carried out by, for example, a juvenile correctional facility or the Dutch Institute for Forensic Psychiatry and Psychology. Usually this can only be done later in the criminal proceedings.
- Provide the professionals of institutions of the criminal justice chain with sufficient knowledge and experience with regard to adolescence. This can be done by involving institutes from the juvenile criminal justice chain, such as the Child Protection Board, juvenile prosecutors and juvenile judges, and/or by working within the adult criminal justice chain with specialists in the field of young adults.
- Make a preliminary choice at the beginning of the criminal proceedings regarding the application of juvenile or adult criminal law that can be adjusted later in the criminal process. In pre-trial detention, choose for placement in a juvenile correctional facility or a special group for young adults in an adult correctional facility. Because young adults are still developing, detention damage from preventive custody must be prevented as much as possible. Transferring from a juvenile correctional facility to an adult correctional facility is generally an easier step than the other way around.

Amendment of (the explanation of) the law

- Choose the starting point *juvenile criminal law unless*. This is in line with the original intention of the law and fits the fact that 18- to 23-year-old young adults are still in full development.
- Adjust the maximum penalties for 18- to 23-year olds, so that the current low maximum penalty no longer hinders the advice and imposition of sanctions from juvenile criminal law.

In the expert forums the discussion mostly was about the aspect of *the person of the perpetrator*, less about the aspect *under which circumstances the offense was committed*. This can be understood given the research questions of this study. The second aspect is also explicitly stated in the law, but has hardly been elaborated in the current instruments. According to the researchers, it is possible and desirable to include the second aspect more clearly in the instruments. This is the case in Germany, where in part a similar criminal approach of young adult suspects applies. Some of the signals from the thirteen dimensions also implicitly or explicitly relate to the circumstances under which the offense was committed.

Closing remarks

Young adults between the ages of 18 and 23 are not 'fully' or 'completely developed'. The development is still going on and will continue. This applies just as much to young people who have committed crimes as to young people who have not. Incompleted and completed development are therefore not the correct concepts for considering whether sanctions from juvenile criminal law or adult criminal law should be applied. Since development is continuously going on, it makes more sense to ask whether and to what extent there is developmental delay and whether the adolescent can and wants to develop himself further.

The current instruments of the Public Prosecution Service, the Probation Service and the Dutch Institute for Forensic Psychiatry and Psychology are insufficiently in line with the intentions of adolescent criminal law and require adjustment. The wish is to develop one set of instruments that can be used by the various institutions of the criminal chain to choose for the application of sanctions from juvenile criminal law or adult criminal law. The list of thirteen dimensions and signals from this study can be used and further developed. Furthermore, it is desirable if not necessary to review the contraindications and to adjust some principles and procedures. Adolescent criminal law is still in development.