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## **Features of forensic psychological examination in the investigation of criminal cases of crimes committed by minors**

The article deals with the issues of appointment and carrying out of forensic psychological examination in relation to minors. Forensic psychological examination in criminal cases involving minors is usually appointed to establish the ability of an accused, suspect, defendant minor with a mental retardation not related to a mental disorder to fully realize the actual nature and social danger of their actions and to direct them; to determine the ability of juvenile witnesses and victims to correctly perceive the circumstances relevant to the case and give correct testimony about them; to determine the ability of juvenile victims in cases of sexual assault to understand the nature and significance of actions committed against them and to resist. In connection with the age characteristics of a minor, in particular during the period of deep experiences occurring against the background of personal conflicts and physiological changes, it is necessary to take into account the individual characteristics of a minor, the peculiarities of upbringing, etc. The authors concluded that forensic psychological examination allows with respect to the research of criminal cases from each objective speck of view to take into account the rank and ableness of a teenager to make out the design of his actions and come this from a deeper scientific sharp end of contemplate than other types of examinations.

*Keywords:* examination, forensic psychological examination, production of forensic psychological examination, forensic psychological examination of minors, age.

### *Introduction*

The main principle of forensic psychological examination is the focus of the study on the analysis of the content and structure of specific actions of minor suspects or the reflection of the phenomena of reality. The production of a forensic psychological examination is carried out within its scientific competence and in accordance with the requirements of the current criminal procedure legislation. The main task of the forensic psychological examination of juvenile suspects is to study the ability of adolescents with signs of mental retardation not related to mental illness to fully understand the meaning of their actions and to direct them. Therefore, the problem of age-specific mental illnesses is relevant for both general and forensic psychiatry.

The object of the study of the forensic psychological examination is the mental manifestations of a minor suspects that go beyond the normal behavior. With the help of this examination, it is possible to obtain the data that allows us to understand and evaluate the features of mental activity and manifestations of a teenager, which are important for legal conclusions and contribute to the correct assessment of the testimony of suspects and accused in cases when the doubts about their reliability are raised.

### *Materials and methods*

During the research we applied the general scientific, historical-legal, comparative, formal-logical, system-structural and other methods traditionally used in jurisprudence. The work used a set of private methods interpreted to the nature of research tasks: the study of documentary sources, comparative legal method for reviewing and analyzing international legal documents and normative legal acts of national legislation governing criminal liability and sentencing minors.

### *Results and discussion*

The forensic psychological examination of minors is one of the most complex types of expert research, which requires serious work to standardize and develop the common generally accepted criteria. At the same time, the development of legal policy in relation to minors allows us to hope for the introduction of a juvenile justice system in Kazakhstan, which provides for the use of not only the principle of understanding, but

also the principle of educability. This will entail raising new questions to expert psychologists and the need for new methodological developments.

The arrangement of the issues confronted by an individual conducting criminal procedures against a minor would barely be conceivable without utilising the wide range of instruments utilized to ponder the identity of a juvenile person.

The success of the preventive activities of the internal affairs bodies largely depends on how comprehensively and deeply the identity of a minor offender is studied. Many mistakes could have been avoided if practical bodies had always put the personality in the center of their attention and professional efforts, and not only the conditions of their life or other influences on them. This fully applies to juvenile delinquents.

Currently the problem of researching the identity of the offender, including minors, has gained particular relevance, and this is motivated, first of all, by the fact that without studying those who commit criminal offenses, it is impossible to fight crime in general [1; 153].

A crucial place among the strategies of figuring out the circumstances that characterize the character of a minor who committed a wrongdoing, as V.Ya. Rybalskaya properly notes, is occupied by a master examination. The conceivable outcomes of most sorts of scientific examinations, the question of which may be an individual or related objects, are past question in any case, they also apply to minors. In any case, a number of examinations can be carried out in connection to minors, for example, in order to determine the age [2; 97].

The main thing of consideration, as noted above, is age. Certain biological, psychological and mental changes in the structure of the personality are associated with it. Age determines a certain level of development of forces, intelligence, drives, and even the physical ability to commit certain crimes.

The process of socialization of people start from an early age, when they begin to assimilate the roles that form their personality. It is in childhood that a person develops as a social being, develops intelligence, the ability to analyze and generalize the surrounding phenomena, the ability to anticipate the possible consequences of their actions; perseverance, determination, self-control, activity, initiative, self-awareness, self-esteem, desire for independence, are formed. All this is closely related to the subsequent behavior of the personality of a minor.

At the same time, the age of minors determines a number of features of the psyche, its instability due to the process of personality formation, physical and spiritual development of the body, puberty. These features of the psyche of minors in many respects contribute to their antisocial actions as a result of the manifestation of such qualities as:

- 1) a distorted idea of the true nature and significance of such important moral concepts as courage, cowardice, fidelity, betrayal, friendship, heroism, modesty;
- 2) errors in the assessments of individuals, phenomena, events, inability to evaluate a person in the aggregate of all their properties and qualities;
- 3) preference for external manifestations of a person without taking into account their true motives and goals;
- 4) emotional imbalance, instability, increased excitability, a sharp change in mood;
- 5) an aggravated attitude to the environment, to everything new, unfamiliar in the absence of the necessary knowledge and experience;
- 6) increased physical activity, initiative, an excess of strength and energy due to the increase in vital activity;
- 7) the desire for independence, self-expression and self-affirmation;
- 8) rejection of other people's advice, pedagogical maxims of older people and other forms of educational influence;
- 9) the desire to show and prove their "maturity", the desire for leadership;
- 10) suggestibility, excessive credulity, a tendency to imitate, conformism [3; 27].

In legal terms, age is defined as the number of years of a person's life established by law, which determines their rights, duties and responsibilities. When investigating criminal cases of this category, the age could be unknown due to the lack of documents that can confirm it, or there are doubts about their authenticity; when there is a deliberate concealment of the age; when there is doubt about the authenticity of the age indicated in the submitted documents, then in accordance with the requirement of the Order of the Minister of Justice of the Republic of Kazakhstan dated April 27, 2017 № 484 "On Approval of the Rules for the Organization and production of forensic examinations and studies in the forensic examination bodies", a forensic medical examination should be appointed to establish the age of the person being brought to criminal re-

sponsibility. At the same time, the day of birth is considered to be the last day of the year that is named by the experts, and when determining the minimum and maximum number of years, the court must proceed from the minimum age of such a person proposed by the experts [4].

In the case of a minor committing a socially dangerous act, information about their identity and age should be established at the stage of preliminary investigation, and, if possible, even at the stage of initiating a criminal case. The case must be accompanied by documents establishing the identity of the accused minor. Only a birth certificate or an identity card (passport) can be used as such a document. These documents must be examined by the court in the judicial investigation with other evidence. Therefore, if an accused minor does not have any identifying documents, it is necessary to request information about them in the Registry office archive.

In this case, the age of the accused who has not reached the age of majority is examination by the determination of their body. And if the documents establishing the identity of the accused minor are not available at all or there are doubts about the reliability of the submitted documents, a forensic medical examination is appointed to establish the age of the minor. In accordance with Article 241 of the Criminal Procedure Code of the Republic of Kazakhstan, this circumstance refers to cases in which an expert examination is mandatory.

When determining the age of a person, the expert is guided by the characteristics of the physiological and anatomical features of the age of a person identified in forensic medical science. The expert can not accurately determine the exact age of a person, that is, the date, month of birth and, in many cases, the year of birth. If the expert opinion indicates the age of a person with a lower and upper age, then the lower age is taken as the basis for making a decision on the case. When the age of a person is determined by an expert method, the date of birth is considered to be December 31. It is necessary to take into account another point related to determining the age of a minor: a person is considered to have reached a certain age not from the date of birth, but from 00 hours of the day following it [5; 112].

With the assistance of legal medical examination so-called natural age can be established, which is based on restorative and physiological (or morphofunctional) characteristic of the body at a certain point in life. Master conclusions are based on a set of information gotten after a comprehensive examination using anthropometric, anthroposcopic, clinical, dental, endocrinological, radiological and other strategies. When analyzing the age of young people, such signs as weight, tallness, measurements of person body parts, signs of adolescence (the advancement of auxiliary sexual characteristics, the arrangement of the menstrual cycle) are taken into account.

Criminal Procedure Code of the Republic of Kazakhstan gives for the obligatory identification of the age of the charged, the suspect and the victim in cases where it is typically important to the case, and there are no archival data on the age. Such requirement emerges when bringing young people to criminal obligation, determining a person's personality, and in a number of other circumstances.

The older a person is, more difficult their age is to determine and the result is less accurate. So, in infants, the age is set with an accuracy of one month, in adolescents-up to two years, in adults of mature age - up to five years, in persons over 50 years — up to 5–10 years.

In cases where additional mental information is required to clarify imperative circumstances for the case, a scientific mental examination is used to explore non-pathological peculiarities of the mind, for case, in the event that there's prove that the youngest are weaker than their peers, and may not have been completely mindful of their activities.

The reason for its arrangement may be the failure of a minor to memorize the curriculum material, rehashed deserting for the moment year, preparing in an assistant school, a inclination to lock in in exercises inborn in youthful children, a long division from classes due to ailment, as well as the insufficiency of the behavior of minors to their age characteristics, the peculiarity of the inspiration of their activities, the disproportion of the objective substance of the activities of a youngster to subjectively set objectives, information on the unfavorable conditions of the childhood of a minor, its educational disregard, etc.

As one appears, agents and judges encounter challenges and make errors within the planning and arrangement of such a master examination, assessment and utilize of the conclusion of master analysts, which is to a certain degree due to the drawbacks of the authoritative control of the arrangement and conduct of this master think about.

One of the foremost prevalent sorts of measurable mental examination is the scientific mental examination of minors, which accounts for more than 60 % of all conducted master mental investigations.

Forensic psychological expertise in criminal cases involving minors is usually assigned in the following cases: to establish the ability of a accused (suspect, defendant) minor with a mental retardation not related to a mental disorder to fully understand the actual nature and social danger of their actions and to direct them; to determine the ability of minor witnesses and victims to correctly perceive the circumstances relevant to the case and to give correct testimony about them; to determine the ability of young and underage victims of sexual assault cases to understand the nature and significance of the actions committed against them and to resist.

In practice, the question arises about what kind of expertise (forensic psychological or complex psychological and psychiatric) to appoint in relation to a suspect, accused or defendant minor.

Chapter 35 of the Criminal Procedure Code of the Republic of Kazakhstan, which regulates the procedure for conducting a forensic examination, does not contain provisions concerning the appointment of a forensic psychological and complex psychological and psychiatric examination of minors. In part 2 of art. 421 of the Code of Criminal Procedure of the Republic of Kazakhstan states that “in the presence of data indicating a lag in mental development not related to a mental disorder, it is also established whether the minor was fully aware of the actual nature and social danger of his actions (inaction) or directed them”, but it is not defined how these circumstances should be established.

The concepts of mental retardation not related to a mental disorder and “mental impediment” stay undisclosed, which presents instability within the elucidation of these terms and gives rise to sharp discourses among researchers and professionals approximately what kind of expertise (forensic psychological or complex psychological and psychiatric) should be endorsed.

As a rule, a forensic psychological examination is assigned to persons who do not raise doubts about the state of their mental health. If such a doubt arises, it is necessary to conduct a preliminary forensic psychiatric examination.

In cases where mental retardation is associated with oligophrenia in the degree of debility, psychophysical infantilism, organic lesions of the central nervous system, psychopathies, asthenic syndrome, a comprehensive forensic psychological and psychiatric examination is prescribed.

As E.V. Polkunova rightly notes, “the forensic psychological examination differs from the complex psychological and psychiatric examination mainly in that the latter is carried out in relation to minors who are characterized by a lag in mental development associated with mental illness, traumatic brain injuries, etc., and not pedagogical neglect” [6; 239].

Meanwhile the question of the appointment of a forensic psychological or complex psychological and psychiatric examination is important, since further proceedings depend on it. In particular, the Criminal Code of the Republic of Kazakhstan clearly distinguishes between two forms of mental retardation: related and not related to a mental disorder. According to part 3 of Article 15 of the Criminal Code of the Republic of Kazakhstan, if a minor has reached the age from which criminal responsibility begins, “but due to a lag in mental development not related to a mental disorder at the time of committing a criminal offense, he could not fully realize the actual nature and social danger of his actions (inaction) or direct them, he is not subject to criminal liability”. In other words, if a minor accused of a crime shows signs of mental (intellectual and personal) development delay due to social or pedagogical neglect, and as a result, at the time of committing criminal acts, he was not able to fully understand the meaning of his actions and control them, to carry out their volitional regulation, then such a minor is generally exempt from criminal liability [7; 79].

In relation to minors participating in criminal proceedings, a forensic psychological examination can also be conducted to establish other circumstances that fall within the competence of expert psychologists, for example, to determine the motivation for the actions of minor defendants (suspects), to identify the motivation for changing testimony. Due to the fact that juvenile delinquents are characterized by the commission of crimes in a group, an examination of the socio-psychological characteristics of the members of the criminal group can also be conducted, aimed at establishing the internal structure of the group, whose members can be both minors and adults.

To resolve the issue of the nearness or nonappearance of a minor slack in mental advancement, a legal complex psychological and psychiatric examination is designated. This examination may address the issues of the border range between brain research and psychiatry. The most assignment of the examination is to determine the mental disorders and peculiarities that incredibly influence the cognitive-orientation movement in connection to the individual undergoing the examination. Such disorders and variations from the norm can as it were be distinguished with the synchronous utilize of psychiatric and mental information. Mental and psychiatric examination is carried out by a commission, which essentially incorporates a profes-

sional clinician and a professional therapist. The objects of this examination are people affected by slight degrees of oligophrenia, psychopathies, mental issues, infantilism, spillover psychopathic states, character accentuations [8; 97].

Mental and psychiatric examination understands the taking after primary assignments: capability of the mental state of the individual experiencing the examination, assurance of the type of mental pathology; assurance of the nearness of highlights of mental movement that anticipate mindfulness of the noteworthiness of the activities performed; assurance of the degree of impact of person characteristics on the execution of unlawful activities; conclusion of the state of influence in psychopathic people.

This way, when conducting master examinations, the individual conducting the procedures gets answers to the questions that emerge, and the substance of the graphic portion of the examination gives a decently total picture of numerous identity characteristics of the individual being tried and is one of the instructive sources around the suspect minor (denounced).

### Conclusion

Forensic psychological examination allows the investigation of criminal cases from an objective point of view to consider the degree and ability of a teenager to understand the meaning of their actions and approach it from a deeper scientific point of view than other types of examinations. In substantial actual performance, employees investigating this division of cases gain problems while formulating questions by reason of inspection, determining the peculiarities of the demeanor of an unimportant that exigency to have existence investigated for the time of a proper psychological inspection, for that reason, in the habitual performance of scrutiny, juridical psychological examinations are appointed totally seldom. It is proposed to form appropriate changes to the Criminal Procedural Code of the Republic of Kazakhstan and give it perceptive to cover a specialist (psychologist) in the manner that a consultant in every part of criminal cases involving minors involved considered in the state of suspects or accused.

The need for the use of such expertise in the investigation and consideration of criminal cases involving minors in court is due to the need to improve the criminal procedure legislation, the development of provisions governing the appointment and production of this type of expert research.

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## Кәмелетке толмағандар жасаған қылмыстар туралы қылмыстық істерді тергеу кезіндегі сот-психологиялық сараптаманың ерекшеліктері

Мақалада кәмелетке толмағандарға қатысты сот-психологиялық сараптаманы тағайындау және жүргізу мәселелері қарастырылған. Кәмелетке толмағандар қатысатын қылмыстық істер бойынша сот-психологиялық сараптамасы, әдетте, кәмелетке толмаған айыпталушының, күдіктінің психикалық бұзылумен байланысты емес психикалық дамуы тежелген сотталушының өз әрекеттерінің нақты сипаты мен қоғамдық қауіптілігін толық көлемде ұғынуға және оларды басқаруға қабілеттілігін анықтау үшін; жас және кәмелетке толмаған куәлар мен жәбірленушілердің ісі үшін маңызы бар мән-жайларды дұрыс қабылдау және олар туралы дұрыс айғақтар беру қабілетін айқындау үшін; жас балалар мен кәмелетке толмаған жәбірленушілердің жыныстық қолсұғушылық туралы істер бойынша тағайындалады. Кәмелетке толмағанның жас ерекшеліктеріне байланысты, атап айтқанда, жеке қақтығыстар, физиологиялық өзгерістер аясында болатын терең күйзеліс кезеңінде кәмелетке толмағанның жеке ерекшеліктерін, тәрбие ерекшеліктерін және т.б. ескеру қажет. Авторлар сот-психологиялық сараптама кәмелетке толмағандарға қатысты қылмыстық істерді зерттеуге қатысты әрбір объективті тұрғыдан жасөспірімнің өз іс-әрекетінің жоспарын көру қабілеті мен қабілетін ескеруге және сот сараптамасының басқа түрлеріне қарағанда тереңірек ғылыми түсінікке негізделуге мүмкіндік береді деген қорытындыға келді.

*Кілт сөздер:* сараптама, сот-психологиялық сараптама, сот-психологиялық сараптама жүргізу, сот-психологиялық сараптама тағайындау, кәмелетке толмағандарға сот-психологиялық сараптама, жасы.

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## Особенности судебно-психологической экспертизы при расследовании уголовных дел о преступлениях, совершенных несовершеннолетними

В статье рассмотрены вопросы назначения и производства судебно-психологической экспертизы в отношении несовершеннолетних. Судебно-психологическая экспертиза по уголовным делам с участием несовершеннолетних обычно назначается для установления способности несовершеннолетнего обвиняемого, подозреваемого, подсудимого с отставанием психического развития, не связанным с психическим расстройством, в полной мере осознавать фактический характер и общественную опасность своих действий и руководить ими; для определения способности малолетних и несовершеннолетних свидетелей и потерпевших правильно воспринимать обстоятельства, имеющие значение для дела, и давать о них правильные показания; для определения способности малолетних и несовершеннолетних потерпевших по делам о сексуальных посягательствах понимать характер и значение совершаемых с ними действий и оказывать сопротивление. В связи с возрастными особенностями несовершеннолетнего, в частности, в период глубоких переживаний, происходящих на фоне личностных конфликтов, физиологических изменений, необходимо учитывать индивидуальные особенности несовершеннолетнего, особенности воспитания и др. Авторы пришли к выводу, что судебная психологическая экспертиза позволяет в отношении исследования уголовных дел, связанных с несовершеннолетними, с каждой объективной точки зрения учитывать уровень и способность подростка разглядеть замысел своих действий и исходить из более глубокого научного осмысления, чем другие виды судебных экспертиз.

*Ключевые слова:* экспертиза, судебно-психологическая экспертиза, производство судебно-психологической экспертизы, судебно-психологическая экспертиза несовершеннолетних, возраст.

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