

LEGAL STUDIES

The Age of Criminal Responsibility

The facts of the Corey Davis case

- March 1998, 10 year old boy drops Corey Davis into a river where he drowned.
- Police charges 10 year old boy with manslaughter.
- April 1999 seen a committal hearing held before a senior children's magistrate in the children's court.
- All four witnesses were between 6-10 years of age.
- Magistrate found he was satisfied that the prosecution evidence was sufficient.
- Magistrate called for the lowering of the age of presumption of doli incapax to 12 years of age.
- The decision was rejected by DPP.
- DPP ordered that the child be indicted for manslaughter in the Supreme Court.
- November 1999 seen the trial take place in Supreme Court.
- December 3 seen the jury find the child not guilty.

Report

In Australia the statutory minimum age of criminal responsibility is now 10 years of age. Between the ages of 10 and 14 years of age a invalidate presumption (doli incapax) operates to deem a child between the ages of 10 and 14 incapable of committing a criminal act. The principle know as doli incapax (in Latin meaning 'incapable of crime') has been adopted into Australian legislation in Queensland, Tasmania, Western Australia and the Northern Territory and operates under the common law system (law made by judges) in the other states and the ACT. The prosecution can disprove this presumption, by showing that the accused child was able at the relevant time to distinguish between right and wrong, then a contested trial result in a conviction. From the age of 14 to 18 years of age young offenders may be held fully responsible for their criminal acts but are subject to a different criminal sanctions then adults that have committed the same offences.

The current law exists under the common law inherited from Britain there is a presumption that children under the age of 14 are not capable of committing a crime because they do not have the capacity to know what they do is seriously wrong. Doli Incapax is a very controversial in both Australia and Britain. In 1998 the Doli Incapax was abolished under legislation. In 1990, a report publish by the Federal Attorney-General's Department reviewing federal criminal law recommended that 1. 'The principle be kept, but the onus should be on the accused to prove that he or she did not understand that the criminal act was wrong'. In 1997, a report which was conducted by the Australian Law reform Commission and the Human Rights and Equal opportunity

Commission, concluded that 2. 'The principle of doli incapax was a practical way of introducing young people to the full criminal responsibly once they reach the age of 18'.

The Corey Davis case has given a rise in debate about the age established as the cut off point for the presumption of doli incapax. Many arguments arise including whether children of today's society are better educated and more urbanized than children 200 years ago. Children in Australia have access to the internet radio, television, computer games e.g. and has far greater of the world today than the same child that may live in a country area of Britain.

The problems with the current law regarding The Age of Criminal Responsibility become apparent once reading some real life news paper articles. One problem that seem to stand out in some cases is that there is no punishment for children who recidivist criminal behavior. The News paper article 'A Life of Crime' from the Sunday Morning Herald 19/4/2008 shows how a 12 year old boy commits countless crimes putting the community at danger and he falls in the category of doli incapax. This

shows a huge problem which needs to be addressed as it is not only affecting him but it is also putting other people at risk by having him in direct contact with the public. Another example of the same problem is found in a news paper article 'untouchable' from the telegraph February 2005. It shows again how the police cannot prosecute the child unless they can prove beyond reasonable doubt that he or she knew that the criminal action was seriously wrong. The 'Right or Wrong: Who takes responsibility' news paper article from the Sunday Morning Herald 2005, show a picture of a young boy who has just left the the NSW court giving the finger as he leaves. This show this boy doesn't care about his actions or the people he has affected on the way of committing these criminal actions. 'Even a nine year old boy who is known to police and has committed more than 30 offences is safe from prosecution.' This statement from the news paper article shows the down side of this legislation and how children can get away with criminal activities within the community. Another question which is raised in many of these news paper articles is where are the parents? And why is this child allowed to roam around without supervision? Maybe this is a case of were DOCS needs to have a look at the family.

In the United Kingdom in some cases children's names have been release into the public once they have committed a crime, I believe naming and shaming the children has good points and bad points about it. Firstly by naming the children perhaps the parents or extended family might then take an interest in keeping the Childs name out of the public eye. Secondly I believe it could cause problems naming the child that name sticks for life and the child will be scared possibly not giving the child a chance to be rehabilitated.

I believe steps can be taken to alter the law so it can improve the efficiency and effectiveness. First of all I believe penalizing the parents and punishing the children under the age of 14. Punishing the children doesn't mean sending them straight into the juvenile jails but working out a punishment which would suit the crime committed by the child. Penalizing the parent would make the parents stand up and take responsibility of their Childs actions. This change in the law would also stop criminals getting their children to do the crimes from them knowing that the police can't touch the children. I also believe changing the age of criminal responsibility to the age of 9 years old in NSW. And lowering the presumption against criminal responsibility (doli incapax) to the age of 13. Because I believe that a child who is 13 years of age knows from right to wrong within this society today. And if there is any doubt whether the child didn't know what they were doing there should be a full examination of the Childs circumstances within there family life.

Referencing For the Report

Newspaper articles

Right or Wrong: Who Takes Responsibility Herald February 2005
A Life Of Crime, And He's Still Just A Boy SMH 19/4/2008
Untouchable February 2005

www.wsws.org/articles/2000/jan2000/bwin-j11.shtml

www.wsws.org/articles/1991/sep1991/juv-s07.shtml

www.dci-au.org/html/crime.html

Quote 1.

<http://www.ag.gov.au/>

Quote 2.

http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/pages/CLRD_child_crim_resp

www.wsws.org/articles/1991/apr1999/chil-a17.shtml