

LRC report on Age of Criminal Responsibility

The Law Reform Commission today (May 25) announced the publication of its report on "The Age of Criminal Responsibility in Hong Kong".

The Commission recommends that:

* the minimum age of criminal responsibility should be increased from seven to ten years of age; and

* children between ten and 14 should be presumed to be incapable of committing a crime unless that presumption can be rebutted by the prosecution.

The Secretary to the Commission, Mr Stuart Stoker, explained that the law currently provides that no child under the age of seven can be guilty of an offence. The law also presumes that a child between the ages of seven and 14 is incapable of committing a crime, unless this presumption is rebutted by the prosecution on proof beyond reasonable doubt that, at the time of the offence, the child was well aware that his or her act was seriously wrong, and not merely naughty or mischievous. This is known as "the rebuttable presumption of *doli incapax*".

Mr Stoker said that Hong Kong's minimum age of criminal responsibility is low in comparison with that in most other jurisdictions. There have been increasing calls in recent years for the minimum age to be raised, on the basis that it is undesirable to subject young children to the full rigours of criminal proceedings, with their attendant sanctions and stigma. He added that there have also been criticisms of the rebuttable presumption of *doli incapax* which applies to children between the ages of seven and 14.

To gauge the public's views on these issues, the Commission published a consultation paper in January 1999 which contained a number of options, and subsequently commissioned a public opinion survey by the Department of Applied Social Studies of the City University of Hong Kong. A majority of those who commented on the consultation paper or who were questioned in the public opinion survey were in favour of raising the present minimum age of criminal responsibility.

Having considered the issues and the views expressed, the Commission took the

view that it cannot be right to hold a child as young as seven to be criminally responsible for his or her actions. While the scientific evidence was inconclusive, the weight of opinion seems to be that a seven-year-old child cannot fully appreciate the criminal nature of his actions. The Commission has therefore concluded that the present minimum age of criminal responsibility should be raised.

The Commission notes that the available statistics suggest that there is no significant level of criminal activity among children below the age of ten, but that there is a marked increase from that age. The Commission is conscious that it is impossible to be scientifically precise as to the proper age at which criminal responsibility should begin, but conclude that a sensible case can be made for adopting the age of ten as the appropriate level.

The Commission argues that the retention of the rebuttable presumption of *doli incapax* between the new age of ten and 14 years would ensure some flexibility to ensure that children who are insufficiently mature are not subject to criminal prosecution. Accordingly, the Commission recommends that the rebuttable presumption of *doli incapax* should continue to apply to children between ten and 14 years.

The Commission concludes its report by recommending that the Administration should carry out a general review of the juvenile justice system once the results of raising the minimum age to ten have been properly assessed.

End/Thursday, May 25,2000

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