

Public views sought on age of criminal responsibility in HK

The Law Reform Commission today (Wednesday) announced the publication of a consultation paper containing a number of options for changes to the law governing the age at which a child can be held responsible in criminal cases.

The Secretary of 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. A child under the age of seven cannot be held criminally responsible in Hong Kong, even if there is cogent evidence which unequivocally points to the child's commission of a crime.

Between the ages of seven and 14, there is a legal presumption that a child is incapable of committing a crime, but this can be 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. When this presumption is rebutted or removed, full criminal responsibility will be imposed on the child who can then be charged, prosecuted and convicted for any offence allegedly committed.

Mr Stoker pointed out that the minimum age of criminal responsibility varies from one jurisdiction to another, but that the age of seven adopted in Hong Kong is one of the lowest. In recent years there have been calls in Hong Kong and by the United Nations Committee on the Rights of the Child for the minimum age of criminal responsibility to be raised, on the basis that it is undesirable to subject young children who are still socially and mentally immature to the full rigour of criminal proceedings, with their attendant sanctions and stigma.

Mr Stoker said that those who favour maintaining the present minimum age of criminal responsibility argue that bringing young delinquents into the criminal justice system in their formative years provides an opportunity for systematic rehabilitation; and that sanctions imposed on a child reduce the likelihood that he or she will develop a life-long pattern of criminal behaviour.

Mr Stoker added that there have also been criticisms of the legal presumption as to criminal responsibility which applies to children between the ages of seven and 14, and that the equivalent presumption has recently been abolished in England.

Because of the divergence of views as to whether the present minimum age of criminal responsibility should be raised (and, if so, to what age), and as to whether the rebuttable presumption should continue to apply to children between seven and 14, the Commission has decided to seek the public's views on a number of options for reform.

The consultation paper presents four main options, with their respective advantages and disadvantages, for consideration:

* retain the present system;

* raise the minimum age of criminal responsibility, but abolish the rebuttable presumption which applies to children from seven to 14;

* raise the minimum age of criminal responsibility and retain the rebuttable presumption; and

* raise the minimum age of criminal responsibility and reverse the rebuttable presumption for children between the revised age and 14 years, so that it would be for the defence to show that a child was not fully aware that his conduct was seriously wrong, rather than for the prosecution to prove that he was.

Mr Stoker said that the Commission was open-minded as to which of these options was to be preferred, and was now seeking the views of the public before reaching any conclusion.

The consultation period will end on March 31, 1999. Written submissions can be sent to the Law Reform Commission Secretariat before that date.

Copies of the consultation paper are available on request from the Law Reform Commission Secretariat, 20th floor, Harcourt House, 39 Gloucester Road, Wan Chai, Hong Kong. The consultation paper can also be found on the government web site.

END/Wednesday, January 13, 1999

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