

The Criminal Responsibility of Children

This article is intended to give readers some information about the responsibility of young children for crimes they are alleged to have committed.

Law that has been derived from past cases, as opposed to legislation, (called "Common Law") has for many centuries concluded that children below a certain age can not be held responsible for conduct that, if committed by an adult, would be deemed to be criminal.

The age at which a child can be found criminally responsible for their conduct under the Common Law is generally agreed to be 7 years of age.

Children nevertheless naturally reach the requisite level of maturity and understanding at different stages in their lives. Courts have long accepted that simply using age as the only gauge of criminal responsibility for all children is unacceptable.

As a result, an important rider to the age test applies under the Common Law.

It states that whilst a child over 7 *can* be charged with a criminal offence, there is a *presumption that this child does not have the capacity to be criminally responsible for their conduct.*

This presumption stops when a child reaches the age of 14. Accordingly, a child over 14 is automatically presumed to be criminally responsible for their conduct and therefore there is no onus on the prosecution to prove it is actually the case.

These Common Law rules still apply in Australian courts. Most jurisdictions have adopted the rules in legislation, however in doing so there has been some small changes in the wording of the test and ages that apply.

It is for the Prosecution, (the most public face of which is, of course, the police) to show, by the use of

evidence, that this presumption is incorrect.

As a general test, the Prosecution in this situation must show *the child knew what he or she was doing was seriously wrong.*

It is not enough to show that the child thought the behaviour was simply naughty or mischievous.

The nature of the offence has no evidentiary weight. In other words a child cannot, for instance, automatically be expected to know committing a murder was seriously wrong, simply because it is an extremely serious criminal charge.

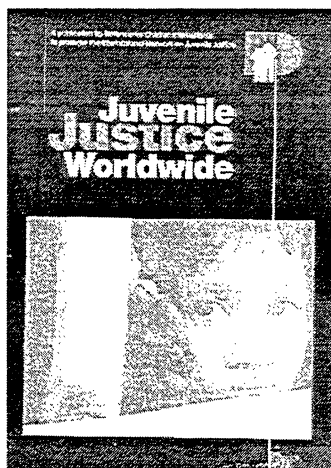
In practice the Prosecution most often attempts to overcome this presumption by simply asking the child during a video interview an obvious question such as "did you know what you did was seriously wrong". (It is arguable the answer may be influenced by the fact the child is being asked the question by a police officer in a police station...)

For a variety of reasons including slackness on the part of the Defence, this Prosecution onus is rarely even raised in court. When it does become the subject of conjecture, it is unusual for a court to rule a Prosecution fails because the presumption has not been rebutted.

There has been recent judicial and media speculation that the age to which the presumption applies should be lowered. In other words, children should automatically be assumed to be criminally responsible for their behaviour at a younger age. I believe the age of 12 has been suggested. The rationale for this being that "the community" considers children now are somehow more worldly, informed, or "street-wise" than ever before, and more crimes are now committed by very young children who are "getting away with it".

The truth of these assumptions is irrelevant in any debate about lowering the age of the presumption. A child can still be charged with a criminal offence at a very young age. The presumption rule simply requires the Prosecution prove that the child involved had the mental capacity to understand what he or she did was wrong, a task that is generally neither onerous or contentious.

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