

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2012

Abolition of the Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse

The LegCo Panel on Administration of Justice and Legal Services and stakeholders generally supported the proposal of the Law Reform Commission (LRC) Report on “The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse” to abolish the common law presumption concerned. As regards the concerns expressed by individual organisations in relation to the issues of minimum age of criminal responsibility and the chance of young offenders being subjected to criminal liability, our response is as follows.

2. In response to the recommendation made in the LRC Report on “The Age of Criminal Responsibility in Hong Kong” published in 2000, the Juvenile Offenders Ordinance was amended in 2003 to raise the minimum age of criminal responsibility from seven to 10 years. The amended Ordinance came into effect on 1 July 2003. The LRC arrived at its recommendation after thorough consideration of the outcome of public consultation and the minimum age of criminal responsibility adopted in overseas jurisdictions. Some other common law jurisdictions (such as England and Australia) have also set the minimum age of criminal responsibility at 10.

3. The Administration has all along endeavoured to provide young persons with rehabilitation opportunities under circumstances which are appropriate and permitted by law. For young persons aged under 18 who are arrested for having committed relatively minor criminal offences, the Police will usually consider the applicability of the Police Superintendent’s Discretion Scheme, so that young offenders will not be subject to sanction under the criminal justice system for having committed minor criminal offences. Under the common law, there is also a rebuttable presumption of *doli incapax* applicable to children aged from 10 to 14, meaning that a child within this age range is presumed to be incapable of committing a crime. The presumption provides adequate protection for children under the age of 14, as the burden of proof of criminal intent is on the prosecution. Moreover, the standard of proof that the prosecution must adduce in such cases is high. It must be proven beyond reasonable doubt that not only was there *actus reus* with *mens rea*, but also that the child knew that the particular act was not merely naughty or mischievous, but seriously wrong.

4. The Administration will continue to closely monitor the crime situation of children and young persons under different age groups. At the present stage, there is no plan to further raise the minimum age of criminal responsibility.

Security Bureau
24 May 2012