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Re: Juvenile Offenders (Amendment) Bill 2001

I have been invited to submit my views on the above-captioned Bill. Major proposals on the Juvenile Offenders (Amendment) Bill 2001 are:

- (i) raising the minimum age of criminal responsibility from seven to 10 years; and
- (ii) retaining the rebuttable common law presumption of *doli incapax* for children aged between the revised minimum age of 10 and below 14.

The Report on the Age of Criminal Responsibility in Hong Kong (The Law Reform Commission of Hong Kong, Hong Kong SAR Government, 2000) has clearly elucidated the reasons for increasing the age of criminal responsibility in Hong Kong from seven years to 10 years. I will not repeat these. However, I suggest that the age of criminal responsibility be raised from seven to 14 years. My recommendation is based on a consideration of our current knowledge about the competence and capabilities of children, ranging in age from 10 to 14 years.

The age of criminal responsibility varies widely across countries because policy makers and those who work with children hold different **assumptions** about age and its relationship to development. Hence, it is appropriate to **question the validity of these assumptions** as they have contributed to the current recommendation of increasing the age of criminal responsibility to 10 years and not to one of increasing it to 14 years. It should be noted that many individuals and organisations concerned with children's rights and welfare favour the age of 14.

Research on Child Development

1. **Caveats of using contemporary research on child and adolescent development to make judgments about when children can be held criminally culpable.**

While great progress has been made, in recent years, in our knowledge about child and adolescent development, "**developmental research cannot provide us with us with "dichotomous boundaries that allow us to create bright-line age distinctions under the law"**" (Steinberg & Caufmann, 2001). We know that development is gradual rather than abrupt, quantitative rather than qualitative and that there are vast individual differences among children of the same chronological age (Steinberg & Caufmann, 2001). Hence **developmental research is better utilised to identify the lower boundary of the age range which children should not be held criminally culpable and the upper boundary of the age range when we can safely assume that normally developing individuals can be held criminally culpable.** The little extant research, which examines the relationship between age and psychosocial judgement with reference to anti-social behaviour that few children before the age of 12 display adult like judgement and that many individuals do not show this by 17 years (Steinberg & Caufmann, 2001).

2. **Individual differences in Moral Development among Children and Adolescents.**

The Law Reform Commission of Hong Kong (Hong Kong Government, 2000) cites research on child and adolescent development to support its recommendations. They refer to the research of Lawrence Kohlberg, a psychologist who specialised in moral development. According to Kohlberg, children reach conventional morality by about 12-14 years. Given that we know that there is considerable variability in rate of development, **we need to acknowledge that children achieve developmental milestones at different chronological ages.** By only increasing the age of criminal responsibility to 10, we are not giving adequate consideration to individual differences in developmental transitions.

3. **The danger of overestimating the competence of children today.**

There is no scientific evidence to indicate that children today are more morally advanced than were those of previous generations. Early and compulsory education, access to Internet technology, and secular trends in physical maturity do not necessarily translate to earlier moral development and psychosocial maturity. Although the primary school curriculum touches on moral education and civic education, the focus is on the 3Rs and not on ethics, criminal responsibility and psychosocial development. Further, just because children have access to the Internet, it does not necessarily promote their moral development.

While a developmental perspective cannot provide a clear age marker in moral and psychosocial development, it does highlight the need to give adequate attention to individual differences in the developmental transition from childhood to adulthood. We do not want to reduce the window of transition by setting the age of criminal responsibility as low as 10.

Thank you.

Yours sincerely,

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