

Parliamentary Briefing

**AGE OF CRIMINAL
RESPONSIBILITY BILL**

**Lords Second Reading
Friday 8 September 2017**

(1) The Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 125 organisations - including charities, voluntary sector service providers and research institutions – all working to establish a fairer and more effective criminal justice system. Across the criminal justice pathway we support

- Promotion of crime-free lives
- Crime reduction
- Better policing
- Fairer, swifter justice
- Reduced reliance on imprisonment
- Improved rehabilitation

A full list of our members is at <http://criminaljusticealliance.org/members/>

(2) Background

The age of criminal responsibility (ACR) sets the bar below which a child cannot be held to have the capacity to commit a crime. The ACR is a crucial standard of the criminal justice system because it recognises that below that age, a child does not have the mental or emotional maturity to be held responsible for the harm they may cause.

This Briefing sets out the CJA's support for Lord Dholakia's Private Member's Bill, which proposes to increase the age of criminal responsibility in England and Wales from ten to 12.

(3) The current picture

The age of criminal responsibility in England and Wales is currently set at ten years, raised from eight in 1963. Until 1998 there existed a legal presumption - the '*doli incapax*' - that children under the age of 14 were also incapable of committing an offence. This presumption was rebuttable if the prosecution could show that a child knew what they were doing was 'seriously wrong' and 'beyond mere naughtiness or childish mischief'. This presumption was removed with passage of the Crime and Disorder Act 1998.

England and Wales (and Northern Ireland) have one of the lowest ACRs in the world and are particularly out of kilter with the rest of Europe, where the average ACR is 14. Our ACR is also out of step with other standards of responsibility assigned to children and young people such as the age of consent and the legal drinking age.

Scotland has a lower ACR than England and Wales (at eight) but has a minimum age of prosecution of 12. Following a 2016 consultation, the Scottish Government proposes to raise the Scottish ACR to align with this.

The ACR in England and Wales has come under repeated criticism from the UN Committee on the Rights of the Child. The Committee considers the absolute minimum acceptable ACR to be 12.

By comparison the ACR in Germany, for example, is 14 and even then a child above that age can only be held criminally responsible if they are considered to be morally and mentally mature at the time an offence occurred. Young adults up to the age of 21 can also be dealt with in the youth justice system if they fail to pass this test.

Similarly in Turkey, where the ACR is 12, children under 15 may only be prosecuted where the judge deems them fully capable of understanding the consequences of their actions and where their capacity to control their behaviour is not underdeveloped. This decision is made on the basis of reports by social workers and forensic specialists.

(4) Reducing the likelihood of reoffending

Involving children in the criminal justice system almost invariably has a hugely negative impact on their development and their transition into adulthood. This is particularly concerning when induction into the criminal justice system is itself criminogenic, in that it demonstrably increases the likelihood of a child going on to reoffend.

Labelling a child criminal at such a young age places them at huge social and economic disadvantages that only increase their chances of reoffending and fails to recognise that such children are often some of the most vulnerable in the first place. Frequently, once offered the identity of an offender, they will assume that behaviour.

The few such children who do exhibit harmful behaviour would be better served by a more sophisticated approach that properly takes into account their welfare and asks not whether they knew what they were doing was right or wrong, but whether it is right or wrong (or indeed efficacious) to treat them as offenders, with all the well-documented undesirable consequences that can ensue from stigmatising children in this way at a stage of very early development.

An approach that removes under-12s from the criminal justice system, as in many other jurisdictions, would also better take into account the contexts in which children behave harmfully. Such children and young people often come from chaotic backgrounds, with histories of poor mental health, dysfunctional families, and backgrounds of emotional, physical or sexual abuse. Well over half of children engaged by the criminal justice system have significant speech or language difficulties and around a quarter have a learning disability. For children in custody, nearly two fifths were in care, compared with one per cent nationally. Aside from whether it's right to assign criminal capacity to a child from that sort of background, there is a powerful case that society would be better served by using the opportunity to intervene positively in a child's life at this early stage, in a care context.

(5) The expert evidence

As neuropsychological understanding of children's development advances, an ACR of ten years old looks increasingly archaic. According to the Royal Society's recent investigation into the legal application of neuroscience, it is 'clear that at the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour'.

The growing expert consensus is that most people's cognitive development does not stop until mid-twenties or even early thirties in some cases. This means that the way a 25 year-old's brain processes information looks very different from either an 18 or 12 year-old's, with important effects on a person's social reasoning, self-control, problem-solving and emotional maturity.

So while a ten year-old will probably know that stealing something is wrong, their ability to apply that knowledge to their actions will be very different from an 18 year-old's. A claimed simple knowledge alone of whether something is right or wrong – which appears to underpin current defence of the status quo – is an oversimplification of an array of neurological, hormonal and environmental factors that dictate a child's behaviour.

(6) How many children would a change affect?

The approach to children and young people by the criminal justice system has changed materially in the last ten years. This has successfully diverted many thousands from entering the criminal justice pathway at an early age.

The number of under-18s arrested for recorded crime has fallen from nearly 350,000 in 2005/06 to fewer than 90,000 in 2015/16, and the total number of children sentenced has dropped by over 70 per cent to fewer than 30,000 in the same period.

Within this cohort, 703 under-12s were arrested in 2015/2016 and 360 were cautioned or convicted, down from 488 in 2014/15, representing just over one per cent of the total number of under-18s cautioned or convicted.

(7) Summary

The Government's continuing position that ten and 11 year-olds should be subject to the criminal justice system (and the full range of punishments it can impose) on the basis that they can distinguish serious wrongdoing from bad behaviour appears increasingly frail. Regrettably, it fails to take into account an up-to-date and nuanced understanding of child neuropsychology and development, relying instead on monochrome historic presumptions about moral certainties.

Furthermore, the ACR in England and Wales is an anomaly in the context of other legal standards of responsibility placed on children as well as with respect to ACRs around the world.

Raising the ACR to 12 would remove an extremely vulnerable cohort of children at a crucial stage of their development from a process that has been shown only to exacerbate negative behaviour and place them at further disadvantage. With the numbers so low, the resources needed to execute a shift towards treating these vulnerable children through a welfare lens, rather than the criminal justice system, would be small while the positive benefits both for them, and for wider society, would be very considerable.

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Although the CJA works closely with its 125 members, this briefing does not represent the individual policy position of any member organisation.