



Standing Committee for Youth Justice

CORONERS AND JUSTICE BILL House of Commons Committee Stage

Part 2(1) Murder, homicide and infanticide: Clause 39: Persons suffering from diminished responsibility

Amendments

Clause 39, page 24, line 9, at end insert

() A person ("D") who kills or is party to the killing of another is not to be convicted of murder if D was under the age of eighteen and his developmental immaturity -
(a) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
(b) provides an explanation for D's acts and omissions in doing or being a party to the killing.

Clause 39, page 24, line 14, after (1)(c) insert "and subsection () (b)"

Clause 39, page 24, line 15, after "functioning" insert "or D's developmental immaturity"

Purpose

To reinsert the Law Commission's recommendation that the diminished responsibility partial defence could be available to a child or young person under 18 if their developmental immaturity substantially impaired their ability to understand the nature of their conduct, form a rational judgment or exercise self-control at the time of the killing. They would be guilty of manslaughter rather than murder and therefore the judge would have a full range of sentencing options.

Briefing

In its report on 'Partial Defences to Murder' published in 2004, the Law Commission recommended that the diminished responsibility partial defence should be available to a child or young person under 18 on the grounds of developmental immaturity.⁴ Following consultation the Government rejected this proposal and hence clause 39 contains no such provision.

We believe that this omission is in contravention of Article 40 of the UN Convention on the Rights of the Child – the right of *'every child alleged as, or accused of, or recognised as having infringed the penal law ... to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, taking into account his or her age'*.¹

¹ Emphasis added.

Why developmental immaturity is relevant?

Children and young people are different from adults. Underneath this apparent statement of the obvious are physiological and psychological realities which should make a major rather than a token difference to how society responds to crimes, including very serious crimes such as murder, committed by young people. Teenagers – even those who are physically large and affect bravado – are developmentally well short of adulthood. The key differences are:

- The physiological development of their brains, in which the amygdala prevails over the frontal lobe. As result they are markedly more impulsive, driven more by fear and gut reactions and react much less rationally than typical adults.²
- Their intellectual understanding and judgement. They are still learning about the world and how it works, and do not have the practical experience of situations that adults have.

Further, under 18s mature at different rates; their ability to decide to engage in criminal activity, including committing murder, in the clear knowledge of the full implications and consequences of this must be subject to the developmental level of the individual young person. Knowing the difference between right and wrong, what is legal and illegal, is not intrinsic to a child and needs to be learned, in some cases, for example where a child is neglected, such learning opportunities are absent throughout childhood. The law must be able to take account of these differentials.

The effect of omitting developmental immaturity from clause 39

The omission of developmental immaturity from clause 39 is particularly serious in the context of the abolition of *doli incapax*, which means that any child over the age of 10 is be held to understand the significance of their actions and that a partial defence to murder should only be available if a child meets the proposed conditions for a diminished responsibility defence. Namely, that he or she is substantially less able to understand the nature of their conduct, form a rational judgment or exercise self-control as the result of an abnormality of mental functioning arising from a “recognised medical condition”.

This is unjust. An adult of 40 years with the emotional maturity of a 10 year old under these conditions can claim diminished responsibility if they are diagnosed as having a “recognised medical condition”, yet a 10 year old without such a recognised condition cannot succeed with the plea as their development has not been arrested, it is simply ongoing. The fact that children develop consequential reasoning as they grow older is disregarded and in this way, more is expected of children than adults.

In its response to the consultation on these proposals the Government explained its decision not to include developmental maturity on the basis that they did not receive any evidence in the consultation that the absence of a developmental immaturity provision in the existing law is causing any significant difficulties in practice and the belief that including the provision would open up the defence too widely and catch inappropriate cases.³ We do not consider these reasons sufficient to justify less favourable treatment of children, particularly in light of the significant limitations included in the clause on when the defence could be employed.

For further information please contact:

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² National Institute for Mental Health 2001 *Teenage brain: a work in progress*

³ MoJ (2008) Murder, manslaughter and infanticide: proposals for reform of the law summary of responses and Government position

Committee for Youth Justice (SCYJ) is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, Children Law UK/TACT, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations