First Draft of Report #58 - Developmental Incapacity Defense

SUBMITTED FOR ADVISORY GROUP REVIEW
May 18, 2020

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
441 FOURTH STREET, NW, SUITE 1C001 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 442-8715
www.ccrc.dc.gov

This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at www.ccrc.dc.gov.

This Draft Report has two main parts: (1) draft statutory text for an enacted Title 22 (Title 22E) of the D.C. Code; and (2) commentary on the draft statutory text. The commentary explains the meaning of each provision and considers whether existing District law would be changed by the provision.

Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group's written comments. The D.C. Criminal Code Reform Commission's final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group's timely written comments and approved by a majority of the Advisory Group's voting members.

<u>The deadline for the Advisory Group's written comments on this First Draft of Report #58 – Developmental Incapacity Defense is June 19, 2020.</u>

Oral comments and written comments received after this date may not be reflected in the next draft or final recommendations. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

RCC § 22E-501. Developmental Incapacity Defense.

(a) *Defense.* An actor does not commit an offense when:
  (1) In fact, the actor is under 12 years of age; or
  (2) The actor is under 14 years of age and, as a result of developmental immaturity, lacks substantial capacity to:
    (A) Conform the conduct alleged to constitute an offense to the requirements of the law; or
    (B) Recognize the wrongfulness of the conduct alleged to constitute an offense.

(b) *Definitions.* The term "in fact" has the meaning specified in RCC § 22E-207; and the term "actor" has the meaning specified in RCC § 22E-701.

COMMENTARY

Explanatory Note. *This section establishes the developmental incapacity defense for the Revised Criminal Code (RCC). The RCC developmental incapacity defense establishes 12 as the minimum age for a child to commit an offense. The defense is also available to children ages 12 and 13 who, due to their developmental immaturity, are incompetent. As criminal charges against children under 14 are otherwise barred by District law, the developmental incapacity defense applies to delinquency proceedings. The RCC developmental incapacity defense replaces the common law defense of* doli incapax *that may still be applicable in the District.*

Subsection (a) specifies that an actor does not commit an offense[1] when either of two alternative requirements is satisfied. Paragraph (a)(1) provides a defense if the actor is under 12 years of age. Paragraph (a)(1) uses the defined term "in fact" to specify that there is no culpable mental state required as to the actor's age. Paragraph (a)(2) provides a defense if the actor is 12 or 13 and, as a result of development immaturity, lacks substantial capacity to either conform their alleged conduct to the requirements of the law or to recognize the wrongfulness of the alleged conduct. This incapacity standard does not refer to the actor's capacity to participate in a delinquency proceeding.[2] This incapacity standard is similar to the legal standard in current District law for determining incapacity due to mental disease or defect.[3] However, as the

[1] As discussed below, the defense applies to conduct that is the subject of juvenile delinquency proceedings. *See* D.C. Code § 16–2301(7) ("The term 'delinquent act' means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.").

[2] The current D.C. Code contains several provisions regarding an actor's ability to engage in a delinquency proceeding. *See, e.g.* D.C. Code § 16-2301(38) (defining "incompetent to proceed"); D.C. Code § 16-2315. While not expressly limited to incompetency of a juvenile due to mental disease or infirmity, these provisions are focused on treatment options that are relevant only for incompetence due to mental disease or infirmity. *See D.C. v. H. J. B.*, 359 A.2d 285, 293 (D.C. 1976) ("…16-2315 provides that if the child be found incompetent to proceed because of mental illness…").

[3] *Bethea v. United States*, 365 A.2d 64, 79 (D.C. App. 1976) (en banc) ("We turn now to the specific language of the standard which we adopt for the insanity defense. We make certain minor modifications in s 4.01; the standard for our court system henceforth thus will be: (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacked substantial capacity either to recognize the wrongfulness of his conduct or to conform his conduct to the requirements of law. (2) As used in this standard, the terms 'mental

standard here is employed in the context of developmental immaturity, District case law based on the insanity defense is instructive but not controlling. Per the rules of interpretation in RCC § 22E-207, the term "in fact" in paragraph (a)(1) also specifies that no culpable mental state need be proven as to the requirements in paragraph (a)(2). Per RCC § 22E-201, if there is evidence of the defense at trial, the government must prove the absence of all elements of the defense beyond a reasonable doubt.

Subsection (b) cross-references applicable definitions in the RCC and the D.C. Code.

Relation to Current District Law. *The RCC developmental incapacity defense clearly changes current District law in two main ways.*

First, the RCC developmental incapacity defense provides a complete defense to liability for an offense for all actors under 12 years of age. The current D.C. Code is silent as to whether there is any minimum age of liability for juvenile delinquency proceedings,[4] and there is no case law on point. However, the D.C. Code "reception statute" broadly provides that the common law remains in force except insofar as it is "inconsistent with, or [] replaced by" statute.[5] At common law, the *doli incapax* rule provides that a child under age 7 is incapable of committing an offense.[6] There does not appear to be any clear statement by Congressional or District

---

disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.").

[4] The D.C. Code contains jurisdictional provisions that refer to maximum ages for delinquency proceedings, but these jurisdictional provisions are silent as to any minimum age of liability. D.C. Code § 11–1101 states, in relevant part, that the Family Court of the Superior Court has jurisdiction over "proceedings in which a child, as defined in § 16-2301, is alleged to be delinquent, neglected, or in need of supervision." A "child" in turn is defined by D.C. Code § 16-2301(3) as "an individual who is under 18 years of age" while excluding certain 16- and 17-year-olds charged by the United States Attorney with certain crimes or charged with a traffic offense.

Recently, the Council specified in D.C. Code § 16–2320(c)(2) a minimum age of 10, for transfer of custody of delinquent children to the Department of Youth Rehabilitation Services (DYRS). *See* Committee on the Judiciary, Report on Bill 21-0683, the "Comprehensive Youth Justice Amendment Act of 2016" (Oct. 5, 2016) at 7-8 (citing other states' minimum age for delinquency adjudication but noting the bill only limits commitment to DYRS). This appears to be the first record of legislative discussion of a minimum age for criminal responsibility and does not address the applicability of a common law defense or address prosecution of children although this latter point was raised by a public witness. *See Statement of Tim Curry, Director of Training and Technical Assistance, National Juvenile Defender Center* (May 31, 2016) in Committee on the Judiciary, Report on Bill 21-0683, the "Comprehensive Youth Justice Amendment Act of 2016" (Oct. 5, 2016) at 364-365.

[5] D.C. Code § 45–401(a) ("The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of the 1901 Code.").

[6] *Allen v. United States*, 150 U.S. 551, 558 (1893). This presumption was conclusive as to charges of rape. 2 Subst. Crim. L. § 9.6(a) (3d ed.). *See, also Adams v. State*, 262 A.2d 69, 71-72 (Md. 1980) ("Since the Code of Hammurabi (circa 2250 B.C.) and down through the ages, society, under the law, has viewed and treated offenders of tender years in a light differently and more favorably than that accorded adults accused of breaching the law. Over the centuries and during the evolution of the common law of England, there emerged a rule of law governing 'the responsibility of infants' under which an individual below the age of seven years cannot be found guilty of committing a crime; an individual above fourteen years charged with a crime is to be adjudged as an adult; and between the ages of seven and fourteen there is a rebuttable presumption that such individual is incapable of committing a crime. In the absence of any pertinent legislative enactment in this State, the common law principles, as stated above, would appear to govern in Maryland and we so hold."); *Linkins v. Protestant Episcopal Cathedral Found. of the D.C.*, 187 F.2d 357, 360 (D.C. Cir. 1950) ("The common law, particularly as derived from the common law of Maryland, is the fundamental part of the law in this jurisdiction to which we look in the absence of

authorities that the creation of a juvenile delinquency system in the District or other legislation was intended to displace the common law *doli incapax* doctrine for children.[7] Consequently, either the *doli incapax* doctrine remains current law in the District and a child under 7 cannot be adjudicated delinquent for an offense, or the juvenile delinquency system in District law has replaced the common law doctrine and charges may be brought against children of any age. In contrast, the RCC developmental incapacity defense specifies that a child under 12 cannot be adjudicated delinquent for an offense. This minimum age of responsibility is supported by recent brain science research on the capacity of young children[8] and criminological research indicating that involvement of young children in the juvenile justice system increases future criminal behavior.[9] A minimum age of 12 is consistent with minimum standards of international law[10] and recent state reforms.[11] This change improves the proportionality of the revised statutes.

Second, the RCC developmental incapacity defense requires there to be supportive evidence of incapacity of a 12- or 13-year-old before the government must prove the actor's capacity. The D.C. Code is silent as to whether there is any defense as to incapacity due to

---

statutory enactment." (internal citation omitted)). The only record the CCRC has located of *incapax doli* being used under the common law in the District dates to 1822. John Young, a 13-year-old "free boy" held three months in a "loathsome gaol" on a charge of theft, claimed to be *incapax doli* in a *habeas* petition to the District of Columbia Circuit Court. *See* Marguerite Ross Howell and Nicole Marcon Mazgaj, *The Southern Debate Over Slavery: Petitions to Southern county courts, 1775-1867* at 113 (2001).

[7] To date, CCRC research has found no case law or legislative history on point. However, District case law does generally describe the juvenile delinquency system created by Congress—as far back as the first Juvenile Court in 1906—as intended to benefit juveniles and, accordingly, statutory language should be strictly construed insofar as it may lead to detention. *See, In re Poff*, 135 F. Supp. 224, 225 (D.D.C 1955) ("The original Juvenile Court Act enacted in the District of Columbia in 1906, [], was devised to afford the juvenile protections in addition to those he already possessed under the Federal Constitution…In order that the beneficient purpose of the act may be effectuated, it should be construed liberally, except in-so-far as it purports to restrain the liberty of the child, in which case it should be strictly construed.[]" (internal citations omitted)); *see also United States v. Tucker*, 407 A.2d 1067, 1070 (D.C. 1979) ("Moreover, we believe that in view of the rehabilitative purposes of our juvenile justice system, D.C.Code 1973, s 16-2301(3) should be strictly construed against the prosecution and in favor of the person being proceeded against.").

[8] *See, e.g.*, Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 356 (2003) ("Our results indicate that juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding."); *see also* Committee on the Judiciary, Report on Bill 21-0683, the "Comprehensive Youth Justice Amendment Act of 2016" (Oct. 5, 2016) at 3-4 (citing child development research indicating the differences in adolescent brain development).

[9] *See* Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg, *Formal System Processing of Juveniles: Effects on Delinquency*, No. 9 of Crime Prevention Research Review, U.S. Department of Justice, Office of Community Oriented Policing Services (2013) (examining the results of 29 randomized controlled trials, finding no evidence that formally moving juveniles through the juvenile justice system has a crime control effect and, in fact, processing increased delinquency); Barry Holman and Jason Zeidenburg, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute (2013) (reviewing costs and effects of juvenile detention and alternatives).

[10] *See* United Nations Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice* (2007) at paragraph 32 ("From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.").

[11] *See, e.g.*, California and Massachusetts recently adopting a minimum age of 12. Cal. Welf. & Inst. Code § 602 (2019); Mass. Gen. Laws Ann. ch. 119, § 52 (2018). Note, however, that California law provides exceptions for murder and certain sex offenses. Cal. Welf. & Inst. Code § 602.

developmental immaturity[12] and there is no case law on point. However, the D.C. Code "reception statute" broadly provides that when the D.C. Code was adopted in 1901 the common law was intended to remain in force except insofar as it is "inconsistent with, or [] replaced by" statute.[13] At common law, the *doli incapax* rule provides a rebuttable presumption that a child ages 7-13 is incapable of committing an offense.[14] Absent government evidence overcoming the presumption, the child was not guilty of an offense. There does not appear to be any statement by Congressional or District authorities that the creation of a juvenile delinquency system in the District or other legislation was intended to displace the common law *doli incapax* doctrine for children.[15] Consequently, either the *doli incapax* doctrine remains current law in the District and there is a rebuttable presumption that a child ages 7-13 is incapable of committing an offense, or the juvenile delinquency system in District law has replaced the common law doctrine and there is no presumption or defense concerning the capacity of 12- and 13-year-old children. In contrast, the RCC developmental incapacity defense, consistent with the burden of proof for other general defenses,[16] requires there to be evidence of incapacity of a 12- or 13-year-old before the government must prove the actor's capacity. The RCC approach recognizes that capacity may not be a disputed issue for many 12- and 13-year-old children in delinquency proceedings, and placing the burden of proof for capacity on the government is unnecessary. This change improves the consistency and proportionality of the revised statutes.

Beyond these two changes to current District law, one other aspect of the revised statute may constitute a substantive change to District law.

The RCC developmental incapacity defense requires proof of incapacity using a standard similar to the current District standard for an insanity defense. The D.C. Code is silent as to whether there is any defense as to incapacity due to developmental immaturity,[17] and there is no case law on point. However, the D.C. Code "reception statute" broadly provides that when the D.C. Code was adopted in 1901 the common law was intended to remain in force except insofar

---

[12] The current D.C. Code is silent as to virtually all general defenses to criminal liability, including frequently used defenses such self-defense. These defenses exist solely as a matter of common law, statutorily recognized through the reception statute, D.C. Code § 45–401(a). The only general defense recognized in the D.C. Code is an insanity defense, which applies to juvenile delinquency and criminal proceedings. *See* D.C. Code § 24–501(c) ("When any person tried upon an indictment or information for an offense, or tried in the Family Division of the Superior Court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict."). *See also* footnote 4, above.

[13] D.C. Code § 45–401(a).

[14] *Allen v. United States*, 150 U.S. 551, 558 (1893). This presumption was conclusive as to charges of rape and "the weight of the presumption was said to decrease as the child approached the age of discretion. 2 Subst. Crim. L. § 9.6(a) (3d ed.). *See also* footnote 6, above.

[15] To date, CCRC research has found no case law or legislative history on point. However, District case law does generally describe the juvenile delinquency system created by Congress—as far back as the first Juvenile Court in 1906—as intended to benefit juveniles and, accordingly, statutory language should be strictly construed insofar as it may lead to detention. *See also* footnote 7, above.

[16] RCC § 22E-201.

[17] The current D.C. Code is silent as to virtually all general defenses to criminal liability, including frequently used defenses such self-defense. These defenses exist solely as a matter of common law, statutorily recognized through the reception statute, D.C. Code § 45–401(a). The only general defense recognized in the D.C. Code is an insanity defense, which applies to juvenile delinquency and criminal proceedings. *See* D.C. Code § 24–501(c) ("When any person tried upon an indictment or information for an offense, or tried in the Family Division of the Superior Court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict."). *See also* footnote 4, above.

as it is "inconsistent with, or [] replaced by" statute.[18] At common law, the *doli incapax* rule provides a rebuttable presumption that a child ages 7-13 is incapable of committing an offense.[19] The standard for incompetence of a child at common law has been described in various ways that tend to focus on cognitive ability,[20] similar to the common law standards used in for insanity defense before advances in psychiatry in the mid-twentieth century changed insanity defense standards to evaluate competence more holistically.[21] There does not appear to be any clear statement by Congressional or District authorities that the creation of a juvenile delinquency system in the District was intended to displace the common law *doli incapax* doctrine for children.[22] Consequently, either the *doli incapax* doctrine remains current law in the District and a child ages 7-13 must be evaluated capable of committing an offense under an imprecise common law standard, or the juvenile delinquency system in District law has replaced the common law doctrine and there is no presumption or defense concerning the capacity of 12- and 13-year-old children. Resolving this ambiguity, the RCC developmental incapacity defense, consistent with the current District standard for competency in an insanity defense,[23] requires there to be evidence that, as a result of developmental immaturity, the actor either lacks substantial capacity to conform their conduct to the law or recognize the wrongfulness of the conduct. The RCC approach recognizes that capacity is not simply a cognitive or moral matter and requires a broader review of competence to determine if immaturity renders the actor's conduct excusable.[24] This change improves the clarity, consistency, and proportionality of the revised statutes.

---

[18] D.C. Code § 45–401(a).

[19] *Allen v. United States*, 150 U.S. 551, 558 (1893). This presumption was conclusive as to charges of rape. 2 Subst. Crim. L. § 9.6(a) (3d ed.). *See also* footnote 6, above.

[20] *See, e.g., Adams v. State*, 262 A.2d 69, 72 (Md. 1980) ("The proof necessary to meet this burden has been variously phrased: It must be shown that the individual 'had discretion to judge between good and evil'; 'knew right from wrong'; had 'a guilty knowledge of wrong-doing'; was 'competent to know the nature and consequences of his conduct and to appreciate that it was wrong.') (citing Perkins, Criminal Law, at 731).

[21] *See Bethea v. United States*, 365 A.2d 64, 72 (D.C. App. 1976) (en banc).

[22] To date, CCRC research has found no case law or legislative history on point. However, District case law does generally describe the juvenile delinquency system created by Congress—as far back as the first Juvenile Court in 1906—as intended to benefit juveniles and, accordingly, statutory language should be strictly construed insofar as it may lead to detention. *See also* footnote 7, above.

[23] *Bethea v. United States*, 365 A.2d 64, 79 (D.C. App. 1976) (en banc) ("We turn now to the specific language of the standard which we adopt for the insanity defense. We make certain minor modifications in s 4.01; the standard for our court system henceforth thus will be: (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacked substantial capacity either to recognize the wrongfulness of his conduct or to conform his conduct to the requirements of law. (2) As used in this standard, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."); D.C. Crim. Jur. Instr. § 9.400 ("A defendant is not guilty by reason of insanity if, at the time of his/her criminal conduct, and as a result of mental disease or defect, s/he either lacked substantial capacity to conform his/her conduct to the requirements of the law or lacked substantial capacity to recognize the wrongfulness of his/her conduct.").

[24] *See* § 175.Immaturity, 2 Crim. L. Def. § 175 ("The difficult question, of course, is what degree of immaturity should be required to satisfy the disability requirement? As has been suggested for other excuses, the answer is governed in part by the purposes to be served by the disability []. The actor must be sufficiently immature that he is distinguishable from the normal population—that is, the normal mature adult population. His immaturity also must be sufficiently severe to cause an excusing condition with regard to the conduct constituting the offense charged, and his immaturity must have verifiable manifestations other than the conduct constituting the offense.").

Relation to National Legal Trends. *The RCC developmental incapacity defense has limited support in United States criminal codes and case law.*

According to one source,[25] most states do not set a minimum age for juvenile delinquency proceedings, but those that do have range from 6 to 12 years of age, including:

- 2 states have a minimum age of prosecution set at 12 years old: California and Massachusetts;[26]
- 1 state has a minimum age of 11 years old: Nebraska;[27]
- 14 states have a minimum age of 10: Arizona, Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin; [28]
- 1 state has a minimum age of 8: Washington;[29]
- 2 states have a minimum age of 7: Connecticut and New York;[30] and
- 1 state has a minimum age of 6: North Carolina.[31]

Some states have explicitly repealed common law *doli incapax* rules with respect to sex crimes, in part or whole, by statute.[32]

Case law in other U.S. jurisdictions on the applicability of *doli incapax* to juvenile proceedings is also divided, although many jurisdictions have not addressed the issue.[33]

---

[25] *See* National Juvenile Defender Center, *The Criminalization of Childhood* (July 2019) at 2.

[26] Cal. Welf. & Inst. Code § 602 (2019); Mass. Gen. Laws Ann. ch. 119, § 52 (2018). Note, however, that California law provides exceptions for murder and certain sex offenses. Cal. Welf. & Inst. Code § 602. Both of these changes in law occurred since the the Council specified in D.C. Code § 16–2320(c)(2) a minimum age of 10, for transfer of custody of delinquent children to the Department of Youth Rehabilitation Services (DYRS). *See* Committee on the Judiciary, Report on Bill 21-0683, the "Comprehensive Youth Justice Amendment Act of 2016" (Oct. 5, 2016) at 7-8 (citing other states' minimum age for delinquency adjudication).

[27] Neb. Rev. Stat. Ann. § 43-247(1) (2016).

[28] Ariz. Rev. Stat. Ann. § 8-307(A) (1997); Ark. Code Ann. § 9-27-303(15) (2019); Colo. Rev. Stat. Ann. § 19-2-104(1)(a) (2018); Kan. Stat. Ann. § 38-2302(n) (2016); La. Child. Code Ann. § art. 804(3) (2011); In re S.A.C., 529 N.W.2d 517 (Minn. Ct. App. 1995) (applying Minn. Stat. Ann. § 260C.007(6)(12) (2019)); Minn. Stat. Ann. § 611.14 (West 2012); Miss. Code Ann. § 43-21-105(i) (2019); Nev. Rev. Stat. Ann. § 194.010 (2015); N.D. Cent. Code Ann. § 12.1-04-01 (2019); 42 Pa. Stat. And Cons. Stat. Ann. § 6302 (2018); S.D. Codified Laws § 26-8C-2 (2019); Tex. Fam. Code Ann. § 51.02(2)(A) (2015); Vt. Stat. Ann. tit. 33, § 5102(2)(c) (2019); Wis. Stat. Ann. § 938.12(1) (2019).

[29] Wash. Rev. Code. Ann. § 9A.04.050 (2011). Note, however, that the government must prove children age 8 to 12 "have sufficient capacity to understand the act" in order to proceed against them. *Id.*

[30] Conn. Gen. Stat. Ann. § 46b-120(1)(A)(i) (2019); N.Y. Fam. Ct. Act § 301.2(1) (McKinney 2016).

[31] N.C. Gen. Stat. Ann. § 7B-1501 (2017).

[32] *See, e.g.,* S.C. CODE ANN. § 16-3-659 ("The common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State."); N.J. STAT. ANN. § 2C:14-5 ("No actor shall be presumed to be incapable of committing a crime under this chapter because of age or impotency or marriage to the victim.").

[33] *See § 9.6(c)Juvenile court jurisdiction,* 2 Subst. Crim. L. § 9.6(c) (3d ed.) ("Most juvenile court acts place no lower age limit on juvenile court jurisdiction. Thus, unless the common law immunity for infants under seven is incorporated into juvenile law, children under seven may be adjudged delinquent for conduct for which they lacked criminal responsibility. This issue seems not to have been confronted in the cases (perhaps indicating that it is not the practice to adjudicate as delinquent children under seven), and the commentators are not in agreement on the point. On the one hand, it is claimed that "the traditional concept of incapacity has no application" in juvenile court, presumably on the ground that juvenile courts are not intended to deal with moral responsibility and are concerned only with the welfare of children. On the other, it is contended that the common law immunity should be applicable because the juvenile court serves to vindicate the public interest in the enforcement of the criminal law. Even if that is so, it does not follow that a significantly higher minimum age of criminal responsibility set by statute should be deemed equally applicable to delinquency proceedings in juvenile court." (internal citations omitted); 83 A.L.R.4th

Internationally, many countries have minimum ages at 12 or above,[34] and the United Nations Committee on the Rights of the Child encourages countries to consider minimum ages as high as 16, and states that an "absolute minimum" of 12 years is necessary to comply with international standards.[35]

1135 (Originally published in 1991) ("Reported decisions have split on the issue of whether the defense of infancy is available in juvenile delinquency proceedings. Cases denying the availability of the defense have generally relied on the maxim that juvenile delinquency proceedings are different from criminal proceedings in that their purpose is curative and rehabilitative rather than punitive (§ 4). Under this line of reasoning, the infancy defense, which is a rule of criminal law, has no application to delinquency proceedings. In opposition, several decisions have held the infancy defense to be applicable in juvenile delinquency proceedings (§ 3). The courts taking this view have generally justified their holdings by saying that, regardless of the stated purposes of juvenile courts, they are, for the purposes of delinquency adjudications, in effect criminal courts for minors and as such should permit such defenses as are permitted in regular criminal courts.").

[34] *See., e.g.,* Canada, 12 years (Criminal Code, RSC 1985, c C-46, s. 13);

[35] United Nations Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice* (2007) at paragraph 32 ("From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.").