

Can article 40(3)(a) to  
promote the  
establishment of



**ASSIGN  
BUSTER**

can be held liable for breaching a country or state's penal laws and so is the lowest age that a person may be held 'innocent until proven guilty' once accused of committing a crime.

A crime or criminal act is legally defined as a violation of the law of the state with a penalty as a consequence and thus in order for someone to have been considered to have committed a crime, they must have mens rea (capacity to know the wrongness of an act) and must have carried out the actus reus (physicality of the crime) (1). A child under the MACR of their country or state is immune from criminal prosecution and as a result cannot be formally charged by authorities nor subjected to criminal law measures. England and Wales as parties to the United Nations Convention on the Rights of the Child, are advised under Article 40(3)(a) to promote the establishment of a minimum age below which the child shall be presumed to not have the capacity to violate the penal law of the state and thus above which the child must understand the magnitude of their actions if they do break the law (2). Under the Children and Young Persons Act 1933, Section 50 states that the MACR in England and Wales is 10 years of age however there is much controversy and debate surrounding this as the Office of the High Commissioner for Human Rights, 1989, for the United Nations Convention on the Rights of the Child defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' (2). Therefore, there is much dispute surrounding the exact age of criminal responsibility, as 10 is often considered by professionals to be too young for a child to be held solely responsible and accountable for their actions, particularly considering the age at which a child is considered by the

United Nations Convention to have matured to adulthood. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice under Rule 4.1, council that the minimum age of criminal responsibility should not be fixed at too low a level and should take into consideration the intellectual, emotional and mental maturity of children (3).

However, this broad notion of 'too low a level' remains undefined and is the most contended area of juvenile justice law as the debate raises crucial issues such as whether children are protected fully in England and Wales through the law and if the current MACR correctly measures the age at which children can sufficiently judge their actions. Currently, there is no exact universal criteria with which to judge a global MACR, reflected in the differing ages worldwide. For example, in the UK alone there are three different MACRs, with England, Wales and Northern Ireland set at 10, Scotland set at 8 and the Republic of Ireland set at 12 (4). This essay will attempt to assess whether the current MACR of 10 in England and Wales should be increased or whether it is more accurate to judge that it should stay the same through analysis and evaluation of several factors including the scientific, legal and global debate. How does the global comparison of the minimum age of criminal responsibility affect the debate? The minimum age of criminal responsibility varies considerably across the globe, with England and Wales notably having one of the lowest recorded MACRS internationally. Therefore, in order to assess whether the MACR correctly stands in England and Wales at the age of 10, juvenile delinquency statistics in England and Wales should be analysed and compared with juvenile delinquency statistics worldwide. According to the Ministry of Justice and Youth Justice Board's Youth

Justice Statistics for England and Wales 2015/2016, at the end of March 2016, there were a total of 896,200 arrests in England and Wales with approximately 88,600 (10%) being that of children of legal offending age (10-17) (5). This same percentage of 10% is equivalent to the number of children within the entire population in England and Wales that are of legal offending age (5) (age 10 or over according to the MACR).

This illustrates that as a result of the MACR in England and Wales being so low, there is a considerable number of child arrests and official juvenile delinquents with criminal records, highlighting that a high proportion of England and Wales' youth are incarcerated per annum. In contrast to England and Wales, in Brazil where the MACR is set 8 years older at 18 years of age, they operate an interventionist Criminal Justice System, focusing on welfare based rather than punitive measures to educate juvenile delinquents rather than punish. In Brazil in 2015, there were only 22,000 arrests and confinement of juvenile delinquents (6) which is the "most severe socio-educational measure (6)" as a means of educating delinquent youth according to the IPEA (Instituto de Pesquisa Econômica Aplicada) as opposed to England and Wales' staggering 88,600 arrests, indicating that a lower age of criminal responsibility does not deter youth from committing crimes and thus a higher age of criminal responsibility seems to be more successful in deterring criminal action from children. Therefore, the high proportion of imprisoned juvenile delinquents in England and Wales could be drastically reduced by increasing the MACR to an age higher than 10, encouraging rehabilitation of delinquent as opposed to subsequent enrolment into the Criminal Justice System. Thereby, through analysis of juvenile

delinquency statistics in Brazil, it can be inferred that raising the MACR in England and Wales should be considered a viable resolution to the current punitive Youth Criminal Justice System which focuses on retribution and not education of criminal acts, resulting in more arrests of young children than necessary due to a low MACR. However, although Brazil has a lower proportion of juvenile delinquents in contrast to England and Wales due to a higher MACR reducing criminalisation of children, this does not come without its consequences. For example, in 2015 there were a series of worrisome attacks throughout Brazil on children below the age of criminal responsibility accused of crimes (7) during a period of severe political turmoil following their rejection to lower the minimum age of criminal responsibility from 18-16 to be able to criminalise child offenders, which lost due to concern over children's welfare in highly dangerous and overcrowded Brazilian prisons (8).

These child attacks indicate that both the police and the public took justice into their own hands in light of lack of response from their Criminal Justice System as a result of the MACR being set so high at 18. Therefore, as suggested by these cases in Brazil, by raising the minimum age of criminal responsibility in England and Wales, one potential danger in light of public opposition, if also fuelled by widespread political reports and anger could result in victimisation of juvenile delinquents by those in society who believe that a higher MACR provides opportunity for offenders to evade the course of justice. Thus, it should be considered that raising the age of criminal responsibility in England and Wales is not a legal measure that should be taken lightly as instead of a resolution to incarcerating young children, the Criminal Justice System could result in inadvertently victimising youth

instead. Despite these concerns however, with an MACR of just 8 years of age, Scotland has proven that a lower minimum age of criminal responsibility can be successful in preventing juvenile delinquency. This is shown through the statistical outcome of the annual number of youth referrals and hearings on offence grounds throughout Scotland, which has dropped significantly from 17,361 in the year 2005-2006 to 2,891 by the end of 2015 (9).

Therefore, this suggests that if the minimum age of criminal responsibility was increased in England and Wales, this would not necessarily increase the already high number of juvenile delinquents as youth would perhaps be more deterred from committing crimes through education and other means from a much younger age when perhaps children are more impressionable.

However, this is not to say that England and Wales should reform the minimum age of criminal responsibility to an age lower than that of 10 years but perhaps indicates that England and Wales are not wrong to have a lower minimum age of criminal responsibility than the majority of other countries in the Western World as this trend could corroborate that a lower MACR discourages criminal activity due to serious penal repercussions being applicable to children from 10 years of age. In comparison to England and Wales, Australia also have an MACR of 10 years of age but in tandem with this, Australian law throughout all territories, invokes the legal principle of *doli incapax* between the ages of 10-14.

This principle now retracted from English and Welsh law, presumes that a child is incapable of crime and criminal acts in the face of the law between the ages of 10-14 as they lack the *mens rea*, which as a result means that despite the MACR being 10 years of age, Australian juvenile delinquents

below the age of 14 cannot be prosecuted for a crime through the Criminal Justice System unless the Crown can prove beyond all reasonable doubt that the child had the capacity to know that they should not have done the criminal act (10). This highlights that the legal principle of *doli incapax* could perhaps resolve issues seen to arise in Brazil of violence towards youth as the MACR is set so high at 18, meaning that with the reintroduction of *doli incapax* in England and Wales, the MACR could remain the same at 10 years of age but children could be protected more in law through use of *doli incapax* in court. This could be a viable resolution to the protection of children as it also appeases heated political tension that could arise within society with the raising of the MACR as youth could still be convicted of crimes, particularly heinous crimes, although it is more difficult to prosecute them, protecting young children from the isolation of incarceration but means that juvenile delinquents guilty of crimes with a more serious criminal nature won't evade the course of justice when justice is deemed by a jury. Furthermore, the use of *doli incapax* in Australia seems to be successful as in the year 2015/2016 the total number of juvenile delinquents of ages 10-17 came to a total of 54,974 offenders (11), a staggering 33,626 less recorded offenders than in England and Wales in the same year. Moreover, in the same year, only 214 children aged 10 to 12 years had an official offence logged against them (10).

What legal factors are there that affect the debate? Criminal records will affect children into adulthood. Since England and Wales do not have relaxed laws concerning the disclosure of childhood convictions, the age of criminal responsibility needs to be raised to protect those who have made

wrong decisions in their childhood to increase effects of rehabilitation in prison. According to the Youth Justice Statistics for England and Wales 2015/2016, the majority of offences that are committed by children arrested are arrested on convictions of a lesser criminal nature with 14% convicted of handling stolen goods and theft, 12% convicted of criminal damage and 8% convicted of drugs related crimes (5). Therefore, it should be argued that by having the MACR set at such a low age, the current Criminal Justice System is in danger of preventing adults from meeting full potential due to illegal actions made in early childhood, before full adult maturity has been reached. This conclusion is corroborated by statistics published in The Independent taken from the Westminster Justice Select Committee Report that in 2014/2015, 26% of standard Disclosure and Barring Service (DBS) checks and 23% of enhanced checks made by prospective employers were related to people who were under 18 at the time of their conviction (9), thus undermining the purpose of youth justice to rehabilitate young offenders so that they can mature to become law abiding adult citizens as criminal records including offences made before the age of 18 are flagged by DBS checks.

A resolution to this issue since Parliament blocked the motion to tighten laws concerning disclosure of childhood convictions, would be considering increasing the age of criminal responsibility to protect those 10 year olds who have committed crimes from re-entering the Criminal Justice System once rehabilitated due to missing out on opportunities such as employment as they would have never entered the Criminal Justice System in the first place. However, although this seems to be a viable resolution, it should also be considered that if the age of criminal responsibility is raised to an age



higher than 10, those that do commit heinous crimes such as murder at 10 years of age will be free from punishment and retribution and thus this invokes the question, is this just and fair? In the case of James Bulger,