

122. Taking Child for Immoral Purposes: s 219

122.1 Legislation

[Last reviewed: September 2024]

Criminal Code

[Section 210](#) – Indecent treatment of children under 16

[Section 215](#) – Engaging in penile intercourse with child under 16

[Section 219](#) – Taking child immoral purposes

[Section 229](#) – Knowledge of age immaterial

122.2 Commentary

[Last reviewed: September 2024]

The Defendant must have:

- (1) Taken or enticed away, or detained the Complainant;
- (2) For the purpose of any person doing a proscribed act in relation to the Complainant;
- (3) In circumstances where the Complainant is under 16 and is not the spouse of the Defendant.

Taken, enticed away, or detained

To 'take' a child means to have in some way contributed to the removal of the child: compare [R v Johnson \[1957\] St R 594](#).

The term 'detain' should be given its ordinary and natural meaning. It has a variety of meanings including 'keep in confinement' and 'hold back, delay, stop': (*R v Awang [2004] 2 Qd R 672*, 677 [21] (Williams JA)).

Proscribed act

A proscribed act is an act defined to constitute an offence in s 210 (indecent treatment of children under 16) or s 215 (engaging in penile intercourse with a child under 16) of the *Criminal Code*. See **Chapter 113a - Engaging in Penile Intercourse with Child under 16** and **Chapters 146, 148, 149, 150, 151, and 151**, which deal with the offences under s 210(1)(a)-(f).

Aggravation

The offence is aggravated if:

- (a) The child was under the age of 12 years; or
- (b) The child was under the age of 12 years and the proscribed act constitutes an offence under s 215 of the *Criminal Code*.

The offence is a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation may be averred.

Defences

Section 219(4) provides that if the proscribed act is one defined to constitute an offence defined in s 210 or s 215 and the child is 12 years old or older, it is a defence to prove that the Defendant believed, on reasonable grounds, the child was 16 years old or older.

See also section 229 which provides that, except as otherwise stated, it is immaterial that the Defendant did not know the person was under the specified age or believed that the person was not under that age.

122.3 Suggested Direction

[Last reviewed: September 2024]

The prosecution must prove beyond reasonable doubt that:

- 1. The Defendant [took/enticed away/detained] the Complainant.**
- 2. The Complainant was a child under the age of 16 years.**
- 3. The [taking/enticing/detention] was done forcibly.**
- 4. The [taking/enticing/detention] was for the purpose of [identify the person] doing an act constituting [indecent treatment of a child under 16/engaging in penile intercourse with a child under 16].**

(Where necessary, the jury should be directed as to the elements of the proscribed offence. The jury may then be directed on any relevant circumstances of aggravation):

- 1. The Complainant was under the age of 12 years.**
- 2. The Complainant was under the age of 12 years and the proscribed act constitutes an offence under s 215.**
- 3. Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation, see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions).**