

## Taking child for criminal purposes s 219<sup>1</sup>

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The prosecution must prove that:

1. The defendant took<sup>2</sup> or enticed away or detained<sup>3</sup> a child under the prescribed age.<sup>4</sup>
2. The taking or detention was done forcibly.
3. For the purpose of any person doing a proscribed act in relation to the child.

A proscribed act is an act defined to constitute an offence in s 208 (sodomy), s 210 (indecent treatment of children under 16) or s 215 (carnal knowledge with or of children under 16).

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<sup>1</sup> The offence is a prescribed offence under s 161Q *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.

<sup>2</sup> As to the meaning of “took”, the defendant must have in some way contributed to the child’s leaving the possession of the parent or arranged or actively participated in the child’s leaving: see *R v Johnson* [1957] St R 594; *R v Timmins* [1860] Bell 276.

<sup>3</sup> 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”. See *R v Awang* [2004] 2 Qd R 672 per Williams JA.

<sup>4</sup> “Prescribed age for a child” means:

- (a) for an offence defined in s208 – 18 years;
- (b) for an offence defined in s210 or 215 - 16 years (s 219(6)).

Section 219(4) provides that if the proscribed act is one defined to constitute an offence defined in s 208 and the child is of or above 12 years, it is a defence to prove that the defendant believed, on reasonable grounds, the child was of or above 18 years. Section 219(5) provides that if the proscribed act is one defined to constitute an offence defined in s 210 or s 215 and the child is of or above 12 years, it is a defence to prove that the defendant believed, on reasonable grounds, the child was of or above 16 years.

If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to prove the defendant believed on reasonable grounds the child was at least the prescribed age (s 229B(5)).

See also s 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.