

Taking child for immoral purposes: s 219

Legislation

219 Taking child for immoral purposes

- (1) Any person who takes or entices away, or detains a child who is under the age of 16 years and is not the husband or wife of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a *proscribed act*) defined to constitute an offence in section 210 or 215 is guilty of a crime.
- (2) If the child is of or above the age of 12 years, the offender is liable to imprisonment for 10 years.
- (3) If the child is under the age of 12 years, the offender is liable to imprisonment—
 - (a) for life, where the proscribed act is one defined to constitute an offence in section 215; or
 - (b) for 14 years in any other case.
- (3A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (3B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (4) If the proscribed act is one defined to constitute an offence defined in section 210 or 215 and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, the child was of or above 16 years.

Commentary

Meaning of 'took, enticed away or detained'

To 'take' a child means 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.

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.

Meaning of '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).

Aggravation

There is an aggravating circumstance if the child was under the age of 12 years old.

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 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.

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

Suggested Direction

The prosecution must prove that:

- 1. The defendant took or enticed away or detained a child under the age of 16 years.**
- 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 210 (indecent treatment of children under 16) or s 215 (engaging in penile intercourse with a child under 16).

Direct on any relevant circumstances of aggravation

- 1. The child was under the age of 12 years.**
- 2. [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.]**