

## Episode 152: Summary

**Episode name:** It Takes a Village: Supporting Children in the Justice System

**Guest(s):** Lauren Cassimatis

**What area(s) of law does this episode consider?**

Criminal law; working with children

**Why is this topic relevant?**

Lawyers and judges working with children involved in the criminal justice system bear heavy and unique responsibilities. They have to protect the broader community from crime whilst also protecting children who may have committed a crime. Lawyers who work in this space know how much more there is to the story than the charges listed on a court document. These are young lives, shaped by difficult circumstances, often, and the decisions made in a courtroom can ripple through their futures.

Now, this is a particularly tricky area of law, and the challenge lies in finding solutions that go beyond mere punishment to addressing the root causes of why kids end up in trouble with our justice system. Often, their lives are marked by unmet needs - whether that's in regards to education, mental health, safety and security at home - and the lawyers and judges responsible for their matters have the unique opportunity to influence those outcomes that will not only help that child but also strengthen their community.

**What legislation is considered in this episode?**

[Young Offenders Act 1997 \(NSW\); Children, Youth and Families Act 2005 \(Vic\)](#)

[Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)

[Cognitive Impairment Forensic Provisions Act 2020 \(NSW\)](#)

[Children \(Criminal Proceedings\) Act 1987 \(NSW\)](#)

**What cases are considered in this episode?**

[RP v The Queen \[2016\] HCA 53](#)

- The appellant was charged with two counts of sexual assault with a child under 10 years old. At the time, the appellant was around 11 years old, and the complainant was his younger half-brother. The key issue at trial was whether the prosecution had rebutted the presumption of doli incapax. Despite evidence that the appellant had borderline intellectual functioning, the trial judge found that the presumption was rebutted for the first offence and that this logically extended to the second offence. The NSW Court of Criminal Appeal upheld the convictions, with a majority agreeing that the appellant's understanding of wrongfulness in the first offence carried over to the second

offence. However, the High Court overturned this decision, finding that there was insufficient evidence about the appellant's upbringing and moral development to conclude beyond reasonable doubt that he understood his actions were seriously wrong. The convictions were quashed, and acquittals were entered.

### What are the main points?

- Many young people in the justice system are often misunderstood and lack proper support.
- The minimum ages of criminal responsibility vary by state and territory. Currently, the ages of criminal responsibility in NSW and Victoria are 10 years old, with Victoria considering raising it from 10 to 12.
- When questioned by police, children have the right to have a parent or guardian present and should refrain from answering potentially incriminating questions without them.
- In the Children's Court, the focus is on rehabilitation rather than punishment, with programs like the Ropes program aimed at fostering understanding between youth offenders and law enforcement to prevent future criminal behaviour.
- The Ropes Program in Victoria can be effective in giving kids a second chance and preventing repeat offences, but may be less effective for more serious crimes.
- In Victoria, children accused of certain offences cannot be held in custody for longer than seven days without appearing before a court for reassessment. The court considers factors like the seriousness of the crime and the child's safety.
- Often children involved in the criminal justice system experience issues like unstable family situations, homelessness, and lack of stable residence.
- Many young individuals who commit crimes are seeking a sense of belonging and validation, often leading them to join groups that offer camaraderie and protection. However, this can lead to them feeling pressured to commit crimes to prove their allegiance.

### What are the practical takeaways?

- The process of working with children in the criminal justice system requires you to understand their backgrounds, which can range from disadvantaged to privileged, and address their unique needs.

- Building trust and rapport with these youths, especially those from traumatic backgrounds, is crucial in guiding children through the legal system with compassion and professionalism.
- Establishing trust may involve connecting them with specialised therapists to handle their cases effectively.
- When communicating with children under 14, lawyers should simplify the language they use. They can also use visuals like diagrams to ensure children understand the concept of criminal acts.
- It is essential to adapt your communication styles, including using swear words if necessary, to establish rapport and facilitate understanding during consultations with children.
- Lawyers representing First Nations clients should undergo cultural safe training to better understand the cultural needs of their clients. By building rapport, understanding generational trauma, knowing how to advocate effectively in court and facilitating the necessary support for their clients, lawyers can provide more tailored and empathetic legal services.
- Students should gain as much practical experience as possible to understand different legal areas to determine their career path.
- The realities of working in the law may differ from what you expect, so exploring various law specialties through hands-on experience can help you discover what truly interests you and aligns with your skills and passions.

## Show notes

[Connecting Lawyer Mums, founded by Lauren Cassimatis.](#)

[The Department of Justice and Community Safety, Victoria, 'Children's Court Youth Diversion Service' \(ROPES Program\)](#)

[Karen Freeman and Neil Donnelly, \(August, 2024\), 'The involvement of young people aged 10 to 13 years in the NSW criminal justice system.' NSW Bureau of Crime Statistics and Research \(BOSCAR\).](#)