# File checklist – *doli incapax*

**To be completed in all cases where a child is under 14 at the time of the offence and, after use of KCCRM5060 Record of assessment of child under 14 at time of alleged offending, the lawyer considers that the principle of *doli incapax* might apply**

**Issues and tasks checklist**

| **Issues** | **Comment (Y/N and notes)** |
| --- | --- |
| Take instructions from the client and assess *mens rea* using * KCCRLM5020 record of instructions – duty lawyer
* KCCRLM5050 record of assessment of capacity, and
* KCCRLM5060 record of assessment of child under 14 at time of alleged offending
 |  |
| Incomplete brief of evidence? Further disclosure required? Matters to consider include:* DVD record of interview (AV not audio only)
* Statements of all witnesses
* CCTV or other recordings of the offending/ or relevant post offence conduct
* Planning of actions (complex preparation cf spur of the moment)
* Client’s role in offending (principal or marginal participant)
* Details of all prior contact with the police (including statements/CCTV/ROI etc)
* Details of arrest
* Any other evidence the police intend to lead to rebut *doli.*
 |  |
| Existing expert reports? Medical, psychiatric, other? Matters to consider include:* Any educational assessments, especially if at a special school
* Any disability assessments, especially if registered with Disability Services
* Any treating medicos especially if seeing a paediatrician, child psychiatrist, psychologist or counsellor (request reports using KCCRLE0100 – Ltr\_Expert\_medical report\_treating practitioner)
 |  |
| Expert assessment? Matters to consider include:* Private or Clinic?
* If private:
	+ Book appointment (see experts register) avoiding delay
	+ Notify the client of the appointment in writing (KCCRLCL0510 – Ltr\_Client\_psych appointment)
	+ Send letter to the expert with necessary enclosures and details (KCCRLE0120 – Ltr\_Expert\_doli incapax assessment)
	+ Remind the client by phone the day before the appointment
	+ Diarise report return
* All police and other material available before assessment?
* Review report to ensure all available evidence is considered to minimise impact of examination by prosecution
* If contested hearing is booked:
	+ Issue subpoena for private expert
	+ Send KCCRLOP0250 – Ltr\_pre\_Other\_Childrens Court Clinic to the Court to require attendance of the Clinician
 |  |

|  |
| --- |
| ***Work instruction*** |
| * *You must complete this record fully and accurately. This will help to demonstrate that you have met the duties of competence and standard of care expected of a lawyer.*
* *In most instances this document would be considered a client document and given to the client upon request. It could also be disclosed under the FOI Act.*
 |