

STATES OF JERSEY



DRAFT MENTAL HEALTH (YOUNG OFFENDERS) LAW (JERSEY) AMENDMENT REGULATIONS 202- (P.40/2024) – CHILDREN’S RIGHTS IMPACT ASSESSMENT

**Presented to the States on 12th June 2024
by the Minister for Justice and Home Affairs**

STATES GREFFE

CHILDREN’S RIGHTS IMPACT ASSESSMENT (CRIA)

PART 1: SCREENING

Name and title of Duty Bearer:	Deputy Rose Binet
Type of Duty Bearer: (Minister, Elected Member or States Assembly Body)	Assistant Minister for Health and Social Services
Assessment completed by (if not completed by duty bearer):	Head of Health Policy
Date:	07/06/2024

<p>1) Name and brief description of the proposed decision The subject of your CRIA may be a proposed law, policy or proposition and in accordance with the Law is referred to in this template as the ‘decision’</p> <ul style="list-style-type: none"> • What is the problem or issue the decision is trying to address? • Do children experience this problem differently from adults?
<p>Draft Mental Health (Young Offenders) Law (Jersey) Amendment Regulations 202-</p> <p>The amendment Regulations will, if approved, fix a known issue within Part 9 of the Mental Health (Jersey) Law 2016 (“the Mental Health Law”) to enable the original policy intent to be achieved.</p>
<p>2) Which groups of children and young people are likely to be affected? Groups of children could include early years, primary or secondary education; young adults; children with additional learning needs; disabled children; children living in poverty; children from particular ethnic backgrounds; migrants; refugees; care experienced children and LGBTQ+ children</p> <p>Children or young people serving a sentence of youth detention in secure accommodation only.</p>
<p>3) What is the likely impact of the proposed decision on children and on their rights?</p> <ul style="list-style-type: none"> • Identify any potential positive OR negative impacts and include indirect impacts on children and their rights as described in the UNCRC • Will different groups of children be affected differently by this decision? <p>The children or young person’s serving a sentence of youth detention in secure accommodation will be able to be transferred to and detained in an approved establishment. This will enable more timely or urgent access to mental health inpatient care.</p>
<p>4) Is a full Children’s Rights Impact Assessment required? If you have identified impacts on children and their rights, a full CRIA should be completed. If no impacts are identified then a Full CRIA is not required, but please explain your rationale and how you reached this conclusion</p> <p>Yes.</p>

Part 2: FULL CHILDREN’S RIGHTS IMPACT ASSESSMENT

5) What will be the impacts (positive or negative) of the proposed decision on children’s rights?

For each of the UNCRC articles described below, click to identify any that may be relevant

Category	UNCRC Article	Impact?	
		YES	NO
Guiding Principles	Non-discrimination (Art 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Best interests of the Child (Art 3) to be a top priority	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to Life survival and development (Art 6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Respect for the child’s views (Art 12)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Civil Rights & Freedoms	Right to birth registration, name and nationality (Art 7)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to an identity (Art 8)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Freedom of expression (Art 13)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Freedom of thought, conscience, and religion (Art 14) Every child has the right to think and believe what they choose	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Freedom of association (Art 15) Every child has the right to meet with other children and to join groups and organisations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to Privacy (Art 16) including family and home life	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Access to information from the media (Art 17) Right to access reliable information from a variety of sources, in a format that children can understand	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Protection against torture or other cruel, degrading or inhumane treatment or punishment (Art 37(a))	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Family Environment and Alternative Care	Respect for the responsibilities, rights and duties of parents (or where applicable, extended family or community) to guide their child as they grow up (Art 5)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Responsibilities of both parents in the upbringing and development of their child (Art 18)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Children must not be separated from their parents against their will unless it is in their best interests (Art 9)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Family reunification (Art 10)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Abduction and non-return of children abroad (Art 11)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to a standard of living that is good enough to meet the child's physical and social needs and support their development (Art 27)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Special protection for children unable to live with their family (Art 20)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Best interests of the child in the context of Adoption (Art 21)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Review of treatment whilst in care (Art 25) If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Protection from violence, abuse or neglect (Art 19)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Recovery from trauma and reintegration (Art 39) Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Basic Health and Welfare	Rights of disabled children (Art 23)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to health and health services (Art 24)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to social security (Art 26)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to adequate standard of living (Art 27)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Education, Leisure and Cultural Activities	Right to education (Art 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Goals of education (Art 29) Education must develop every child's personality, talents and abilities to the full	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Leisure, play and culture (Art 31) Every child has the right to relax, play and take part in cultural and artistic activities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Special Protection Measures	Special protection for refugee children (Art 22)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Children and armed conflict (Art 38 and Optional Protocol #1) Governments must do everything they can to protect and care for children affected by war and armed conflict.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Children and juvenile justice (Art 40) Right to be treated with dignity and respect, right to legal assistance and a fair trial that takes account of age.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Inhumane treatment and detention (Art 37 (b)-(d)) Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recovery from trauma and reintegration (Art 39) Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Child labour and right to be protected from economic exploitation (Art 32)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Drug abuse (Art 33)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual exploitation (Art 34)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Abduction, sale and trafficking of children (Art 35)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Protection from other forms of exploitation including for political activities, by the media or for medical research (Art 36)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Children belonging to a minority or an indigenous group (Art 30)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Optional Protocol on the sale of children, child prostitution and child pornography	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Optional protocol on the involvement of children in armed conflict	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6) Information and research What evidence has been used to inform your assessment?		
Evidence collected (include links to relevant publications)	What did the evidence tell you?	What are the data gaps, if any?
Research of the original proposition and law drafting instructions Legislative research	That the original policy intention was not adequately achieved when the Mental Health Law was originally drafted. That similar provisions exist in the Mental Health Act 1983 which is considered a sibling law of the Mental Health Law.	

7) Engagement with children

What groups of children and young people (or those who speak on their behalf, such as social workers, teachers or youth workers) have been directly or indirectly involved in developing the decision?		
Groups consulted	How they were involved	What were the findings?
None	n/a	n/a

8) Assessing Impact on children’s rights Based on the information collected and analysed above, what likely impact will the proposed decision have on the specific children’s rights identified in question 5)?		
Relevant UNCRC Articles (rights) identified in Q5	Describe the positive or negative impacts on these rights	Which group(s) of children are likely to be affected?
Article 3- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.	<p>Positive: the Court will be provided with the power to order the transfer of a person serving a sentence of youth detention in secure accommodation to an approved establishment upon the evidence of two registered medical practitioners.</p> <p>The Code of Practice for the Mental Health Law sets out the following five guiding principles that underpin the Law and decisions taken in respect of it. They are:</p> <ul style="list-style-type: none"> • <i>“Least restrictive option and maximising independence.</i> • <i>Empowerment and Involvement</i> • <i>Respect and Dignity</i> • <i>Purpose and effectiveness, and</i> 	Children serving a sentence of youth detention held in secure accommodation.

	<ul style="list-style-type: none">• <i>Efficiency and equity.”</i> <p>The code then goes on to state that ALL decisions must be lawful and informed by good professional practice.</p> <p>In any decision to admit or transfer a patient to an approved establishment consideration must be given to the following:</p> <ul style="list-style-type: none">• <i>“the patient’s wishes and view of their own needs;</i>• <i>the patient’s age and physical health;</i>• <i>any past wishes or feelings expressed by the patient, in accordance with the respect principle;</i>• <i>the patient’s cultural background;</i>• <i>the patient’s social and family background;</i>• <i>the impact that any future deterioration or lack of improvement in the patient’s condition would have on their children, other relatives or carers, especially those living with the patient, including an assessment of</i>	
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	<p><i>these people's ability and willingness to cope; and</i></p> <ul style="list-style-type: none"> • <i>the effect on the patient, and those close to the patient, of a decision to admit or not to admit under the Law."</i> <p>Furthermore, The Royal College of Psychologists of Psychiatrists' (of which an Approved Practitioner must be a member) code of ethics includes the following wording: <i>"Psychiatrists need to be sensitive to their own biases and beliefs, how these might influence their practice and to ensure that the patient's best interests are paramount."</i></p> <p>In addition, the Code of Practice sets out specific guidance on issues concerning children and young people and states that the following should always be considered:</p> <ul style="list-style-type: none"> • <i>"the welfare of the child or young person must always be the paramount consideration. Article 2(3) of the Children Law provides details of what areas should be considered in assessing a child's welfare;</i> 	
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	<ul style="list-style-type: none"> • <i>children and young people should always be kept as fully informed as possible, just as an adult would be. They should receive clear and detailed information concerning their care and treatment. This should be explained in a way they can understand and in a format that is appropriate to their age;</i> • <i>the child or young person's views, wishes and feelings should always be considered;</i> <p><i>any intervention in the life of a child or young person that is considered necessary by reason of their mental disorder should be the option that is least restrictive to meet the required aims. This should be consistent with effective care and treatment. It should also result in the least possible separation from family, carers, friends and community or interruption of their education, as is consistent with their wellbeing."</i></p>	
<p>Article 24 - States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment</p>	<p>Positive: the Court will be able to order the transfer of a young person to an approved establishment, where in the opinion of two registered medical</p>	<p>Children serving a sentence of youth detention held in secure accommodation.</p>

<p>of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.</p>	<p>practitioners (one of whom must be an approved practitioner) the young person is suffering from a mental disorder of a nature or degree that makes it appropriate for that young person to be detained in the approved establishment for treatment. This establishment may be on island, equally it may be off island if that is in the best interests of the young person. Of course, that would only be an eventuality if the persons mental health care needs could not be met by an approved establishment on-island, i.e. as a last resort.</p>	
<p>Article 25 - States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<p>It is usual practice within the Mental Health Service for clinicians to frequently review the treatment being provided to a child with a view to deciding if the current placement within the approved establishment remains necessary. If it is not necessary, then the clinician should initiate discharge proceedings under Article 69 as that would be in the child's best interest.</p>	<p>Children serving a sentence of youth detention held in secure accommodation.</p>
<p>9) Weighing positive and negative impacts</p> <ul style="list-style-type: none"> • If a negative impact is identified for any area of rights <u>or</u> any group of children and young people, what options are there to modify the proposed decision to mitigate the impact? • Could any positive impacts be enhanced? 		
<p>The Regulations do not seek to alter how or when a transfer order is made by the Royal Court, they merely seek to extend the current provisions as per the original policy intention, to secure accommodation. Using this as a starting point the Regulations can be deemed to have a positive impact on children's rights as they facilitate a timely transfer, where warranted, to an approved establishment. This is something that all other persons held either in a prison or young offenders' institution are afforded currently.</p>		

An update to the Code of Practice as a result of these Regulations being approved will enhance the awareness and care of children and young people as a result of these proposed changes.

10) Conclusions

In summary, what are your key findings on the impact of the proposed decision on the rights of Jersey children?

The regulations broaden the application of Article 69 to secure accommodation. This will enable the timely transfer of young people to an approved establishment, where, in the clinical opinion of two doctors it is necessary due to that young person suffering from a mental disorder of a nature or degree that makes the transfer to an approved establishment appropriate.