

**DRAFT CRIMINAL JUSTICE (ANONYMITY IN SEXUAL OFFENCE CASES) (JERSEY) LAW 200-**

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by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## **European Convention on Human Rights**

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

## REPORT

As the draftsman's Explanatory Note recites, this draft Law is intended to extend to any person against whom a sexual offence is or is alleged to have been committed, provisions preventing public disclosure of their identity. It is unnecessary in this Report to re-recite the detail contained in that Explanatory Note. It is necessary, however, to set out the background against which these reforms are proposed.

Sexual offences are particularly distressing crimes and victims should be given every encouragement to give evidence in these cases. Victims will be encouraged to testify if their anonymity from publicity is guaranteed or if details of their name and address are withheld in Court. There is a deficiency in Jersey law in this respect in that whereas female victims of rape can remain anonymous from publicity, victims of (for example) child abuse who are now adults and adult victims of sodomy by force are not guaranteed the same anonymity from publicity.

The Working Party on indecent assault and rape in Jersey in 1995/6 chaired by Senator C. Stein assessed Court procedures and concluded that procedural issues can often be resolved without recourse to legislation. It concluded that measures to help victims could include screens in Court and having a separate room for the victim from other witnesses. The problem remains, however, that these methods are at the Court's discretion and it may hesitate before derogating from open proceedings. The existing position was expressed by the [then] Deputy Bailiff (*in re The Esteem Settlement* 1995 JLR 266) thus -

*"It is trite law that civil and indeed criminal cases must be heard in open court unless exceptional circumstances such as public safety exist or where, for instance there is to be evidence given by children in an offence against morality or decency."*

In the absence of statutory provision, there is also the problem that the media has a discretion on how to treat victims of sexual assault. Jersey's media adopted a policy of withholding the names of alleged rape victims prior to the statutory protection afforded by the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992 and the Working Party noted in 1995 that media reporting had "demonstrated greater sensitivity towards the victims of sexual assault". The fact remains, nonetheless, that the decision to name victims can ultimately be at the editor's discretion.

Since the Law of 1992, victims of rape receive different treatment. In addition to any measures the Court may take to preserve their anonymity, they have statutory anonymity (subject to certain exemptions) from publicity. The principal reason for giving statutory anonymity is to encourage rape victims to come forward and report offences to the police. This, however, is equally true of victims of other sexual offences.

### **The existing law in Jersey on sexual offences**

Sexual offences, in the main, take their identity from Jersey customary law. Jersey does not subscribe to the finer distinctions of a statutory code as in the law of England and Wales under the Sexual Offences Act 1956. However, offences in Jersey have been defined at customary law and include rape, sodomy, incest, indecent assault upon children, gross indecency, unlawful sexual intercourse and indecent assault upon mature women.

In addition to the customary law, the *Loi* (1895) *modifiant le droit criminel* created several statutory offences of unlawful sexual intercourse (and was modified in certain respects by Article 1 of the *Loi* (1938) *touchant l'âge de mariage*).

By virtue of the Sexual Offences (Jersey) Law 1990, as amended, a homosexual act in private is no longer punishable as sodomy if the parties to the act consent and have attained the age of 18 years.

As already stated, only in the case of victims of rape is there statutory protection. The Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992 restricts the written publication or broadcast of a woman's name or address or the publication of a picture during her lifetime if it is likely to lead members of the public to identify her as an alleged victim of the crime of rape.

A similar anonymity is guaranteed by Article 100A of the Children (Jersey) Law 1969, as amended, if the victim is a child. Further protection is afforded to children giving evidence by the Criminal Justice (Evidence in Procedure) (Jersey) Law 1997 which permits the giving of evidence by means of video recording and television links. This does not extend to adult victims of sexual offences.

### **The draft Law**

The key provision in the draft Law is Article 3(1) which would provide that -

*"Where an allegation has been made that a sexual offence has been committed against a person, no matter relating*

*to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the complainant."*

Article 3(2) would go on to provide that -

*"Where a person is accused of a sexual offence, no matter likely to lead members of the public to identify a person as the complainant shall, during the complainant's lifetime, be included in any publication."*

Thus, anonymity would henceforth be enforced for a male or female victim of sodomy by force: currently only a female of vaginal rape has that right. Furthermore, anonymity would henceforth be enforced for a child victim of sexual abuse who complains as an adult: currently only a child victim of sexual abuse who complains as a child has that right.

## **Conclusion**

The reasons that led the States to enact the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992 are the same reasons that have led the Legislation Committee to bring forward legislation extending the protection afforded by that Law to complainants of sexual offences generally. Anonymity in such cases is particularly important in a small community where anxiety about publicity is increased which could prevent victims making a complaint regarding a sexual offence. Sexual offences are appalling crimes. For as long as victims are inhibited from making complaints for fear of publicity, the deterrent of conviction and punishment will be weakened because offenders will be encouraged in the belief that their activities have a good chance of going undetected. This is something which should not be countenanced in any way by a civilized society.

The draft Law will secure much needed protection from publicity of victims of sexual crimes which, in many other jurisdictions, has been in place for years and is now taken for granted.

## **Financial/manpower statement**

This draft Law has no implications for the financial or manpower resources of the States.

## **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 1st November 2001 the Legislation Committee made the following statement before Second Reading of this *projet* in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

The purpose of this draft Law is to extend to any person against whom a sexual offence is or is alleged to have been committed (a “complainant”) provisions preventing public disclosure of their identity. Currently, such protection is afforded only to complainants of rape, by the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992.

*Article 1* is the interpretation provision.

*Article 2* lists the sexual offences to which the draft Law applies.

*Article 3* prohibits the publication, in any medium, of any information or details which could result in disclosure of the identity of a complainant of an alleged or proven sexual offence. The prohibition applies for the life of the complainant.

*Article 4* creates an exception to *Article 3*. Once a person has been charged with the offence, the Royal Court may give a direction disapplying *Article 3* to the complainant. It may do so either for the purpose of inducing likely witnesses to come forward or to prevent substantial prejudice to the defence case. Once a trial is under way, the Court may disapply *Article 3* to specific information, if satisfied that reports of the trial would otherwise be substantially and unreasonably restricted and that it is in the public interest to remove or relax the restriction. In the event of an appeal against conviction, the Court may also disapply *Article 3* to a complainant if the appellant shows that it is necessary in order to obtain evidence and that, without the direction, he is likely to suffer substantial injustice.

*Article 5* disapplies *Article 3*, in cases of incest and sodomy, where the complainant is also accused of the offence.

*Article 6* makes it an offence to publish information in contravention of *Article 3*. The penalty is an unlimited fine. There are 3 possible defences -

- (a) that the complainant is aged 16 or more and has freely consented to the disclosure;
- (b) that the publisher did not know or suspect that the information had been included in the publication;
- (c) that, in the case of publication before a person is charged with the offence, that the publisher did not know or suspect that an allegation had been made regarding the offence.

*Article 7* is the standard provision extending culpability for an offence by a partnership to its members and by a company to its directors, secretary and officers or, as the case may require, its members.

*Article 8* makes it clear that the draft Law does not affect restrictions on publication that appear in other enactments.

*Article 9* applies the draft Law to military charges and courts-martial.

*Article 10* empowers the States to amend, by Regulations, the kinds of publication to which the draft Law applies.

*Article 11* repeals the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992, the provisions of which are replaced by this draft Law.

*Article 12* is the citation and commencement provision.

**CRIMINAL JUSTICE (ANONYMITY IN SEXUAL OFFENCE CASES) (JERSEY) LAW 200-**

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**ARRANGEMENT OF ARTICLES**

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1. Interpretation
2. Sexual offences
3. Anonymity of victim of sexual offence
4. Direction disapplying Article 3
5. Special rules for cases of incest or sodomy
6. Offences
7. Offences by bodies corporate, etc.
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11. Repeal
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**CRIMINAL JUSTICE (ANONYMITY IN SEXUAL OFFENCE CASES) (JERSEY) LAW 200-**

**A LAW** to repeal and re-enact the provisions of the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992 and to make new provision for the anonymity of victims of sexual offences other than rape; sanctioned by Order of Her Majesty in Council of the

(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

**STATES OF JERSEY**

The \_\_\_\_\_ day of \_\_\_\_\_ 200-

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

**Interpretation**

(1) In this Law, unless the context otherwise requires -

“complainant” means a person against whom a sexual offence is alleged to have been committed;

“picture” includes a likeness, howsoever produced;

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed) but shall not include an indictment or other document prepared for use in particular legal proceedings;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990 as that Act from time to time has effect in the Island by virtue of any Order in Council;

“sexual offence” shall be construed in accordance with Article 2.

(2) For the purposes of this Law -

(a) where it is alleged that a sexual offence has been committed, the fact that any person has consented to an act which, on any prosecution for that offence, would fall to be proved by the prosecution, shall not prevent that person from being regarded as a person against whom the alleged offence was committed; and

(b) where a person is accused of an offence of incest or sodomy, the other party to the act in question shall be taken to be a person against whom the offence was committed even though he consented to that act.

(3) For the purposes of this Law, where it is alleged or there is an accusation -

(a) that an offence of conspiracy or incitement of another to commit an offence mentioned in Article 2(a) to (g) has been committed; or

(b) that an offence of aiding, abetting, counselling or procuring the commission of an offence of incitement of another to commit an offence mentioned in Article 2(a) to (g) has been committed,

the person against whom the substantive offence is alleged to have been intended to be committed shall be regarded as the

person against whom the conspiracy or incitement is alleged to have been committed.

(4) In paragraph (3), “the substantive offence” means the offence to which the alleged conspiracy or incitement related.

(5) For the purposes of this Law, a person is accused of an offence if -

(a) he is presented before the Magistrate’s Court by the Connétable of the parish where the offence is presumed to have been committed; or

(b) he is brought before or committed for trial before the Royal Court on a charge for the offence,

and references in this Law to an accusation alleging an offence shall be construed accordingly.

(6) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(7) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(8) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

## ARTICLE 2

### **Sexual offences**

For the purposes of this Law, “sexual offence” means any of the following -

(a) rape;

(b) incest;

(c) sodomy;

(d) indecent assault;

(e) gross indecency;

(f) any offence under the Loi (1895) modifiant le droit criminel,<sup>[1]</sup> other than an offence under Article 9;

(g) any offence under Article 45 of the Mental Health (Jersey) Law 1969,<sup>[2]</sup>

(h) any offence of attempt to commit any of the offences in paragraphs (a) to (g);

(j) any offence of conspiracy or incitement to commit any of the offences in paragraphs (a) to (g);

(k) any offence of aiding, abetting, counselling or procuring any of the offences in paragraphs (a) to (j);

## ARTICLE 3

### **Anonymity of victim of sexual offence**

(1) Where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person’s lifetime be included in any publication if it is likely to lead members of the public to identify that person as the complainant.

(2) Where a person is accused of a sexual offence, no matter likely to lead members of the public to identify a



person as the complainant shall, during the complainant's lifetime be included in any publication.

(3) This Article -

(a) shall not apply in relation to a person by virtue of paragraph (1) at any time after a person has been accused of the offence; and

(b) in its application in relation to a person by virtue of paragraph (2), has effect subject to any direction given under Article 4.

(4) The matters relating to a person in relation to which the restrictions imposed by paragraph (1) or (2) apply (if their inclusion in any publication is likely to have the result mentioned in that paragraph) include in particular -

(a) the person's name;

(b) the person's address;

(c) the identity of any school or other educational establishment attended by the person;

(d) the identity of any place of work of the person; and

(e) any still or moving picture of the person.

(5) Nothing in this Article prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or an appeal arising out of, a trial at which the accused is charged with a sexual offence

#### ARTICLE 4

##### **Direction disapplying Article 3**

(1) If, before the commencement of a trial at which a person is charged with a sexual offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to the Royal Court for a direction under this paragraph and satisfies the Royal Court -

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and

(b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the Royal Court shall direct that Article 3 shall not, by virtue of the accusation alleging the said offence, apply in relation to the complainant.

(2) If, at a trial, the Royal Court is satisfied that the effect of Article 3 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, it shall direct that Article 3 shall not apply to such matter as is specified in the direction.

(3) A direction shall not be given under paragraph (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the court to which the appeal is or would be made for a direction under this paragraph and satisfies that court -

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the direction is not given,

that court shall direct that Article 3 shall not, by virtue of an accusation which alleges a sexual offence and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under this Article shall not affect the operation of Article 3 at any time before the direction is given.

(6) If, after the commencement of a trial at which a person is charged with a sexual offence, a new trial of the person for the offence in question is ordered, the commencement of any previous trial shall be disregarded for the purposes of paragraph (1).

## ARTICLE 5

### **Special rules for cases of incest or sodomy**

(1) Article 3 shall not apply to a person against whom incest is alleged to have been committed if that person is accused of having committed incest against the other person who is alleged to have committed incest against him.

(2) Article 3 shall not apply to a person against whom sodomy is alleged to have been committed if that person is accused of having committed sodomy against the other person who is alleged to have committed sodomy against him.

(3) Paragraph (1) or (2) shall not affect the operation of this Law in relation to anything done at any time before the person mentioned first in that paragraph is accused.

(4) In this Article, a reference to incest includes an attempt to commit that offence and a reference to sodomy includes an attempt to commit that offence.

## ARTICLE 6

### **Offences**

(1) If any matter is included in a publication in contravention of Article 3, the following persons shall be guilty of an offence and liable to a fine -

- (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) where the publication is a relevant programme -
  - (i) any body corporate or limited liability partnership engaged in providing the programme service in which the programme is included, and
  - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
- (c) in the case of any other publication, any person publishing it.

(2) Where a person is charged with an offence under this Article in respect of the inclusion of any matter in a publication, it shall be a defence, subject to paragraph (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the sexual offence is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain consent or that the person was under the age of 16 at the time when it was given.

(4) Where a person is charged with an offence under this Article, it shall be a defence to prove that, at the time of the alleged offence, he was not aware and neither suspected nor had reason to suspect, that the publication included the matter in question.

(5) Where -

- (a) a person is charged with an offence under this Article; and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of Article 3(1),

it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

(6) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

#### ARTICLE 7

##### **Offences by bodies corporate, etc.**

(1) Where an offence under Article 6 committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### ARTICLE 8

##### **Prohibitions, etc. in other enactments**

Nothing in this Law shall affect any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a relevant programme.

#### ARTICLE 9

##### **Courts-martial**

(1) This Law shall have effect with the modifications set out in paragraph (2) in any case where, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as those Acts from time to time have effect in the Island by virtue of any Order in Council, a person is charged with a sexual offence.

(2) The modifications are -

- (a) any reference to a trial shall be read as a reference to a trial by court-martial;
- (b) in Article 1(5), for sub-paragraphs (a) and (b) there shall be substituted the words “he is charged, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as those Acts from time to time have effect in the Island by virtue of any Order in Council, with a sexual offence”;
- (c) in Article 4(1), any reference to the Royal Court, in relation to the person charged with a sexual offence, shall be read as a reference to the judge advocate appointed to conduct proceedings under that paragraph relating to the offence, whether or not he is also appointed to conduct other preliminary proceedings relating to the offence; and
- (d) in Article 4(2), any reference to the Royal Court shall be read as a reference to the judge advocate appointed to be a member of the court-martial.

(3) Where any provision of an Act referred to in this Article is repealed and re-enacted, with or without modifications, by a provision of another Act having effect in the Island, references in this Article, and in the modifications made by it, to the provision so repealed and re-enacted shall be construed as references to the provision so re-enacted, as it

has effect in the Island.

#### ARTICLE 10

##### **Regulations**

The States may by Regulations amend the definitions “publication” and “relevant programme” in Article 1(1).

#### ARTICLE 11

##### **Repeal**

The Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992<sup>[3]</sup> shall be repealed.

#### ARTICLE 12

##### **Citation and commencement**

This Law may be cited as the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 200- and shall come into force on the seventh day after it is registered.

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<sup>[1]</sup> Tomes IV-VI, page 132, Volume 1968-1969, page 340 and Volume 1996-1997, pages 1053 and 1054.

<sup>[2]</sup> Volume 1968-1969, page 394.

<sup>[3]</sup> Volume 1992-1993, page 437.