

**DRAFT PROTECTION OF CHILDREN (AMENDMENT No. 2)
(JERSEY) LAW 199**

**Lodged au Greffe on 27th April 1999
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

Report

The Protection of Children (Jersey) Law 1994 was enacted to prohibit the taking of indecent photographs of children and to penalize the possession, distribution, showing and advertisement of such indecent photographs. The 1994 Law was amended recently to extend its scope to pseudo-photographs, that is to say, images made up artificially by computer graphics or otherwise appearing to be photographs.

It is an important facet of the 1994 Law that, when a person is convicted of an offence relating to indecent photographs or pseudo-photographs of children, the Court has power to order that indecent or obscene material be confiscated. In a recent case before the Royal Court, the wording of the 1994 Law was construed to confine the power of forfeiture to the Magistrate's Court. It was not apparent that the Royal Court had a general power to order forfeiture.

The Legislation Committee believes that it is necessary to act swiftly to ensure that, in any matter touching on child pornography, there should be no doubt whatsoever about the power of the Court to order forfeiture. The 1994 Law followed in many respects the corresponding United Kingdom legislation in which it was unnecessary to confer a specific power of forfeiture on the Crown Court because it already possessed a general power to order forfeiture of any material or thing used in connection with the offence or offences in respect of which it has jurisdiction.

In due course the Legislation Committee proposes to consult with the Royal Court, as well as the Law Society, and other interested parties with a view to conferring upon the Royal Court a general power of forfeiture akin to that possessed by the Crown Court under sections 43 and 43A of the Powers of Criminal Courts Act 1973 [as amended by the Criminal Justice Act 1988] of the United Kingdom. At present, the Royal Court possesses such powers only in relation to specific statutes, the most prominent example of which is the Misuse of Drugs (Jersey) Law 1978, as amended.

Reverting, however, to the specific area of protection of children, the Legislation Committee believes that it is beyond question that the Royal

Court ought forthwith to have the necessary powers to order forfeiture of indecent or obscene material relating to children.

The draft Law would confer such a power of forfeiture. It would ensure that there was a power of forfeiture also in cases where a defendant was acquitted having proved -

- (a) that the photographs or pseudo-photographs were sent to him without any prior request and he did not keep them for an unreasonable time; or
- (b) that he had not himself seen the photographs and did not know or have any cause to suspect them to be indecent.

In both of these situations, the defendant may be acquitted, but the Court ought nonetheless to have the power to order the forfeiture of the indecent material.

The Committee believes that these measures, which are intended to fill a lacuna in the existing powers of the Court, will be readily endorsed by the House.

Explanatory Note

The purpose of this draft Law is to amend the Protection of Children (Jersey) Law 1994 to -

- (a) extend the obligation of the Magistrate's Court to order the forfeiture of indecent photographs or pseudo-photographs of children on the conviction of a person of an offence in respect of such photographs to all courts who convict persons of such offences; and
- (b) where a person is charged with such an offence but is acquitted by virtue of being able to prove one of the defences provided by the Law, to allow the court which acquitted the person nevertheless to order the forfeiture of any indecent photographs or pseudo-photographs that formed the basis of the charge.

**PROTECTION OF CHILDREN (AMENDMENT No. 2) (JERSEY)
LAW 199**

A LAW to amend further the Protection of Children (Jersey) Law 1994; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

In paragraph (3) of Article 5 of the Protection of Children (Jersey) Law 1994,¹ as amended (hereinafter referred to as “the principal Law”), for the definition of “the Magistrate” there shall be substituted the following definition -

“ ‘the Magistrate’ has the meaning assigned by Article 1 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949;”.

ARTICLE 2

In Article 6 of the principal Law -

¹ Volume 1994-1995, page 79.

Draft Protection of Children (Amendment No. 2) (Jersey) Law 199

- (a) for paragraph (8) there shall be substituted the following paragraphs -

“(8) Where a person is convicted under paragraph (1) of Article 2 of an offence, the court by which he is convicted shall order that any indecent photographs or pseudo-photographs of children in the possession of the prosecution for or in connection with the prosecution of the offence shall be forfeited.

(8A) Where a person -

- (a) charged with an offence under sub-paragraph (b) of paragraph (1) of Article 2, proves in accordance with sub-paragraph (b) of paragraph (3) of Article 2 that the photographs or pseudo-photographs were sent to him without prior request made by him or on his behalf and that he had not kept them for an unreasonable time; or
- (b) charged with an offence under sub-paragraph (b), (c), or (d) of paragraph (1) of Article 2, proves in accordance with sub-paragraph (b) of paragraph (4) of Article 2 that he had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent,

and the person is accordingly acquitted of the charge, the court by which he is acquitted may nevertheless order that any indecent photographs or pseudo-photographs of children in the possession of the prosecution for, or in connection with, the prosecution shall be forfeited.”;

- (b) for paragraph (11) there shall be substituted the following paragraph -

Draft Protection of Children (Amendment No. 2) (Jersey) Law 199

“(11) In this Article, except in paragraphs (8) and (8A), ‘the court’ means the Magistrate’s Court.”.

ARTICLE 3

This Law may be cited as the Protection of Children (Amendment No. 2) (Jersey) Law 199 .