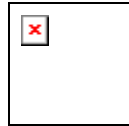


DRAFT PIERCING AND TATTOOING (JERSEY) LAW 200-

**Lodged au Greffe on 9th October 2001
by the Health and Social Services Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Health and Social Services Committee has made the following statement -

In the view of the Health and Social Services Committee the provisions of the Draft Piercing and Tattooing (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator S. Syvret**

REPORT

1. Background

Tattooing, body piercing and other forms of skin piercing can have potentially serious health consequences related to the spread of blood-borne diseases such as hepatitis B or HIV infection, or result in permanent injury or disfigurement. The Health and Social Services Committee is concerned that there is currently no legislation in Jersey to regulate these activities and the Committee considers it necessary to set minimum standards to protect the safety and health of the public, with particular regard to the interests of minors.

The Committee previously lodged a *Projet de Loi* (P.52/2000) on 11th April 2000. However, following the advice of the Law Officers Department regarding human rights and certain other matters, the Committee decided to withdraw this draft under the provision of paragraph 17(6) of the Standing Orders of the States of Jersey.

A revised *Projet* is now submitted, which addresses the concerns raised and is considered to limit any interference with the rights of individuals, whether young people and their parents or tattooists and similar practitioners, to the extent that is reasonably necessary for the protection of public health and morals. The Law Officers Department has accordingly advised that the Committee may make a voluntary statement of compatibility in respect of the draft Law.

The specific provisions of the legislation are described in the following Report.

2. Statement of human rights compatibility

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 3rd October 2001 the Health and Social Services Committee made the following statement before Second Reading of this *Projet* in the States Assembly -

“In the view of the Health and Social Services Committee the provisions of the Draft Piercing and Tattooing (Jersey) Law 200- are compatible with the Convention Rights.”

3. Issues

Increasing concern has been raised regarding the health consequences of various forms of tattooing, body piercing and other forms of skin piercing. For example, the United Kingdom Royal College of Nursing has pressed the United Kingdom government to introduce legislation on body piercing and has received assurances that the government would do so; and case reports in the British medical press have urged doctors to be vigilant to treat infections and prevent significant cosmetic damage caused by body piercing and “high ear piercing” (British Medical Journal, 14th April 2001).

The purposes of the proposed Law are -

- to minimise the risk of infection or unnecessary injury arising from tattooing, ear piercing, body piercing, acupuncture and electrolysis;
- to protect children from permanent and potentially disfiguring tattoos or body piercing.

The Committee has given careful consideration, after consultation with a variety of practitioners involved in the procedures concerned, to the extent of regulation necessary and the potential impact of any standards and Code of Practice on their businesses. It is apparent that the great majority of practitioners already maintain high standards to ensure the safety and health of their clients, and the proposed Law will have little impact on their practice. However, the registration requirements are considered necessary to ensure that *all* those concerned continue to meet the appropriate standards and that the Committee is empowered to monitor conformance and take action should any fall short of the safety standards.

The question of age limits for tattooing and body piercing has been the subject of some debate and, when the legislation was initially proposed, contrasting views were expressed as to whether a liberal approach might be adopted or if a higher measure of protection was appropriate for minors. Having taken into consideration the potentially permanent and disfiguring nature of tattooing and some forms of body piercing, and with reference to

similar legislation in other jurisdictions, the Committee believes it is necessary to prohibit these particular procedures from being carried out on a child aged under 16 years and to require parental consent between 16 and 18 years (except when performed by a doctor or dentist). However, the Committee proposes that other lesser forms of skin piercing, i.e. acupuncture, ear piercing and electrolysis, should be permissible for a person aged under 16 years, providing his or her parent or guardian has given consent.

In regard to the particular activities which are included within the scope of the Law, the Committee does not discriminate between those practices that might be considered therapeutic, artistic or cosmetic, or the professional standing of any of the practitioners involved, apart from an exemption in Article 2(3) in respect of those practitioners who are registered under any other Law. The criteria for inclusion reflect only the potential level of risk involved.

Financial and manpower implications

The implementation of this Law will be carried out through the Environmental Health Department. There are no significant manpower or revenue implications arising.

4. Outline of the Law

It is intended that the objectives of the Law will be achieved by the following provisions -

- Article 1 includes definitions, including the treatments to which the Law applies. An important distinction is made between “ear piercing” (i.e. in the lower lobe of the ear) and “high ear piercing” (i.e. in the cartilaginous part of the ear) which is defined in “body piercing”. This is because of the evidence of significantly greater injury caused by “high ear piercing”.
- Article 2 requires the registration of practitioners and premises involved in the above activities, apart from those health professionals registered under another Law, and Article 3 specifies the form of such an application.
- Article 4 enables the Committee to prescribe, by Order, the criteria for registration, including the qualifications and experience of a practitioner and standard of his premises, and empowers the Committee to apply conditions to registration, or refuse to register or renew registration if the practitioner or premises are unfit or unsuitable. The practitioner is also required to inform the Committee of any changes in the registered details.
- Article 5 defines the offences arising in connection with the registration requirements, namely, failure of a practitioner or premises to be registered when required to be so, failure to comply with any conditions of registration and failure to inform the Committee of changes in the registered details.
- Article 6 prohibits tattooing or body piercing of a child under the age of 16 years; prohibits tattooing or body piercing of a child aged 16 years but less than 18 years without prior written parental consent; and prohibits ear piercing, acupuncture or electrolysis on a child under the age of 16 years without parental consent. An exception is made in each case when the treatment is performed by a doctor or dentist.
- Article 7 provides for the appointment of designated officers for the purpose of administering the Law.
- Article 8 provides designated officers with powers to enter registered premises, in various circumstances where there are reasonable grounds to do so, to inspect and monitor compliance with the appropriate standards.
- Article 9 enables the Health and Social Services Committee to introduce and require compliance with approved Codes of Practice detailing, for example, specific practices and procedures, standards of premises and equipment and any records that must be kept.
- Article 10 enables the Court to revoke the registration of a practitioner or his premises if he has been convicted of an offence under the Law; and empowers the Committee to revoke the registration of a practitioner or his premises if he fails to comply with a condition of registration, fails to comply with any provision of the Law, an Order or a Code of Practice, or is otherwise not a fit and proper person or the premises are unsuitable.

- Article 11 provides for a right of a hearing by the Committee, then appeal to the Court, if the Committee proposes or has decided to refuse, revoke or apply conditions to registration.
- Article 12 provides a power for the Committee to make Orders generally for carrying the law into effect, including specific requirements for registration.
- Article 13 makes a transitional provision for existing practitioners, allowing a period of three months before registration is required, or until an application is determined by the Committee.
- Article 14 makes provision for offences committed by aiders and abettors, and corporate bodies; and Article 15 provides for the Law to come into force on the seventh day following its registration.

5. Conclusions

The Health and Social Services Committee proposes to minimise any risk of infection or unnecessary injury arising from tattooing, ear piercing, body piercing, acupuncture and electrolysis, and to protect children under the age of 16 years from permanent and potentially disfiguring tattoos or body piercing.

The draft Piercing and Tattooing (Jersey) Law 200- is intended to achieve these objectives.

Explanatory Note

The purpose of the draft Law is to register and regulate persons who, whether or not for reward, practice acupuncture, body or ear piercing, electrolysis or tattooing on other persons and the premises on which those practices are carried out.

Article 1 is the interpretation provision.

Article 2 requires persons carrying on the practices of acupuncture, body or ear piercing, electrolysis or tattooing to be registered with the Committee. Any premises on which these practices are carried out must also be so registered and a registered person may not administer treatment elsewhere without the Committee's prior agreement. Where the practices referred to are conducted as part of other professional activities, e.g. a doctor or nurse, for which a person is registered under another Law that person need not register under this Law. Registration expires at the end of the calendar year but is renewable annually.

Article 3 prescribes the procedure for making applications for registration or renewal of registration. *Article 4* provides for the determination of applications, the power to impose conditions on the grant or renewal of registration and the maintenance of a register. There is an obligation on the person concerned to inform the Committee of any changes in particulars supplied on application for registration. *Article 5* makes it an offence to contravene *Article 2* or any condition of registration. It is an offence not to inform the Committee of changes in particulars supplied on application. There are also offences of making false representations etc. to procure registration and knowingly allowing premises to be used for treatment when either the premises or the person administering the treatment are unregistered.

Article 6 prohibits body piercing or tattooing being carried out on persons under the age of 16 or under the age of 18 without parental consent. It is also an offence to administer acupuncture, ear piercing or electrolysis to a person under 16 without parental consent. There is an exception for treatment carried out by a doctor or dentist.

Articles 7 and 8 deal with designated officers and their powers of entry and search.

Article 9 empowers the Committee to issue Codes of Practice relating to the practices.

Article 10 provides for revocation of a registration by the court where a person is guilty of an offence under the Law. There is also power for the Committee to revoke registration in certain circumstances.

Article 11 provides for an appeal against the Committee's refusal to register a person or premises, imposing of a condition or revoking of a registration.

Article 12 provides for the general Order-making powers, including power for Orders to impose requirements, the breach of which is an offence. *Article 13* provides transitional arrangements which enable a person carrying out the practices before this Law comes into force to operate for three months following its commencement or until his application for registration is determined, whichever is the later.

Article 14 deals with the criminal liability of accessories and officers of a body corporate.

Article 15 is the citation provision and provides for the Law to come into force on the seventh day following its registration.

Where the draft Law prescribes a penalty by way of a fine not exceeding a specified level "on the standard scale", this is a reference to the scale set out in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993. The maximum penalties for each level on that scale, currently, are -

Level 1	-	£50
Level 2	-	£500
Level 3	-	£2,000
Level 4	-	£5,000

PIERCING AND TATTOOING (JERSEY) LAW 200-

ARRANGEMENT OF ARTICLES

1. Interpretation
2. Requirement for persons and premises to be registered
3. Application for and renewal of registration
4. Determination of applications and maintenance of register
5. Offences in connection with registration
6. Treatment of persons not of full age
7. Designated officers
8. General powers of entry and investigation
9. Codes of practice
10. Revocation of Registration
11. Appeals
12. Orders
13. Transitional provisions
14. Criminal liability
15. Citation

PIERCING AND TATTOOING (JERSEY) LAW 200-

A LAW to regulate the practices of acupuncture, body and ear piercing, electrolysis and tattooing and the premises on which those practices are conducted, whether or not for reward, and for matters incidental thereto and connected therewith; 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 -

“acupuncture” means the insertion of solid needles into the skin in order to stimulate nerve impulses for medical purposes;

“body piercing” means total or partial penetration of any part of the skin other than the lower non-cartilaginous lobe of the pinna, using a needle or other implement, with the intention of creating an aperture for decorative or cosmetic purposes, including insertion through or into the skin, whether or not by the person carrying out the body piercing, of decorative jewellery;

“Committee” means the Health and Social Services Committee;

“designated officer” means a person appointed under Article 7;

“doctor” means a medical practitioner registered under the Medical Practitioners (Registration) (Jersey) Law 1960;
[\[1\]](#)

“dentist” means a dentist registered under the Dentists (Registration) (Jersey) Law 1961;
[\[2\]](#)

“ear piercing” means total or partial penetration of the lower non-cartilaginous lobe of the pinna, using a needle or other implement, with the intention of creating an aperture for decorative or cosmetic purposes, including insertion through or into the skin, whether or not by the person carrying out the ear piercing, of decorative jewellery;

“electrolysis” means the insertion of needles into the skin in order to apply electrical current for medical or cosmetic purposes;

“prescribed” means prescribed by Order made by the Committee;

“registered person” and “registered premises” mean a person or premises, as the case may be, registered under this Law;

“tattooing” means the insertion into the skin of any colouring material for decorative purposes and designed to leave a permanent mark; and

“treatment” means any operation in administering acupuncture, body or ear piercing, electrolysis or tattooing.

(2) 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.

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

(4) 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 by or under another enactment, including another provision of this Law.

ARTICLE 2

Requirement for persons and premises to be registered

(1) Subject to paragraphs (2) and (3), a person shall not administer treatment to another person (whether or not for reward) unless he and any premises from which he administers treatment are registered by the Committee in accordance with this Law.

(2) A registered person may occasionally administer treatment elsewhere than from registered premises if he has the prior approval of the Committee.

(3) This Article shall not apply to a person who is registered under any other Law which permits the administering of treatment as part of the professional activities which that person is registered to perform in the Island.

(4) Every registration under this Law shall expire on the thirty-first day of December next following the date on which it takes effect but shall be renewable annually in accordance with this Law.

ARTICLE 3

Application for and renewal of registration

An application for registration or renewal of registration under Article 2 shall -

- (a) be in such form as the Committee may require;
- (b) specify the categories of treatment in respect of which it is made;
- (c) contain or be accompanied by such particulars as the Committee may require; and
- (d) be accompanied by such fee as may be prescribed (which shall not be refunded if the application or renewal is refused).

ARTICLE 4

Determination of applications and maintenance of register

(1) Subject to paragraph (2) the Committee shall register a person or premises under this Law if and only if it is satisfied -

- (a) that the person possesses such qualifications and experience as may be prescribed; and
- (b) that the premises and any equipment used in connection with the administration of any treatment meet such conditions as may be prescribed.

(2) The Committee may refuse to register or renew the registration -

- (a) of any person it considers not to be a fit and proper person to administer the treatment he proposes to administer; or

- (b) of any premises it considers to be unsuitable for the purposes of administering the treatment proposed to be administered from those premises.
- (3) Where the Committee registers or renews the registration of any person or premises it may impose such conditions on such registration as it thinks fit.
- (4) The Committee shall maintain a register of registered persons and registered premises and the register shall -
 - (a) specify the categories of treatment to which the registration relates;
 - (b) contain such other particulars as may be prescribed; and
 - (c) be available for inspection at reasonable times by members of the public.
- (5) Where a person or premises have been registered and any of the particulars required to be supplied to the Committee under Article 3(1)(c) have changed, the person concerned shall inform the Committee as soon as reasonably practicable.
- (6) The Committee may make such alterations to the register as are necessary to ensure its accuracy.

ARTICLE 5

Offences in connection with registration

- (1) A person who -
 - (a) contravenes Article 2(1); or
 - (b) contravenes any condition imposed under Article 4(3) or fails to comply with Article 4(5),

shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.^[3]

(2) A person who wilfully procures or attempts to procure himself or any other person to be registered by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either orally or in writing, shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

- (3) An owner or occupier of any premises who knowingly allows -
 - (a) such premises, not being registered in accordance with this Law, to be used for the purpose of administering treatment; or
 - (b) any person who is not registered in accordance with this Law to administer treatment on such premises,

shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.³

ARTICLE 6

Treatment of persons not of full age

- (1) Subject to paragraph (2) a person shall not -
 - (a) administer body piercing or tattooing to a person under the age of 16 years;
 - (b) administer body piercing or tattooing to a person aged more than 16 years but under full age without the prior written consent of that person's parent or guardian; or
 - (c) administer acupuncture, ear piercing or electrolysis to a person under the age of 16 years without the prior written consent of that person's parent or guardian.
- (2) Paragraph (1) shall not apply where the treatment consists of any procedure performed by a doctor or a

dentist in the course of his practice as such.

- (3) A person who intentionally or recklessly contravenes paragraph (1) shall be guilty of an offence and liable -
 - (a) in the case of an offence under paragraph (1)(a) to imprisonment for a term not exceeding five years or to a fine, or both; and
 - (b) in the case of an offence under paragraph (1)(b) or (c) shall be liable to a fine not exceeding level 3 on the standard scale.^[4]

ARTICLE 7

Designated officers

- (1) The Committee may appoint in writing any person it considers to be suitably qualified, to be a designated officer for the purposes of all or any part of this Law.
- (2) A designated officer who is exercising his powers under this Law shall on request -
 - (a) produce evidence of his authority to do so; and
 - (b) state his name and the power that he proposes to exercise.

ARTICLE 8

General powers of entry and investigation

- (1) A designated officer may, in respect of any registered premises, for the purposes of ascertaining compliance with this Law -
 - (a) enter, inspect or search the premises;
 - (b) take or remove for examination, analysis or as evidence any substances, articles or other things found there;
 - (c) inspect any records kept there; or
 - (d) require any person there to furnish such information as he may reasonably require with respect to the premises or any person who has administered treatment from the premises.
- (2) A power under this Article shall only be exercised -
 - (a) where there are reasonable grounds for doing so;
 - (b) in the manner that is proportionate and otherwise reasonable;
 - (c) at a reasonable hour; and
 - (d) if the designated officer has given not less than 48 hours' notice in writing to the owner or the occupier of the premises.
- (3) Paragraph (2)(c) and (d) shall not apply in an emergency.
- (4) Where the Bailiff, a Jurat, the Magistrate or Sous-Magistrate is satisfied on sworn information -
 - (a) that there are reasonable grounds for the exercise of any power under paragraph (1); and
 - (b) that in the circumstances of the case it is desirable to grant a warrant under this paragraph,

he may grant a warrant to a designated officer authorizing the officer at any time to enter the premises specified in the warrant and there exercise any powers under paragraph (1) and in doing so to use any reasonable force necessary.

- (5) A warrant shall continue in force until -
- (a) the purposes for which the warrant is granted have been fulfilled; or
 - (b) the expiry of the period of one month following its grant.

(6) A person who without reasonable excuse intentionally obstructs a designated officer who is exercising or seeking to exercise any power under this Article shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.^[5]

(7) Where a designated officer has exercised any powers under this Article in respect of registered premises, he shall in writing inform the owner or occupier of the premises as soon as reasonably practicable and in any event within 21 days -

- (a) of the powers he has so exercised; and
- (b) of everything he has taken or removed in the course of exercising those powers.

ARTICLE 9

Codes of Practice

The Committee may issue Codes of Practice setting out -

- (a) the practice and procedures that should be adopted by a registered person in administering any treatment;
- (b) the standards to which registered premises and any equipment used in connection with the administration of treatment should conform; and
- (c) the records that should be kept in respect of persons to whom, and the premises at which, treatment is administered.

ARTICLE 10

Revocation of Registration

(1) Where a registered person has been convicted of an offence under this Law the court may, in addition to any other penalty it may wish to impose, order that his registration and, if he is the only registered person administering treatment from registered premises, the registration in respect of those premises, be revoked.

- (2) Where the Committee is satisfied -
- (a) that a registered person -
 - (i) has contravened or failed to comply with any condition imposed under Article 4(3) with respect to his registration or that of registered premises from which he administers treatment,
 - (ii) has contravened or failed to comply with any provision of this Law or any Order made or Code of Practice issued thereunder, or
 - (iii) is otherwise not a fit and proper person to be administering the treatment he is administering; or
 - (b) that registered premises are unsuitable for the purposes of administering the treatment proposed to be administered from those premises;

it may revoke his registration and, if he is the only registered person administering treatment from registered premises, the registration in respect of those premises.

ARTICLE 11

Appeals

(1) Where the Committee proposes to refuse registration, or to grant such registration subject to conditions, under Article 4 or to revoke such registration under Article 10 it shall give the person concerned written notice of -

- (a) its intention to do so and the reasons for so doing; and
- (b) his right to be heard in person or by a representative if he informs the Committee in writing of his desire to do so within 14 days of the notice.

(2) If the Committee, after having given the person concerned an opportunity to be heard, decides to refuse the application, impose conditions or revoke the registration it shall, if he requires, deliver to him within seven days of receiving such request, written particulars of the reasons for its decision and his right of appeal.

(3) A person aggrieved by such decision of the Committee may, within 28 days from the date on which he is notified of it under paragraph (2) appeal to the Inferior Number of the Royal Court.

(4) Subject to paragraph (5) where the Committee has revoked the registration of any person or premises such revocation shall not take effect until the 28 days after the person concerned receives notification of the revocation or his appeal has been dismissed, whichever is the earlier.

(5) Where the Committee considers that it is necessary in the public interest for the revocation of a registration under this Law to have immediate effect it may apply to the Bailiff, a Jurat, the Magistrate or Sous-Magistrate who may make such order.

- (6) On an appeal under this Article the court may confirm, reverse or vary the Committee's decision.

ARTICLE 12

Orders

(1) The Committee may make Orders generally for carrying this Law into effect and in particular but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Law.

- (2) An Order under this Law may -
 - (a) impose requirements with respect to registered persons and registered premises; and
 - (b) provide that a person who contravenes or fails to comply with any such requirement shall be guilty of an offence and liable to such a fine not exceeding level 3 on the standard scale^[6] as may be prescribed.
- (3) An Order under this Law may -
 - (a) make different provisions in relation to different cases or circumstances;
 - (b) contain such consequential, incidental, supplemental and transitional provisions as the Committee considers to be necessary or expedient.
- (4) The Subordinate Legislation (Jersey) Law 1960^[7] shall apply to Orders made under this Law.

ARTICLE 13

Transitional provisions

Article 2 shall not apply to a person administering treatment or to the premises from which he administers that treatment before the commencement of this Law until three months after such commencement, or until the determination by the Committee of any application for registration under this Law made during that period, whichever is the later.

ARTICLE 14

Criminal liability

(1) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(2) Where an offence under this Law committed by a body corporate 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 director, manager, secretary or other similar officer of the body corporate; 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 body corporate to the penalty provided for that offence.

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

ARTICLE 15

Citation

This Law may be cited as the Piercing and Tattooing (Jersey) Law 200- and shall come into force on the seventh day following its registration.

[1] Tome VIII, page 829, and Volume 1992-1993, page 267.

[2] Volume 1961-1962, page 135, Volume 1982-1983, page 143 and Volume 1992-1993, page 243.

[3] Volume 1992-1993, page 437.

[4] Volume 1992-1993, page 437.

[5] Volume 1992-1993, page 437.

[6] Volume 1992-1993, page 437.

[7] Tome VIII, page 849 and Volume 2001, page 3.