

STATES OF JERSEY



YOUTH CUSTODY FOR PERSONS AGED 12 AND OVER (P.2/2004): COMMENTS

**Presented to the States on 20th April 2004
by the Health and Social Services Committee**

STATES GREFFE

COMMENTS

1. Introduction

This report is the response of the Health and Social Services Committee to Proposition P.2/2004, Youth Custody for Persons aged 12 and over, lodged by the Deputy of St. Martin. The Committee, having examined all the issues surrounding the use of custody for the age group of children proposed, has concluded that it cannot support the proposition for a number of reasons which are set out below.

2. The proposition

The proposition seeks to give the Court the power to impose a sentence of detention upon a child aged not less than 12 but under school leaving age, if he or she is convicted of an offence which for a person aged 21 years or over would be punishable with imprisonment, and if the Court is of the opinion that the young person is a persistent offender and no other method of dealing with the offender is appropriate. A number of other qualifications to the sentence to detention are then specified.

Members of the Health and Social Services Committee were recently able to attend a seminar on child offending which presented a large body of evidence which indicates that the use of custody for young people is not an effective sentencing option and in a substantial number of cases actually results in an increase in the offending behaviour of young persons. The evidence of its use in European countries finds that in terms of re-offending rates following release from custody, the re-conviction rate of 14-17 year olds within 24 months of release is 80%. The equivalent figure for the YOI in Jersey is higher at 88%. Given this extremely high re-conviction rate and the view among a great many of the professionals and specialists working in this field that association with other offenders within a custodial setting actually increases the likelihood of further offending, the Committee cannot support a proposition which would in all probability replicate the same difficulties and risks for this age group.

The Committee also acknowledges the issues of equity surrounding the sentencing of persistent offenders highlighted in the information produced by the Jersey Probation Service at the above seminar. It also believes and supports the fundamental principle of juvenile justice that it should be focused on the reform and rehabilitation of the young person rather than upon punishment or removal from society. The evidence is that the use of custody for young people may achieve the latter objective, but will also increase the risk of not achieving the desired outcome of reform and rehabilitation.

3. The use of secure provision

The Committee acknowledges that the use of custody in the sentencing of young persons of this age for heinous crimes is necessary for the protection of society, and that the use of secure remand is required for some young people in process through the criminal justice system.

The Committee also supports the use of secure provision in the *treatment and protection* of young persons of this age when it is deemed essential during the course of that treatment to use the provision to protect either the young person or other people. This approach does appear to share common ground with the proposition but there are some essential differences in the rationale and ethos supporting its use with this age group of children e.g. –

- The Committee does not support the principle that a court should be able to sentence a certain category of young offender in this age group to a fixed period of custodial provision. The Committee believes such measures focus principally upon punishment and containment and there is strong evidence to suggest that it compromises the potential for reform and rehabilitation.
- The Committee would prefer to support the proposals emerging from the work of the new Children's Executive which seeks to create a range of options for the treatment, training and care of behaviourally disordered children, including but not exclusively, those who offend, as part of a rehabilitative programme for each young person.

- As part of that programme it is acknowledged that for a number of young persons of this age, some of whom may have committed criminal offences, there may be a need for a period of residential care under close supervision. The Executive is therefore proposing the introduction of a residential supervision order which may be imposed by the civil court on occasion by recommendation of the court or professionals dealing with criminal offences.
- It is further proposed by the Executive that for some young people it may be necessary during the course of their treatment/rehabilitation programme, or for other circumstances arising from an immediate risk to a young person or other persons, for that young person to be detained in secure provision until such time as it is deemed safe to return them to a less supervised environment. The Children's Executive is examining options for the introduction of such a secure provision order which it is envisaged would be an order issued under the power of the Royal Court and subject to review at given intervals.

Conclusion

In supporting the development of these measures the Committee acknowledges that it may be deemed necessary for some young persons in the age range detailed in Deputy Hill's proposition to be detained for periods of time within secure provision. However it does not believe this should be an option contained within the sentencing powers of the Juvenile Court but rather, used only when absolutely necessary for the safety of the young person or others, as part of a rehabilitation/treatment programme.

The Committee is aware from discussions with the Deputy of St. Martin that he supports the thrust of the recommendations of the Children's Executive and hoped the proposition would serve to assist the work being undertaken to improve the range of services available to assist young people. However, as outlined above, the Health and Social Services Committee is concerned to support the use of secure accommodation for children of the age specified in the proposition only as an option available within a rehabilitation/treatment programme. During discussions with the Deputy of St. Martin the Committee endeavoured to alight upon a shared interpretation of the meaning and purpose of the Deputy's proposition, as he expressed the view that his objective was the same as that sought by the Children's Executive and relevant States committees. However, in the final analysis, the Committee concluded the potential for such divergent interpretations of the Deputy's proposal, meant the Committee could not support it as drafted.

The proposition, as it is worded, would have the effect of extending that use to allow for the custodial disposal of persistent offenders of this age as a sentencing option for the court. In effect it would allow for the sentencing of young school-aged children to fixed periods of custody. As the research evidence indicates that the likely effect of such a proposition is to compromise rather than enhance the potential for the young person's reform and rehabilitation, the Committee cannot support it and firmly believes that the work undertaken by the Children's Executive following the report of Dr. Bull should be allowed to continue unfettered.