

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS  
BY DEPUTY T.M. PITMAN OF ST. HELIER  
ANSWER TO BE TABLED ON TUESDAY 19th JANUARY 2010**

**Question**

Will the Minister clarify how and why reducing sentencing for individuals convicted of importing drugs into the Island will help alleviate Jersey's drug problem and advise what evidence he has to support such a proposal?

**Answer**

I do not think that I have publicly claimed that reducing sentencing for individuals convicted of importing drugs into the Island would help alleviate Jersey's drug problem directly, although there is a scenario which I will describe at the end of this answer by virtue of which this may be indirectly so.

The States of Jersey in November 2007 approved its first Criminal Justice Strategy. The section on Pillar 8 – Dealing with offenders contains the following section at paragraph number 11.18.

**A review of drug sentencing policy**

11.1 Over the last decade or so, the profile of custodial sentencing has changed. In 1991, a total of 549 offenders received custodial sentences in Jersey. However, the Prison never approached its maximum capacity because 90% of these sentences were for periods of less than 6 months. Over the years, the availability of a range of effective community penalties managed by a strong and professional Probation and After-Care Service has undoubtedly been a major factor in reducing significantly the number of shorter custodial sentences. By 2001, a much reduced total of 253 offenders were given custodial sentences in Jersey with only 54% serving less than 6 months. The irony, therefore, is that the marked reduction in the use of custody as a sentencing option has coincided with severe prison overcrowding due to increased sentence lengths. As the Rutherford Report highlighted, the main contributory factor has been the Royal Court's sentencing policy on drug trafficking. Sentencing principles were first formalised in the Court of Appeal landmark judgment of Campbell, Molloy and MacKenzie (1995) JLR 136 and there have been several judgments since which have modified the guidelines. In upholding the condign punishments meted out by the courts in Jersey, the Court of Appeal has supported the stance that such sentences are necessary to protect the social and economic fabric of Jersey society, to mark public abhorrence of drug trafficking and to deter others from indulging in the same crime. Notwithstanding the integrity of this sentencing policy and the need to deal appropriately with serious and organised crime, the Island is paying in other ways, notably with prison overcrowding and excessive cost to the tax payer. Moreover, there is no evidence that such tough sentences are having the desired effect. Trafficking of Class A drugs into Jersey is still a regular occurrence and heroin addiction still blights our society. Intelligence would also indicate that imprisoning drug traffickers together can create more powerful and elusive syndicates. Furthermore, our drugs enforcement strategy has, hitherto, resulted in a disproportionate number of couriers being incarcerated. On the other hand, we do not know whether the situation would have been much worse had the Court not adopted this sentencing policy. The fact remains, however, that there has been no measurable decline in drug trafficking as a direct result of sentencing policy. Consequently, the Home Affairs Department will be entering into discussions with the Bailiff over the sentencing policy in respect of drug trafficking in the light of the experience of the last 8 years. This was supported by the Shadow Scrutiny Panel in its review on substance misuse carried out at the end of 2004.

Furthermore, the action plan which follows this section of the Strategy includes the following action point:-

“Enter into discussions with the Bailiff over sentencing policy.”

I believe that it is clear from the contents of paragraph number 11.18 that this action point, which was agreed by the States as part of the policy, flowed from the concerns expressed in relation to the current sentencing policy in relation to drugs.

The constitutional position is that, subject to maximum sentences which may be set by the States for different offences, sentencing policy is a matter for the courts. In particular, the key sentencing case of Campbell, Molloy and Mackenzie was decided in 1995 by the Court of Appeal. I believe that this was decided by an especially convened Court of Appeal with more than the usual number of Court of Appeal judges being present. If this judgment is to be changed by the courts then that could only be by virtue of a further specially convened Court of Appeal. What I have suggested, in line with the Criminal Justice Policy, is that the time is right for such a review. However, I have confined my concerns in relation to sentencing policy to the sentencing of couriers (commonly known as “drugs mules”) who are recruited solely for the purpose of transporting drugs to Jersey. The concerns expressed in the Criminal Justice Policy extend to all those involved in the importation of illegal drugs but my concerns are narrower.

This is a controversial area. Opinions differ amongst experts in the field of criminology and amongst judges as to the effectiveness of deterrent sentences in relation to drugs couriers. In order to assist the judges in their deliberations in relation to this matter, the Home Affairs Department has sought the assistance of the Probation Department in terms of analysis of the prisoners who are currently in H. M. Prison La Moye serving a sentence as a courier. This study will provide the necessary factual analysis although of necessity there will always be a judgment to be exercised as to whether an individual prisoner is merely a courier or more heavily involved in the importation and as to whether or not they had any knowledge of the Jersey sentencing policy. It is my contention that a policy based upon deterrent sentencing can only be effective if potential couriers know about the sentencing policy and are actually deterred by this.

As I have said before, all these are ultimately matters for the courts to decide. However, I contend that, in the light of the States Criminal Justice policy it was necessary for me as the new Minister to formulate a view in relation to this area.

There are also arguments which arise in relation to the weakness and vulnerability of many of the drugs couriers. I have, of course, personal knowledge of this by virtue of the cases with which I dealt as Magistrate and I would expect the current study to confirm my opinion. In my opinion, many of the couriers are themselves victims of the destructive effects of their own drug addiction or are weak people who have been coerced in acting as couriers. Although they remain responsible for their own actions and for the consequences to others of their acting as couriers, the issue arises as to whether such long prison sentences are still appropriate and whether these are effective as a deterrent to others.

Finally, I come to the possible scenario. If the current sentencing policy were to be reviewed and reduced in relation to couriers and this led to a reduction in the prison population then this should eventually lead to reduced costs of running the prison. If the Home Affairs Department were able to re-deploy those resources in relation to other areas such as improved enforcement by the police and/or customs or in terms of improved rehabilitation services for addicts then this would help to alleviate Jersey’s drug problem.