# STATES OF JERSEY

# YOUNG OFFENDERS: NAMING BY THE MEDIA (P.148/2009) – COMMENTS

**Presented to the States on 17th November 2009**
**by the Minister for Health and Social Services**

**STATES GREFFE**

2009 Price code: B P.148 Com.(3)

## COMMENTS

The Minister for Health and Social Services noted that an amendment to the proposition had been lodged 'au Greffe' by Senator B.E. Shenton in which he had proposed 16 years as an appropriate age at which to apply amended reporting restrictions. Following advice from the independent Chair of the Jersey Child Protection Committee, the Data Protection Commissioner, Law Officers and local experts in the field of child welfare, the Minister for Health and Social Services, on behalf of the Ministers for Home Affairs and Education, Sport and Culture, that together, make up the Corporate Parent, is unable to support the proposition by Deputy T. Pitman or amendment by Senator B.E. Shenton for 5 principle reasons set out below.

### 1. Compliance with the United Nations Convention on the Rights of the Child (UNCRC)

The Minister recalled that the Strategic Plan 2009 – 2014 included a commitment to seek extension of the U.K. ratification of the United Nations Convention on the Rights of the Child.

- The proposal to name children convicted of offences of violence in order to prevent re-offending and deter others is explicitly contrary to Article 40 of the U.N Convention on the Rights of the Child (UNCRC) which the States Assembly agreed to ratify earlier this year.

- Article 40 (Juvenile Justice) states that children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings. Disclosure of a young person's personal details in the manner proposed would contravene this and could leave the young person open to abuse or retributive action.

- The proposal, as drafted, would lead to a greater degree of naming than is permitted in Courts in England and Wales. This is significant because England and Wales have been found to be failing to comply with the terms of the UNCRC in 2002 and 2008 for this, as well as other, matters. In its 2008 report, the U.N. Committee criticised England and Wales for failing to ensure full protection against discrimination against children. The report states that they '(have not taken) sufficient measures to protect children, notably those subject to ASBOs, from negative media representation and public "naming and shaming".

  The U.N. Committee report states that England and Wales should take '*urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media'* and to:
  *'Intensify its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child'.*

- It would seem perverse to introduce such a measure when it has been found to be in direct conflict with the terms of the UNCRC, and would undoubtedly draw criticism from the supervising Committee of the UNCRC at the next review.

**2. Evidence of effectiveness**

- It is unclear what evidence the Deputy has to support his assertion that 'naming' has a deterrent effect, as it has not been possible to identify any academic reports or reviews which show that the naming of children convicted of criminal proceedings has any positive impact on their behaviour or the behaviour of others.

- There is ample evidence from research that being 'labelled' with a negative identity can have an adverse effect upon the wellbeing of the individual involved, can thwart the achievement of their full potential and make it difficult for them to gain an alternative, more positive, identity away from their marginalised group.

- If a child is labelled with an identity as a criminal, such a self-image can contribute to marginalisation, and would provide a further obstacle for the child, and those working with the child, to overcome. Important issues relating to re-integration and long-term impact are more significant in a small island community such as Jersey.

- Deputy Pitman argues in detail that the solution to successfully addressing youth offending is through a 'socially just society' which invests early in supportive services and in equitable distribution of resources. He states that '*if you put sufficient monies in to these areas earlier enough you save an absolute fortune over the following years. This is a fact and an inarguable one'*. There is national and international research evidence to support this statement. Such an approach (i.e. substantial early investment into universal and targeted services for children and families) would no doubt find support from H&SS, Education, Probation, etc. However, the Deputy's proposition is at the very least at odds with his support of the 'early investment' approach.

**3. Restorative justice argument**

- "Shaming" as Deputy Pitman states in his report, is a recognised tool in restorative justice, in which '*the perpetrator is made to see the damage that they have done to a victim'*. However, in the context of restorative justice naming and shaming is used in a very specific and controlled way.

- The Parish Hall Enquiry System employs 'shaming' practices aimed at re-integrating youth offenders into their community and encouraging them back into acceptable behaviours. However, the 'shaming' in this and other restorative justice work is a process which is supportive, not punitive, in nature. It usually takes place in settings involving the victim/s and their family, the offender's family and other close associates who are significant in their lives. It does not involve publication of the name and offence of children as young as 12 years to the community as a whole as is intended by this proposition.

## 4. Impact on individual youth offenders

- Page 5 of the Proposition refers to the "shock of being held up for the entire world". The publication of personal details of young offenders would necessarily become a permanent record, especially on the Internet. Individuals would be forced to live with a detailed record beginning with childhood that would stay with them for life, wherever that individual goes – searchable and accessible from anywhere in the world, as the Proposition rightly states.

- Public 'naming and shaming' risks losing sight of the importance of proportionality. Unfortunately there is no clarity of objective in the Proposition. Unless the objectives are clear, it is impossible to discuss the proportionality of the measures proposed.

- The position of children in the care of the Minister for Health and Social Services is of particular concern. Looked-after children are vulnerable, having by definition already experienced disruption and difficulty in their family lives. Such difficulties, rarely of their own making, might well have contributed to their anti-social and offending behaviour. These children are often already characterised in a negative way in the media and in the minds of a significant proportion of the public. This is an inaccurate reflection of children in care, the great majority of whom are not involved in offending behaviour. This proposition could well contribute further to the degree of prejudice and ostracism that these vulnerable children already experience.

## 5. Impact upon others

- The Proposition fails to take account of risk to third parties, referring only to the requirement placed upon the Court to assess the potential for serious risk of physical or mental harm to the *individual*. The naming and shaming approach would certainly result in potential adverse impact upon the wider family, and most particularly and significantly any siblings within the family, who will have had no part in the criminal activity but would be rendered vulnerable to bullying and possibly worse, simply because of their brother or sister's actions. Again, this factor is of greater significance when applied to looked-after children and their family as a whole.

**Recommendation:**

The Minister believes that the proposition and its amendments raise crucial issues in relation to Youth Justice which have impacts that are wider than the specific matter of whether juvenile offenders should be publicly named.

The Minister considers that a comprehensive review of Youth Justice arrangements across the board is essential to understanding and implementing the many and substantial changes to current legislation, administrative processes and service provision which are required in order to successfully resolve political and public disquiet. The Corporate Parent can confirm that the groundwork for such a review has already been completed and this should allow issues to progress in a timely manner.

The Minister believes that it is appropriate to ensure that all legislative changes relevant to the Children (Jersey) Law 2002 and the Criminal Justice (Young Offenders) (Jersey) Law 1994 – including the pressing need to consider custodial sentencing to Greenfields – should be made at the same time.

Therefore, the Minister would recommend that any debate on this proposition is deferred until the outcome of the Youth Justice Review is known, and any proposals can be considered on their respective merits.

The Minister for Health and Social Services, on behalf of the Ministers for Home Affairs and Education, Sport and Culture that together, make up the Corporate Parent, having considered the legal advice received, resolved to oppose both P.148/2009 and the related amendment lodged by Senator Shenton, as both would be contrary to Article 40 of the U.N. Convention on the Rights of the Child (UNCRC) which the States Assembly agreed to ratify earlier this year. The Minister recommends that members reject this proposition.