

STATES OF JERSEY

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DRAFT CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 200

**Lodged au Greffe on 20th May 2003
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 200

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft Criminal Justice (Suspension of Prison Sentences) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy R.G. Le Hérissier of St. Saviour**

REPORT

The Legislation Committee has for some years considered whether legislation should be introduced to enable the Magistrate's Court or the Royal Court, when it decides to impose a prison sentence, to suspend that sentence and give the convicted person one last chance to stay free and mend his or her ways. Such legislation was introduced in the United Kingdom in 1967 and in Guernsey in 1972 and already existed in different forms in France, Germany, Belgium, Denmark, Israel, Switzerland and in parts of the United States.

The Committee embarked on an exhaustive process of consultation and, having considered all comments received, felt that the power to suspend a sentence of imprisonment would be of use to the Courts. The chief merits of the suspended sentence in other jurisdictions have been identified as the relief of overcrowding in prisons (with consequent saving of public expense) and the fact that it acts as a powerful deterrent against further wrongdoing. Knowledge on the part of an offender that, if he or she commits a further offence, a term of imprisonment will almost inevitably follow is perhaps as effective a deterrent as experience of prison itself.

The Committee decided to request the Law Draftsman to draft the necessary legislation. As a result of further consultation the Superior Number of the Royal Court suggested, amongst other things, that there should be reciprocal enforcement of a breach of a suspended sentence in the United Kingdom. Enquiries were made of the Home Office in this respect. Their eventual response was that it would be difficult to allow Courts to sentence for offences committed beyond their jurisdiction and in respect of which the offender had already been sentenced. The compatibility of this approach with Article 7 of the European Convention on Human Rights was doubtful.

The draftsman's explanatory note provides a succinct statement of the effect of each of the *Articles* of the *projet de loi*. In general terms this proposed legislation would give the courts a useful additional means of deterring crime. Whereas, at present, the alternatives to a custodial sentence consist in the main of binding-over, probation and community service orders, the courts would instead be able to mark the seriousness of the offence and actually to pass a sentence of imprisonment and, in those cases where it was appropriate to give the offender a last chance to stay free and not re-offend, to permit him or her to remain in the community without the cost of being maintained in prison, but in the knowledge that imprisonment for the original offence would be the corollary of any further offence (together with whatever additional imprisonment was appropriate for that further offence). At present the court has no such discretion even though it may feel strongly that all the circumstances of the case before it call for such an approach.

Whilst a probation order can also have a deterrent effect and a breach of such of such an order by re-offending can result in a custodial sentence, it is not infrequently the case there is little added to the sentence for the breach. Further, the purpose of a probation order is to rehabilitate the offender and deal with the cause of his or her offending behaviour. By its nature it is resource intensive requiring the services of a Probation Officer to supervise the offender during the currency of the order. A suspended sentence acts purely as a deterrent: it can be used *e.g.* where a person of previous good character commits a relatively serious offence such as one involving a breach of trust that would normally result in an immediate custodial sentence. The person is unlikely to re-offend and the court should have the option of allowing such a person the opportunity of making a contribution to the community rather than becoming a burden upon it.

The Committee can see no reason why this particular avenue of sentencing should be closed to the courts of this Island. It is utilized to good and beneficial effect in many other jurisdictions: this *projet de loi* would enable its use to the same effect in Jersey.

Financial/manpower statement

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

European Convention on Human Rights

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 12th May 2003 the Legislation Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Legislation Committee the provisions of the Draft Criminal Justice (Suspension of Prison

Sentences) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The intention of this Law is to enable a court to order, where it has sentenced an offender to imprisonment for a term of not more than 2 years, that the offender shall not be imprisoned in accordance with the sentence unless, within a period specified by the court, the offender commits another offence for which he could be imprisoned.

Article 1 provides for the interpretation of certain terms used in the Law.

Article 2 gives a court the power to suspend imprisonment under a sentence it has imposed, which the offender may have to serve if he or she commits another offence during a period specified by the court.

Article 3 provides what is to happen if the person commits, during the period specified by the court, an offence for which he or she can be imprisoned.

Generally the offender will be required to serve the original term of imprisonment but this will depend upon the circumstances.

Article 4 sets out the powers of the Magistrate's Court when it convicts a person who is already on a suspended prison sentence.

Article 5 provides for what may happen if a court overlooks the fact that a person it convicts is already on a suspended sentence.

Article 6 allows a court that has suspended a prison sentence on a person to impose a supervision order on the person.

Article 7 provides that although a sentence of imprisonment is suspended it is still a sentence of imprisonment for the purpose of other legislation (for example, disqualification from office).

Article 8 provides for the making of Rules of Court for the purposes of the Law should they be necessary.

Article 9 provides for consequential amendments to the Rehabilitation of Offenders (Jersey) Law 2001.

Article 10 provides a citation for the Law and provides when it is to come into force.



Jersey

DRAFT CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 200

Arrangement

Article

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Jersey

DRAFT CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 200

A LAW to enable a court to order, in specified cases, that an offender shall not be imprisoned in accordance with a sentence of imprisonment it has passed unless the offender is convicted of another offence, committed during a specified period, for which the offender may be imprisoned; and for related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

(1) In this Law –

“operational period”, in respect of a suspended sentence, means the period specified in respect of the suspended sentence in accordance with Article 2(1)(a) or, if a period is substituted for that period by an order made under Article 3(4)(c), the substituted period;

“sentence of imprisonment” does not include a committal –

- (a) in default of payment of a sum;
- (b) for want of sufficient distress to satisfy a sum of money, or
- (c) for a failure to do or abstain from doing anything required to be done or to be left undone;

“supervision order” means an order made under Article 6(1);

“suspended sentence” means a sentence to which a suspension order relates;

“suspension order”, in respect of a sentence of imprisonment, means an order made in respect of that sentence in accordance with Article 2(1).

- (2) A reference in this Law to an Article by number only is a reference to the Article of that number in this Law.
- (3) A reference in an Article or any other division of this Law to a paragraph or sub-paragraph by number or letter only is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division.
- (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 under another enactment, including another provision of this Law.

- (5) If on an appeal a court passes a suspended sentence the court that imposed the original sentence shall for the purposes of this Law be taken to have passed the suspended sentence.
- (6) For the purpose of this Law consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term of imprisonment.

2 Power to suspend sentence of imprisonment

- (1) Except as provided by paragraph (5), a court that has sentenced an offender to a term of imprisonment of not more than 2 years may order that the offender shall not be imprisoned in accordance with that sentence unless –
 - (a) during a period specified in the order, being not less than one year and not more than 2 years, the offender commits in the Island a further offence punishable by imprisonment; and
 - (b) the court that convicts the offender for that offence makes an order under Article 3 that the offender shall be imprisoned, either for the original term or for a lesser term.
- (2) A court shall not make a suspension order unless it is satisfied that if it did not have the power to do so a sentence of imprisonment would still be an appropriate sentence.
- (3) If a court makes a suspension order it shall not –
 - (a) make a probation order in respect of the offender; or
 - (b) impose a term of imprisonment in respect of another offence of which the offender is convicted by or before the court or for which the offender is dealt with by the court unless the suspension order also applies in respect of that term of imprisonment,but the court is not otherwise prohibited from imposing on the offender any other penalty, sanction or obligation it has the power to impose by virtue of the offence or offences committed by the offender.
- (4) On passing a suspended sentence the court shall explain to the offender in ordinary language the offender's liability under Article 3 if during the operational period the offender commits an offence punishable by imprisonment.
- (5) A court has no power to make a suspension order in respect of –
 - (a) youth detention - being a sentence of detention in a young offenders institution imposed by virtue of Article 4(1) of the Criminal Justice (Young Offenders) (Jersey) Law 1994;^[1] or
 - (b) a sentence of imprisonment that is to take effect during or after an existing term of imprisonment in respect of which no suspension order has been made.
- (6) The fact that a suspension order has been made in respect of a sentence of imprisonment has no effect on any right of appeal the offender may have in respect of that sentence.
- (7) If a court imposes consecutive terms of imprisonment or terms of imprisonment that are wholly or partly concurrent and the total term of imprisonment is more than 2 years the court has no power under this Article to make a suspension order in respect of any of those terms of imprisonment.

3 Conviction of further offence punishable by imprisonment

- (1) This Article applies where –
 - (a) a court has passed a suspended sentence in respect of an offender;
 - (b) a court has not made an order under paragraph (2) or (4)(a) in respect of that sentence; and
 - (c) the offender has been convicted of a further offence punishable by imprisonment committed during the operational period in respect of the suspended sentence.
- (2) Except as provided by paragraph (3) and Article 4, the court that convicted the offender of the further offence shall order that the offender shall be imprisoned in accordance with the original sentence with the term of imprisonment unaltered.

- (3) The court shall not make an order under paragraph (2) if it is satisfied that it would be unjust to do so having regard to any circumstances that have arisen since the suspended sentence was passed, including the facts of the further offence.
- (4) If by virtue of paragraph (3) a court does not make an order under paragraph (2) it shall state its reasons for not doing so and shall order –
 - (a) that the offender shall be imprisoned in accordance with the original sentence but with the substitution of a lesser term of imprisonment for the original term;
 - (b) that the offender shall continue not to be imprisoned; or
 - (c) that the operational period in respect of the suspended sentence shall be varied by substituting for the original period a period ending not later than 2 years after the date of the variation.
- (5) When a court makes an order under paragraph (2) or (4)(a), it shall state in that order whether imprisonment in accordance with the original sentence is to start immediately or on the expiration of another term of imprisonment passed on the offender by that or another court.
- (6) Where the Royal Court could be required to make an order under this Article any question as to whether an offender has been convicted of an offence punishable by imprisonment shall be determined by the Bailiff sitting alone.
- (7) If a court makes an order under this Article and it is not the court that passed the suspended sentence it shall give details of the order it makes under this Article to the court that passed the suspended sentence.
- (8) For the purposes of any enactment conferring rights of appeal in criminal cases an order made by a court under this Article shall be treated as a sentence passed on the offender by the court that passed the suspended sentence.

4 Power of Magistrate's Court under Article 3

- (1) This Article applies where –
 - (a) Article 3 applies and, but for this Article, the Magistrate's Court would be required to make an order under that Article; and
 - (b) the relevant suspended sentence was passed by the Royal Court.
- (2) Where this Article applies the Magistrate's court may –
 - (a) commit the offender (on bail or in custody) to the Royal Court for an order to be made under Article 3 and for the offender to be sentenced for the subsequent offence; or
 - (b) deal with the offender in respect of the subsequent offence and make an order under Article 3 (4)(b) that the offender shall continue not to be imprisoned under the suspended sentence.
- (3) If the Magistrate's Court acts in accordance with paragraph (2)(a) the Royal Court shall have–
 - (a) the power to make an appropriate order under Article 3; and
 - (b) the same power as the Magistrate's Court to sentence the offender for the subsequent offence.
- (4) If the Magistrate's Court acts in accordance with paragraph (2)(b) it shall give the Royal Court and the Attorney General details of the manner in which it dealt with the offender for the subsequent offence.

5 Court fails to make order under Article 3

- (1) If the Royal Court is satisfied that it or the Magistrate's Court should have made an order under Article 3 in respect of an offender but failed to do so it may order that the offender be apprehended or warned to appear before the Royal Court which may thereupon make an order under Article 3.
- (2) If the Magistrate's Court passed the relevant suspended sentence it shall have the same power under

paragraph (1) as the Royal Court.

6 Court may order supervision

- (1) Where a court passes a suspended sentence it may also make an order placing the offender under the supervision of a supervising officer, being either a probation officer (as that term is defined in the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée^[2]) or another person appointed by the court.
- (2) A court does not require the consent of the offender before making a supervision order.
- (3) The court shall specify in a supervision order the period during which the offender is to be subject to supervision, being a period that does not exceed the operational period in respect of the suspended sentence.
- (4) The court shall –
 - (a) give a copy of the supervision order to the offender and to the supervising officer; and
 - (b) explain to the offender in ordinary language the effect of the order.
- (5) An offender in respect of whom a supervision order is in force shall –
 - (a) keep in touch with the supervising officer in accordance with instructions given to him or her by the officer; and
 - (b) notify the officer of any change of address.
- (6) A supervision order shall cease to have effect if before the end of the period specified in it –
 - (a) a court makes an order under Article 3(2) or (4)(a); or
 - (b) the order is discharged under paragraph (7) or replaced under paragraph (8).
- (7) A court that has made a supervision order may discharge it on the application of the supervising officer or the offender.
- (8) If a court makes an order under Article 3(4)(a) or (b) it may also make a supervision order in respect of the offender, which shall replace any supervision order already in effect.
- (9) If it appears to the Magistrate's Court that an offender in respect of whom a supervision order is in effect has not complied with an obligation under paragraph (5) it may order that the offender be apprehended or warned to appear before that Court and may thereupon enquire into the matter and if satisfied that the offender has failed to comply with the requirement may impose on him or her a fine not exceeding level 3 on the standard scale^[3] and also impose a term of imprisonment, not exceeding one month, to be served if the fine is not paid within a specified period.
- (10) For the purposes of any enactment conferring rights of appeal in criminal cases a supervision order made by a court under this Article shall be treated as a sentence passed on the offender by that court.

7 Legislative effect of suspended sentence

Unless a contrary intention appears a suspended sentence shall be treated as a sentence of imprisonment for the purpose of all enactments.

8 Rules of Court

- (1) Provision may be made by Rules of Court for any purpose for which it appears to be necessary or expedient that provision should be made in connection with this Law.
- (2) The power to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948^[4] shall include a power to make Rules for the purposes of this Article.

9 Rehabilitation of Offenders (Jersey) Law 2001 amended

- (1) For Article 2(4) of the Rehabilitation of Offenders (Jersey) Law 2001^[5] there shall be substituted the following paragraph –

- “(4) An individual shall not be treated as having failed to satisfy the condition in paragraph (2)(b) by reason only of –
- (a) the failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a binding over order;
 - (b) the breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he or she is in fact so dealt with); or
 - (c) a failure to comply with any requirement of a suspended sentence supervision order.”.

- (2) For Article 3(5) of the Rehabilitation of Offenders (Jersey) Law 2001^[6] there shall be substituted the following paragraph –

- “(5) For the purposes of this Article –
- (a) ‘sentence of imprisonment’ includes a sentence of penal servitude or hard labour, and ‘term of imprisonment’ shall be construed accordingly;
 - (b) consecutive terms of imprisonment or of detention and terms that are wholly or partly concurrent, being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings, shall be treated as a single term;
 - (c) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and
 - (d) a sentence imposed by a court outside the Island shall be treated as a sentence of that one of the descriptions in this Article which most nearly corresponds to the sentence imposed.”.

10 Citation and commencement

- (1) This Law may be cited as the Criminal Justice (Suspension of Prison Sentences) (Jersey) Law 200- .
- (2) It shall come into force on the seventh day following registration.

[1] *Volume 1994-1995, page 38.*

[2] *Tome VII, page 188, Volume 1994-1995, page 24, Volume 1998, page 657 and Volume 2001, page 46.*

[3] *Volume 1992-1993, page 437.*

[4] *Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.*

[5] *Volume 2001, page 58.*

[6] *Volume 2001, page 63.*