

DRAFT CRIMINAL JUSTICE (EVIDENCE OF CHILDREN) (JERSEY) LAW 200-

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by the Legislation Committee**



STATES OF JERSEY

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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 (Evidence of Children) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

This draft Law arises from Law Drafting revisions - please see attached Explanatory Note for details.

There are no additional financial or manpower implications for the States arising from 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 2nd November 2001 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 (Evidence of Children) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The purpose of this Law is to re-enact in consolidated form the provisions of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1997 and Articles 36, 37, 100B and 100C of the Children (Jersey) Law 1969, as amended, as a consequence of the repeal of the 1969 Law by the Children (Jersey) Law 200-. The repeal of these provisions and their re-enactment in this Law will make no substantive legislative change.

Articles 2 and 3 reproduce (with minor drafting changes) Articles 2 and 3 of the 1997 Law concerning the giving of evidence by children and some persons with mental health problems via a TV link and the video recording of the evidence of these witnesses.

Article 4 reproduces the prohibition on persons under the age of 17 being present in court during criminal proceedings hitherto contained in Article 100B of the 1969 Law. *Article 5* reproduces Article 100C of that Law concerning the power to clear the court when persons under the age of 17 are giving evidence. *Article 6* re-enacts Article 36 of the 1969 Law which empowers the court to proceed in the absence of a victim under the age of 17 in relation to certain specified offences which are set out in the *Schedule*. *Article 7* (previously Article 37 of the 1969 Law) extends the power to take depositions of persons under the age of 17.

Article 8 repeats the provision in Article 5 of the 1997 Law concerning the giving of unsworn evidence by children under 14 and *Article 9*, previously Article 6 of that Law, restricts the right to cross-examine certain alleged victims. The Rule-making power in Article 7 of that Law is now in *Article 10*.

CRIMINAL JUSTICE (EVIDENCE OF CHILDREN) (JERSEY) LAW 200-

A LAW to consolidate the provisions of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1997 and certain provisions of the Children (Jersey) Law 1969, as amended, concerned with the giving of evidence of children and certain other persons by means of television links and video recording, the presence in court of children under the age of 17 at the trial of other persons, the conduct of proceedings where the victim is a child, the giving of unsworn evidence by children and other related provisions involving children and other persons, 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 -

“child witness” means a child who is not the accused or one of the accused in criminal proceedings;

“statement” includes any representation of fact, whether made in words or otherwise;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track;

“witness” means a person who is not the accused or one of the accused in criminal proceedings.

(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 in which that reference occurs.

(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

Evidence through television links

(1) A person to whom this Article applies may, with the leave of the court, give evidence through a live television link in any criminal proceedings if he is charged with -

(a) an offence which involves an assault on, or injury or a threat of injury to, a person;

- (b) an offence under -
 - (i) Article 35 of the Children (Jersey) Law 200-,^[1]
 - (ii) Article 1, 2, 4, 5 or 6 of the “Loi (1895) modifiant le droit criminel”,^[2]
 - (iii) Article 44 or 45 of the Mental Health (Jersey) Law 1969,^[3] or
 - (iv) the Protection of Children (Jersey) Law 1994;^[4]
- (c) rape, buggery, bestiality, incest, gross indecency, procuring an act of gross indecency, or indecent assault; or
- (d) an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub-paragraphs (a) to (c).
- (2) This Article applies to a -
 - (a) child witness; and
 - (b) witness who is a patient or person requiring special care within the meaning of the Mental Health (Jersey) Law 1969,^[5] being a patient or person who is competent to give evidence.
- (3) Article 3(10) shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under 15 years of age or under 18 years of age.

ARTICLE 3

Video recordings of testimony from child witnesses and other witnesses

- (1) In any proceedings in connection with an offence referred to in Article 2(1) the court may give leave to allow a video recording to be given in evidence of an interview which -
 - (a) is conducted between an adult and child witness or witness referred to in Article 2(2)(b); and
 - (b) relates to any matter in issue in the proceedings.
- (2) Subject to the exercise of any of its powers to exclude evidence which is otherwise admissible, the court shall give leave under paragraph (1) unless -
 - (a) it appears that the child witness or witness, as the case may be, will not be available for cross-examination;
 - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
 - (c) it considers that, having regard to all the circumstances of the case, in the interests of justice the recording ought not to be admitted.
- (3) Where the court gives leave under paragraph (2), it may, if it considers that in the interests of justice any part of a recording ought not to be admitted, direct that that part shall be excluded.
- (4) In considering whether any part of a recording ought to be excluded under paragraph (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (5) Where a video recording is admitted under this Article the child witness or witness, as the case may be -
 - (a) shall be called by the party who tendered it in evidence;
 - (b) may, with the leave of the court, be examined in chief on any matter which, in the opinion of the court, has

been dealt with in his recorded testimony.

(6) Any statement made by the child witness or witness, as the case may be, which is disclosed by a video recording given in evidence under this Article shall be treated as if given by that witness in direct oral testimony.

(7) Any statement referred to in paragraph (6) shall be admissible evidence of any fact of which such testimony from the child witness or witness, as the case may be, would be admissible.

(8) No statement referred to in paragraph (6) shall be capable of corroborating any other evidence given by the child witness or witness, as the case may be.

(9) In estimating the weight, if any, to be attached to a statement referred to in paragraph (6), regard shall be had to all the circumstances from which any inference as to its accuracy or otherwise can reasonably be drawn.

(10) In this Article “child” means a person who -

(a) in the case of proceedings specified in Article 2(1)(a) (or in sub-paragraph (d) of that paragraph where the principal offence is one specified in sub-paragraph (a) of that paragraph), is under 14 years of age or, if he was under that age when the video recording was made, is under 15 years of age; or

(b) in the case of proceedings specified in Article 2(1)(b) or (c) (or in sub-paragraph (d) of that paragraph where the principal offence is one specified in sub-paragraph (b) or (c) of that paragraph) is under 17 years of age or, if he was under that age when the video recording was made, is under 18 years of age.

(11) Nothing in this Article shall prejudice the admissibility of any video recording which would be admissible apart from this Article.

ARTICLE 4

Prohibition on persons under the age of 17 being present in court during the trial of other persons

Except by leave of the court, no person under the age of 17 years (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purpose of justice; and any child present in court when under this Article he is not permitted to be there shall be ordered to be removed.

ARTICLE 5

Power to clear court while person under the age of 17 is giving evidence in certain cases

(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person under the age of 17 years is called as a witness, the court may direct that all or any persons, not being-

(a) members or officers of the court or parties to the case, their advocates or solicitors or persons otherwise directly concerned in the case; or

(b) *bona fide* representatives of newspapers, news agencies or sound or television broadcasting companies,

be excluded from the court during the taking of the evidence of that witness.

(2) The powers conferred on a court by this Article shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

ARTICLE 6

Power to proceed with case in the absence of person under the age of 17

Where in any proceedings with relation to any of the offences mentioned in the Schedule to this Law, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with in the absence of that person.

ARTICLE 7

Extension of power to take deposition of person under the age of 17

(1) Where the Bailiff is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any person under the age of 17 years in respect of whom any of the offences mentioned in the Schedule to this Law is alleged to have been committed would involve serious danger to his life or health, he may direct that the deposition of the child be taken on oath in accordance with the “Loi (1853) concernant la rédaction des dépositions”^[6] and the depositions shall be admissible in evidence in the proceedings with relation to the offence either for or against the accused person without further proof thereof.

(2) In this Article “registered medical practitioner” has the same meaning as in the Medical Practitioners (Registration) (Jersey) Law 1960.^[7]

ARTICLE 8

Evidence given by children

(1) Evidence of a child in proceedings against any person for any offence shall be given unsworn.

(2) A statement of unsworn evidence of a child may be taken for the purposes of proceedings against any person for any offence as if that evidence had been given on oath.

(3) Evidence of a child shall be received unless it appears to the court that the child is incapable of giving intelligible testimony.

(4) If any child whose evidence is received unsworn in accordance with paragraph (1) wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be liable to be dealt with as if he had been convicted of an offence punishable in the case of an adult with imprisonment.

(5) In this Article, “child” means a person under fourteen years of age.

ARTICLE 9

Cross-examination of alleged victims

(1) No person who is charged with an offence referred to in Article 2(1) shall cross-examine in person any witness who is -

(a) alleged to be a person against whom the offence was committed or to have witnessed the commission of the offence; and

(b) a person to whom Article 2 applies, or is to be cross-examined following the admission under Article 3 of a video recording of testimony from him.

(2) Article 3(10) shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under fifteen years of age or under eighteen years of age.

ARTICLE 10

Power to make Rules

Rules may be made in the manner prescribed by the Royal Court (Jersey) Law 1948^[8] to make such provision as appears to the Superior Number of the Royal Court to be necessary or expedient for the purposes of this Law.

ARTICLE 11

Repeal of enactment

The Criminal Justice (Evidence and Procedure) (Jersey) Law 1997^[9] shall be repealed.

ARTICLE 12

Citation and commencement

This Law may be cited as the Criminal Justice (Evidence of Children) (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint.

SCHEDULE

(Articles 6 and 7)

Offences against persons under the age of 17 to which Articles 6 and 7 apply

Murder or manslaughter.

Infanticide.

Any offence under Article 1, 2, 4, 5 or 6 of the “Loi (1895) modifiant le droit criminel”^[10] and any attempt to commit an offence under Article 5 or 6 of that Law.

Sodomy or an attempt to commit such an offence.

Incest or an attempt to commit such an offence.

Stealing a child or receiving a stolen child.

Assault.

An offence under Article 35 of the Children (Jersey) Law 200-^[11].

Any other offence involving bodily injury.

An offence under Article 2(1)(a) of the Protection of Children (Jersey) Law 1994.^[12]

^[1] P.200/2001.

^[2] Tomes IV-VI, pages 132, 134, 135 and 136 and Volume 1996-1997, pages 1053 and 1054.

^[3] Volume 1968-1969, page 394.

^[4] Volume 1994-1995, page 75, Volume 1996-1997, page 1059, Volume 1998, page 722 and Volume 1999, page 529.

^[5] Volume 1968-1969, page 347.

^[6] Tomes I-III, page 205.

^[7] Tome VIII, page 829.

^[8] Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, page 175, Volume 1990-1991, pages 193 and 855, Volume 1992-1993, page 461, Volume 1996-1997, pages 147 and 667, Volume 1998, pages 187 and 659 and Volume 2001, page 7.

^[9] Volume 1996-1997, page 609.

^[10] Tomes IV-VI, pages 132, 134, 135 and 136 and Volume 1996-1997, pages 1053 and 1054.

^[11] P.200/2001.

^[12] Volume 1994-1995, page 76 and Volume 1996-1997, page 1061.