

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 6th April 2016
by the Minister for Home Affairs

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (No. 2) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Peter**

Minister for Home Affairs

Dated: 24th March 2016

REPORT

A. Introduction

In July 2014, the States Assembly debated and adopted the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) (the “2014 Law”) [P.93/2014](#).

The 2014 Law, which has yet to be brought into force, was primarily intended to –

- (a) make provision for a Placement Panel whose function is to determine and review the place of custody for young offenders; and
- (b) replace the existing [Criminal Justice \(Young Offenders\) \(Jersey\) Law 1994](#) (the “1994 Law”).

In reviewing the 2014 Law, however, a number of issues have been identified and, as result, the Minister for Home Affairs, in consultation with other CAVA Ministers¹, has determined that the Draft Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201- (the “No. 2 Law”) should be brought forward in order to amend the 2014 Law.

The No. 2 Law brings forward a number of changes to the 2014 Law, across 4 key areas –

- (1) the treatment of 17 year-olds
- (2) detention of children who commit a serious offence
- (3) the role of the Placement Panel with regard to children and young people
- (4) the status of children and young people who are detained or on remand.

More detail about each of these areas is set out below.

Subject to the States’ approval, the No. 2 Law will come into force on the same day as the 2014 Law via an Appointed Day Act. It is envisaged that this will be in the summer of 2016, dependent on States Assembly and Privy Council approval.

B. Effects of the No. 2 Law

(1) Treatment of 17 year-olds

The 2014 Law, whilst adopted by the States, has not been enacted. The Law which is currently in effect is the 1994 Law, and there are some differences between those 2 Laws with regard to the treatment of 17 year-olds.

Under the 2014 Law, a 17 year-old can only receive a maximum 12 month sentence for a lesser offence (although they can receive longer for serious offences or for murder), but under the 1994 Law, a 17 year-old can receive the same maximum sentence as a 21 year-old.

To put it another way, the 2014 Law treats 17 year-olds in the same way as 15 and 16 year-olds, whereas the 1994 Law treats 17 year-olds in the same way as 18, 19 and 20 year-olds.

This means that, at the point at which the 2014 Law is enacted, a 17 year-old who commits a lesser offence would receive a sentence which is potentially significantly shorter than that which they currently may receive.

¹ CAVA = the Children and Vulnerable Adults Policy Group, and includes the Ministers for Home Affairs, Health and Social Services, Education, Housing, and Social Security. It is chaired by the Assistant Chief Minister.

Whilst it is agreed that a 17 year-old, who is still a minor, should be treated in the same way as a 16 year-old for most lesser offences (as set out in the 2014 Law), this is not considered appropriate with regard to driving offences. It is argued that a 17 year-old who is allowed to drive should have the same responsibilities as all other persons who are allowed to drive.

For this reason, the No. 2 Law amends the 2014 Law so that the Law, when enacted, will treat 17 year-olds in the same way as 16 year-olds, except in relation to certain driving offences, where they will be treated in the same way as 18 year-olds for the purpose of certain road traffic offences.

Those offences, as set out in the Road Traffic (Jersey) Law 1956 and the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948 include, for example, causing death by careless driving, and driving whilst under the influence of drink or drugs.

The effect of these changes is shown in **Appendix 1** to this report.

Note: United Nations Convention on the Rights of the Child (“UNCRC”)

The UNCRC sets out that a child is a child until they reach the age of 18. This does not mean, however, that the decision to treat 17 year-olds in the same way as 18 year-olds in relation to driving offences is incompatible with the Convention. This is because a 17 year-old charged with a driving offence would still be treated as a juvenile in the justice system. Their case would be dealt with by the Youth Court and, prior to imposing any custodial sentence, that Court must find that the young person:

- (a) has a history of failing to respond to custodial penalties or is unable or unwilling to respond to them;
- (b) or that only a custodial sentence would be adequate to protect the public from serious harm from the person; or
- (c) that the totality of the offending is so serious that a non-custodial sentence cannot be justified.

(2) Detention of children who commit a serious offence

The 2014 Law provides that the maximum sentence of youth detention that can be imposed on a young person or a young adult who commits a lesser offence is 12 months (i.e. someone aged 15 to 20 years). A child cannot be sentenced for a lesser offence (i.e. someone aged 10 to 14 years).

The 2014 Law also provides that a child, young person, or young adult can be detained for murder (i.e. someone aged 10 to 20 years), and that a young person or young adult can be detained for a serious offence (i.e. someone aged 15 to 20 years). However, under the 2014 Law, a child aged 10 to 14 years cannot be detained for a serious offence. Serious offences can include offences such as manslaughter and rape.

This is a change in position from the 1994 Law, and is different from the UK position, where the maximum sentence for a child (10 to 14 years) for a serious offence is the same as the sentence for a 21 year-old.

The No. 2 Law therefore amends the 2014 Law so that it allows a child to be detained for committing a serious offence, as well as murder. The nature of serious offences is such that, even if they have been committed by a child, the Public needs to be protected against any risk of re-offending, plus the child needs to be in an environment which can appropriately meet their needs and provide for rehabilitation.

The effects of these changes are shown in Appendix 1.

Note: Age of criminal responsibility

The No. 2 Law has no effect on the age of criminal responsibility, which remains at 10 years old as per the current 1994 Law. This is the same as in England and Wales.

In requesting that the UNCRC be extended to Jersey, the then Children’s Policy Group (now CAVA), noted that the UNCRC Committee does not consider any age below 12 years to be acceptable, although there is no specific requirement for a lower age of criminal responsibility. Subsequent to that extension, H.M. Attorney General has produced a Direction which states that –

1. in relation to children under the age of 12 years, prosecution should only occur in the most exceptional of cases and only with the consent of the Attorney General;
2. in the case of children over 12 years and under 14 years, there should be a presumption against prosecution, and prosecution should only take place with the consent of the Attorney General or the consent of a Crown Advocate.

In light of that Direction, CAVA have agreed that the age of criminal responsibility should remain at 10 years old – in order that there are appropriate powers to deal with the very rare but extreme instances of crimes that may arise – but that this decision, alongside all data relating to offences committed by children aged 10–14 should be reviewed at the end of 2020.

(3) Role of the Placement Panel with regard to children and young people

The 2014 Law establishes a Placement Panel (“the Panel”) which, under that Law, has responsibility for determining the appropriate place of custody for a young person on remand or following a sentence of youth detention and for periodically reviewing that placement.

The establishment of the Panel was the prime reason for introducing the 2014 Law, as it provides a mechanism through which it can be determined whether a young person can serve their sentence in Greenfields as opposed to H.M.P. La Moye (“La Moye”) or the Young Offenders’ Institute (“YOI”).

Currently, in law, a child or young person can only be placed in Greenfields if they are remanded there by the Court, or if under the Children (Jersey) Law 2002 they are placed there under the terms of a Secure Accommodation Order on welfare grounds (i.e. to prevent them from injuring themselves or others, or if they are likely to abscond and, if they do abscond, they are likely to come to harm).

Whilst the 2014 Law provides for the Panel to make placement decisions in relation to young people convicted of a lesser offence, it has no role in relation to children nor to young people who have been detained for a serious offence or murder (other than with regard to arranging the delivery of young people to a place of detention as directed by the Royal Court).

Given the changes set out in sections 1 and 2 above, it is important that the Panel’s role is extended so that it has the power to determine the appropriate placement in relation to –

- a child on remand, or a child detained for a serious offence or for murder; and
- a young person on remand or detained for a lesser offence, a serious offence or for murder.

The No. 2 Law brings forward these changes.

In addition, the No. 2 Law provides for the Panel to determine where a child or young person is held, following a conviction for a lesser offence, a serious offence or murder. This is a change from the 2014 Law as adopted, which provided the Panel powers of determination in relation to lesser offences, but gave the Secretary of State the power of determination in relation to serious offences and murder.

This change is to allow for a child or young person convicted of a serious offence or murder to serve all or part of their sentence in Jersey in the event that the Panel considers it is in that child's/young person's best interests, and the best interests of all other children/young people in the proposed place of detainment. Historically, children/young people who committed offences, other than lesser offences, have been transferred to the UK because the default presumption was that Jersey did not have facilities to cater for the needs and rehabilitation of people serving long-term sentences. This, however, is not necessarily the case. There are some children and young people who can serve longer sentences in Jersey, albeit not all.

In the event that the Panel does not consider it is appropriate for all or part of the sentence to be served in Jersey, the child or young person may be transferred to the UK in accordance with UK's Crimes (Sentences) Act 1997.

In all cases, the Panel must –

- consider the best interests of the child or young person who has been sentenced, alongside the best interests of other children or young people detained in the same facility, including matters such as behaviour, impact on others, educational needs, the views of the child/young person and of those with parental responsibility;
- review those placement decisions within a specified timeframe. These timeframes are one month after the start of placement, then at intervals not exceeding 3 months, except for young females who are detained in La Moye, where the first review is one week after the start of the placement, then at intervals not exceeding one month.

Regulations relating to the membership of the Panel, and an associated appeals process, will be brought forward for debate by the States Assembly in the near future.

(4) Status of children and young people who are detained or on remand

The No. 2 Law provides, in the Schedule, for changes to be made to the Children (Jersey) Law 2002 (the "2002 Law"). The effect of these changes is that all children and young people who are detained – whether in Greenfields, La Moye or the YOI – will be Looked After Children ("LAC"), and will fall under the care of the Minister for Health and Social Services (the "Minister HSS").

This decision represents a shift in policy, whereby the key focus is on the *needs rather than the deeds*, of the child or young person.

The effect of the No. 2 Law is that the definition of LAC is amended so that it can include those who are detained on remand or following sentence. In doing so, however, there will be some differences in provisions relating to children and young people who are detained, and other 'looked after' children and young people (for the purposes of this report they are referred to as Detained LAC and Other LAC).

These differences include –

- whilst the Minister HSS is required to provide secure accommodation for Detained LAC (i.e. those children and young people who it is determined should be detained or remanded in Greenfields), the Minister HSS cannot specify the maximum period that the Detained LAC are kept in that secure accommodation, unlike with all Other LAC; and
- the Minister HSS is not required to provide accommodation and maintenance for a Detained LAC who is detained or remanded other than in secure accommodation (for example, if they were detained in the YOI), unlike Other LAC.

The Minister HSS does, however, have a duty to treat Detained LAC in the same way as Other LAC for all other purposes, including a general duty to –

- safeguard and promote their welfare;
- ascertain their wishes/feelings, plus those of their parents/carers, etc. with regard to any decisions taken in respect them and, in so doing, having consideration of factors such as their age, religious persuasion, etc.;
- make appropriate provision in relation to advice and befriending and social work support;
- make a contribution or grant in relation to education or training, where this falls outside the responsibilities of the Minister for Education.

C. Transitional provisions

The No. 2 Law sets out transitional provisions. It states that any child or young person who is detained or on remand on the date when the Law comes into effect will be deemed to be detained in accordance with the Law. This means that –

- the Panel must review their place of detention and, if deemed necessary, change that place of detention
- those children and young people will become Looked After Children and fall under the care of the Minister for Health and Social Services.

These transitional provisions will not, however, have any effect on the period of detention to which the child or young person has already been sentenced.

D. Financial and manpower implications

Given the small number of children or young people on remand or sentenced in Jersey, the Health and Social Services Department will manage its resources in such a way as to ensure –

- (1) that any children or young people placed in Greenfields by the Panel can be appropriately and safely accommodated in Greenfields; and
- (2) that regardless of the place of detention (Greenfields, La Moye or the Prison), those children and young people will be provided the support and services that are available to all Looked After Children.

With regard to educational provision, the Education Department will retain responsibility for provision of education to all school-age children (i.e. education up to the point at which a child completes their GCSEs), even if the place of detention or remand is La Moye or the YOI. The Health and Social Services Department will,

however, be responsible for education provision post-school-age in accordance with its responsibilities towards all Other LAC.

Where a child or young person is transferred to England or Wales, the costs will be incurred by the Health and Social Services Department, as that child or young person is an LAC. The Prison Service will be liable for young adults and adults, as per the current arrangements.

This will be achieved within existing resources, except in the unlikely event that there is a prolonged increase in the number of children or young people who are either sentenced or on remand, in which case the relevant Department will consider making a request for additional resources via the States' financial planning processes.

E. Human Rights

The notes on the human rights aspects of the draft Law in **Appendix 2** to this report have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX 1 TO REPORT

**COMPARISON OF 2014 LAW AS AMENDED BY THE No. 2 LAW
AND THE 1994 LAW**

The No. 2 Law amends the 2014 Law in such a way as to make it comparable with the current 1994 Law, with the exception of the treatment of 17 year-olds.

	2014 Law as amended by the No. 2 Law				1994 Law		
	Age	Sentence for murder	Maximum period of detention for serious offence	Maximum period of detention for a lesser offence	Sentence for murder	Maximum period of detention for serious offence	Maximum period of detention for a lesser offence
	0–9	Nothing: as below the age of criminal responsibility					
Child	10	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced
	11	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced
	12	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced
	13	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced
	14	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Cannot be sentenced
Young Person	15	Detention at H.M. pleasure	Same as applicable to a 21 year-old	12 months maximum	Detention at H.M. pleasure	Same as applicable to a 21 year-old	12 months maximum
	16	Detention at H.M. pleasure	Same as applicable to a 21 year-old	12 months maximum	Detention at H.M. pleasure	Same as applicable to a 21 year-old	12 months maximum
	17	Detention at H.M. pleasure	Same as applicable to a 21 year-old	12 months maximum Exception for driving offences: 17 year-olds will be treated as 18 year-olds.	Detention at H.M. pleasure	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old

	2014 Law as amended by the No. 2 Law				1994 Law		
	Age	Sentence for murder	Maximum period of detention for serious offence	Maximum period of detention for a lesser offence	Sentence for murder	Maximum period of detention for serious offence	Maximum period of detention for a lesser offence
Young Adult	18	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old
	19	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old
	20	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old	Custody for life	Same as applicable to a 21 year-old	Same maximum sentence as applicable to a 21 year-old

APPENDIX 2 TO REPORT

Human Rights Note on the Draft Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law makes a number of amendments to the Criminal Justice (Young Offenders) (Jersey) Law 2014 (the “2014 Law”). The only amendments that raise any issue with respect to compatibility with the ECHR are those set out in Articles 4(b) and (c), and 6(d) of the draft Law. The purpose of these amendments and the reasons why they are compatible with the ECHR are explained below.

Pursuant to Article 4(1) of the 2014 Law as enacted, a “young person” (aged between 15 and 17 years of age) or a “young adult” (aged 18 to 20 years of age) who is convicted of an offence that is punishable with imprisonment may be sentenced to a period of “youth detention”. Pursuant to Article 4(3) and (6) of the 2014 Law, the maximum term of youth detention to which a young person may be sentenced is 12 months.

Pursuant to Article 5(1) of the 2014 Law, a “child” (aged between 10 and 14 years of age), a young person or a young adult who is convicted of murder may be sentenced to detention for life.

Pursuant to Article 5(3) of the 2014 Law, a young person or a young adult who is convicted of an offence that, if committed by someone aged over 21, would carry a maximum penalty of 14 years’ imprisonment or more (a “serious offence”), may be sentenced to detention. The period of detention to which the person may be sentenced is the same as the maximum period of imprisonment to which a person over 21 may be sentenced.

Therefore, under the 2014 Law as enacted, a child who committed a serious offence would not be liable to youth detention under Article 4(1) or to detention under Article 5(3). As a result, if the 2014 Law were brought into force as enacted, it would no longer be possible (as is currently the case under Article 5(4) of the Criminal Justice (Young Offenders) (Jersey) Law 1994) to lawfully impose a custodial sentence on a child who was convicted of a serious offence.

Articles 4 and 6 of the draft Law remove the distinction in the 2014 Law between sentences of detention and youth detention. Further, the combined effect of Article 4(b) and (c) and Article 6(d) of the draft Law is then to make it clear that a child may be sentenced to youth detention under Article 5(3) of the 2014 Law if they are convicted of a serious offence.

The most relevant ECHR right in the context of this Article of the draft Law is Article 5 of the ECHR, which provides (so far as is relevant):

“Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a. the lawful detention of a person after conviction by a competent court;
 -
 - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;”.

To be compatible with Article 5(1) of the ECHR, a deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be “lawful” by reference to national law and be in keeping with the purpose of protecting the individual from arbitrariness.

The detention of a child (as defined in the 2014 Law) following conviction by a competent court, falls within the exception in Article 5(1)(a) of the ECHR and would not be arbitrary. It is relevant to note that the provisions in Articles 3(b), 7, and 9 to 13 of the draft Law make further provision with respect to the place in which a child or young person would be detained following conviction for a serious offence. These provisions will ensure that a child would be detained in secure accommodation, and that any decision as to the appropriate place of custody in Jersey for a child or young person would be made by the Placement Panel for children and young persons as defined in Article 1 of the 2014 Law, as amended by the draft Law.

In view of the above, the draft Law is compatible with Article 5 of the ECHR.

Explanatory Note

This Law amends the Criminal Justice (Young Offenders) (Jersey) Law 2014 (“2014 Law”) and the Children (Jersey) Law 2002 with respect to young offenders. The 2014 Law is to come into force by an Appointed Day Act.

Article 1 defines the 2014 Law as the principal Law.

Article 2 amends the long title of the 2014 Law to reflect the new role of the Placement Panel added by this Law in respect of the placing in custody of children (defined in the 2014 Law to mean children aged 10 years and over but under the age of 15 years). The 2014 Law currently establishes the Placement Panel and confers on it a role with respect to the placing in custody of young persons but not children. (Young persons are defined in the 2014 Law as persons aged 15 years and over but under the age of 18 years.)

Article 3 amends various definitions in the 2014 Law to reflect the new role of the Placement Panel in respect of children and amends the definition of “youth detention” so that it is clear that the term applies to any sentence of detention imposed under the 2014 Law on a child, young person or “young adult”. (A “young adult” is defined as a person aged 18 years or over but under 21 years.) The amendments also create a power for the States to amend definitions by Regulations.

Article 4 amends the 2014 Law so that it is clear that a court’s powers to pass a sentence of youth detention apply to a child but only where Article 5 of the 2014 Law applies, that is, in cases where a child is convicted of murder or other offence where a life sentence is fixed by law or of another offence which is punishable with a term of imprisonment of 14 years or more. *Article 4* also makes a consequential amendment upon the insertion of a new Article in the 2014 Law by *Article 5*.

Article 5 amends the 2014 Law so that the provision which prevents a young person convicted of an offence from being sentenced to youth detention for a term exceeding 12 months does not apply in relation to an offence under the Road Traffic (Jersey) Law 1956 or the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948 if the young person has attained the age of 17 years.

Article 6 amends Article 5 of the 2014 Law in respect of (a) children, young persons or young adults who are sentenced to youth detention having been convicted of murder or of an offence for which a life sentence is fixed by law; and (b) children and young persons who have been convicted for other serious offences (that is any offence which, in the case of a person over the age of 21, is punishable with imprisonment for 14 years or more). The amendments delete the current provisions relating to the place of detention requiring such persons to be detained in such place and under such conditions as directed by the Secretary of State or, pending such directions, as directed by the Royal Court. Instead, amendments are made by *Article 7* in relation to the place of detention. Provision is also made by *Article 6* to retain the existing provision in the Criminal Justice (Young Offenders) (Jersey) Law 1994 which enables children as well as young persons to be sentenced to detention for the same length of term as would apply if a person over 21 were convicted. Under the 2014 Law (which replaces the 1994 Law), except in relation to murder and other offences for which life imprisonment is fixed by law, this provision was removed in respect of serious offences committed by children.

Article 7 amends the 2014 Law so as to make provision for children sentenced to youth detention in the circumstances described in Article 5 of the 2014 Law. Provision is made so that such children must be detained in an appropriate place of custody as

determined by the Placement Panel. In the case of a child, an “appropriate place of custody” is defined in Article 1 of the 2014 Law to mean secure accommodation provided by the Minister for Health and Social Services under the Children (Jersey) Law 2002. *Article 7* also amends the 2014 Law so that young persons sentenced to youth detention in the circumstances described in Article 5 of that Law must be detained in an appropriate place of custody as determined by the Placement Panel. In the case of young persons, an “appropriate place of custody” is defined in Article 1 of the 2014 Law to mean secure accommodation or, in the case of a male young person only, a young offender institution. Provision is made to make it clear that nothing in Article 7 affects the powers of the Secretary of State under the Crime (Sentences) Act 1997 of the United Kingdom. Under that Act persons of any age sentenced in Jersey to detention may be transferred to the United Kingdom (or other parts of the British Islands) in order to serve all or part of the sentence.

Article 8 amends Article 9 of the 2014 Law which makes provision in relation to supervision after release from youth detention. By way of background, the effect of amending the definition of “youth detention” in *Article 3* is that children, young persons and young adults who are released from youth detention having been sentenced in the circumstances described in Article 5 of the 2014 Law will be subject to supervision under Article 9 of the 2014 Law by a probation officer in the same circumstances as young persons and young adults sentenced in other cases. In all cases the period of supervision cannot last longer than 12 months or extend beyond a person’s 22nd birthday. *Article 8* makes provision so that a child who breaks the requirements of a supervision order cannot be subject to a custodial sentence.

Article 9 amends the 2014 Law so that terminology referring to children being looked after by the Minister for Health and Social Services under the Children (Jersey) Law 2002 is consistent with amendments made to that Law by the *Schedule* to this Law.

Article 10 amends the 2014 Law in respect of a child who is remanded in custody so that the wording is consistent with the changes described above concerning the role of the Placement Panel in respect of children. Instead of referring to the child being remanded in “secure accommodation”, the provision refers to the child being remanded in “an appropriate place of custody”.

Articles 11 and 12 amend the 2014 Law by amending the heading to, and provisions in, Part 4 of the 2014 Law establishing the Placement Panel so that they refer to children as well as young persons.

Article 13 amends the provisions in the 2014 Law setting out the functions of the Placement Panel. These functions include the new functions of (a) determining and reviewing the appropriate place of custody for a child or young person sentenced under Article 5 of the 2014 Law; (b) assessing children for the purpose of the Placement Panel exercising its functions under this Law; (c) consulting with the Secretary of State as to whether all or part of a sentence of youth detention imposed on a child or young person should be served outside Jersey; and (d) making arrangements for the delivery of a child or young person to or from a place of detention.

Article 14 makes an amendment to the 2014 Law which is consequential on the new role of the Placement Panel in respect of children by requiring the Placement Panel to take into account the best interests of the child in relation to whom it exercises its functions.

Article 15 and 16 substitute the provisions in the 2014 Law concerning Regulations, Orders transitional provisions and amendments to the Children (Jersey) Law 2002 (“2002 Law”). New transitional provisions are inserted so that children and young

persons who are detained, or required to be detained, on the date the 2014 Law comes into force will be deemed to have been detained or required to be detained, under the 2014 Law. The Placement Panel must, accordingly, exercise its functions under the 2014 Law with respect to such children and young persons and review the placement of each child and young person who, immediately before the date the 2014 Law comes into force, has been detained in custody. Such review must take place no later than 3 months after that date (or one month in the case of a female young person detained in prison).

Article 16 gives effect to the *Schedule* which sets out amendments to the 2002 Law. The effect of the amendments made by the *Schedule* to the 2002 Law is to clarify the status under the 2002 Law of a child or young person (within the meaning of the 2014 Law) who is detained in custody on remand or following sentence. The Minister for Health and Social Services (“Minister”) is given a specific power to provide secure accommodation (defined in the 2002 Law as accommodation for the purpose of restricting liberty) for such persons. Provision is made so that the current provisions in the 2002 Law setting out the circumstances in which the Minister may provide secure accommodation for children other than those in custody on remand or following sentence are dis-applied to children and young persons who are being dealt with under the 2014 Law. However children and young persons in custody on remand or following sentence are otherwise children “looked after” by the Minister for the purposes of the 2002 Law and, accordingly, the general duties of the Minister under that Law in relation to safeguarding and promoting welfare apply to such children and young persons, including care under Article 21 of the 2002 Law once out of detention.

Article 18 sets out the title of the Law and provides that it will come into force on the same date that the 2014 Law comes into force.



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (No. 2) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (No. 2) (JERSEY) LAW 201-

A LAW to amend further the Criminal Justice (Young Offenders) (Jersey) Law 2014 and the Children (Jersey) Law 2002 with respect to young offenders.

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

In this Law, “principal Law” means the Criminal Justice (Young Offenders) (Jersey) Law 2014¹.

2 Long title amended

In the long title to the principal Law the words “Young Person’s” shall be deleted.

3 Article 1 amended

In Article 1 of the principal Law –

- (a) the existing text shall be numbered paragraph (1);
- (b) in the definition “appropriate place of custody” in paragraph (a) for the words “male or female young person” there shall be substituted the words “child or young person”;
- (c) in the definition “Panel” for the words “Young Person’s Placement Panel” there shall be substituted the words “Placement Panel for children and young persons”;
- (d) in the definition “secure accommodation” for the number “22” there shall be substituted the number “1”;

- (e) for the definition “youth detention” there shall be substituted the following definition –
- “ ‘youth detention’ means any sentence of detention imposed under this Law on a child, young person or young adult following conviction.”;
- (f) after paragraph (1) there shall be added the following paragraph –
- “(2) The States may by Regulations amend any definition in paragraph (1).”.

4 Article 4 amended

In Article 4 of the principal Law –

- (a) in the heading the words “for young persons and young adults” shall be deleted;
- (b) in paragraph (1) for the words “young person or a young adult” there shall be substituted the words “child, young person or young adult”;
- (c) after paragraph (1) there shall be inserted the following paragraph –
- “(1A) Where a child is convicted of an offence, the court shall not impose a sentence of youth detention on him or her except where Article 5 applies.”;
- (d) for paragraph (2) there shall be substituted the following paragraphs –
- “(2) A court shall not pass a sentence of youth detention unless –
- (a) Article 5 applies; or
- (b) where Article 5 does not apply, it considers that no other method of dealing with the person is appropriate because it appears to the court that –
- (i) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them,
- (ii) only a custodial sentence would be adequate to protect the public from serious harm from the person, or
- (iii) the offence or the totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified.
- (2A) The court shall state in open court its reasons for imposing a sentence of youth detention and shall explain to the person that on the person’s release the person may be subject to a period of supervision in accordance with Article 9.”;
- (e) in paragraph (6) for the words “Article 5” there shall be substituted the words “Articles 4A and 5”.

5 Article 4A inserted

After Article 4 of the principal Law there shall be inserted the following Article –

“4A Sentence of youth detention for driving offences

Where a young person who has attained the age of 17 years is convicted of an offence under the Road Traffic (Jersey) Law 1956² or the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948³, a court shall take no account of Article 4(6) when passing a sentence of youth detention in relation to that offence.”

6 Article 5 amended

In Article 5 of the principal Law –

- (a) for the heading there shall be substituted the following heading –

“5 Youth detention for offences where life sentence fixed by law and for other serious offences”;

- (b) in paragraph (1) –

- (i) in sub-paragraph (a) for the words “had attained the age of 18 years” there shall be substituted the words “was a young adult”,
(ii) in sub-paragraph (b) for the words “under the age of 18 years” there shall be substituted the words “a child or young person”;

- (c) paragraph (2) shall be deleted;

- (d) in paragraph (3)(a) before the words “young person” there shall be inserted the words “child or”;

- (e) paragraph (4) shall be deleted.

7 Article 7 amended

In Article 7 of the principal Law –

- (a) in the heading after the words “custody for” there shall be inserted the word “children,”;

- (b) in paragraph (2) after the words “orders a” there shall be inserted the words “child or”;

- (c) in paragraph (3) –

- (i) before the words “young person is required to be” there shall be inserted the words “child or”,
(ii) after the words “place of custody, the” there shall be inserted the words “child or”;

- (d) for paragraph (4) there shall be substituted the following paragraphs –

“(4) Without prejudice to the exercise of powers under Article 10 in relation to a young person, the Panel shall determine the appropriate place of custody for a child or young person who is detained in accordance with paragraph (3) as soon as reasonably practicable and, in any event, within 72 hours or such other period as the Minister may specify by Order, from the time the child or young person is detained.

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- (5) Nothing in this Article affects the powers of the Secretary of State under Schedule 1 to the Crime (Sentences) Act 1997 of the United Kingdom.”.

8 Article 9 amended

In Article 9(5)(b) of the principal Law before the words “an appropriate custodial sentence” there shall be inserted the words “except in the case of a child.”.

9 Article 11 amended

In Article 11(3)(b) of the principal Law for the words “the Part 3” there shall be substituted the words “Article 1A(a) or (b)”.

10 Article 16 amended

In Article 16 of the principal Law –

- (a) paragraph (2)(a) shall be deleted;
- (b) in paragraph (2)(b) after the words “the person is a” there shall be inserted the words “child or”;
- (c) in paragraph (3) –
 - (i) after the words at the beginning “If a” there shall be inserted the words “child or”;
 - (ii) after the words “appropriate place of custody, the” there shall be inserted the words “child or”;
- (d) for paragraph (4) there shall be substituted the following paragraph –

“(4) Without prejudice to the exercise of powers under Article 10 in relation to a young person, the Panel shall determine the appropriate place of custody for a child or young person who is remanded in accordance with paragraph (3) as soon as reasonably practicable and, in any event, within 72 hours or such other period as the Minister may specify by Order, from the time the child or young person is remanded.”.

11 Part 4 sub-heading amended

For the sub-heading to Part 4 of the principal Law there shall be substituted the following sub-heading –

“PLACEMENT PANEL FOR CHILDREN AND YOUNG PERSONS”.

12 Article 17 amended

In Article 17 of the principal Law –

- (a) for the heading there shall be substituted the following heading –

“17 Placement Panel for children and young persons”;

- (b) in paragraph (1) for the words “Young Person’s Placement Panel” there shall be substituted the words “Placement Panel for children and young persons”;
- (c) in paragraph (2) the words “Young Person’s Placement” shall be deleted.

13 Article 18 amended

In Article 18 of the principal Law –

- (a) for paragraph (a) there shall be substituted the following paragraph –
 - “(a) determining the appropriate place of custody for a child or young person who is remanded in custody or sentenced to youth detention;”;
- (b) in paragraph (b) before the words “young person” in each place they appear there shall be inserted the words “child or”;
- (c) for paragraphs (d) and (e) there shall be substituted the following paragraphs –
 - “(d) making assessments of children and young persons for the purpose of exercising its functions under this Law;
 - (e) consulting with the Secretary of State as to whether, in the case of a child or young person sentenced to youth detention, all or part of the sentence should be served outside Jersey under the Crime (Sentences) Act 1997 of the United Kingdom;
 - (f) making arrangements for the delivery of a child or young person to or from any place of detention to or from which the child or young person is required to be moved under this Law.”.

14 Article 19 amended

In Article 19 of the principal Law before the words “young person” in each place they appear there shall be inserted the words “child or”.

15 Articles 31 and 32 substituted

For Articles 31 and 32 of the principal Law there shall be substituted the following Articles –

“31 Regulations and Orders – general provisions

Any Regulations or Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States, or, as the case may be, the Minister making the Order, to be expedient for the purposes of the Regulations or the Order.

32 Consequential amendments to enactments and transitional provisions

- (1) The States may, by Regulations, amend any enactment, including this Law, for the purpose of making such provision as they consider necessary or expedient in consequence of the coming into force of any provision of this Law.
- (2) A child or young person who, on the date this Law comes into force, is detained, or required to be detained, in custody on remand or following the passing of a sentence shall be deemed to have been detained, or required to be detained, in custody under this Law and the Panel shall, accordingly, exercise its functions in relation to the placement of that child or young person in custody.
- (3) Paragraph (2) does not affect the length of any period of detention to which a child or young person has been sentenced before the date this Law comes into force.
- (4) In respect of a child or young person who, on the day this Law comes into force, is detained in custody on remand or following the passing of a sentence, the panel shall review the placement of –
 - (a) a child or young person who is detained in an appropriate place of custody as soon as reasonably practicable after this Law comes into force and in any event not later than 3 months after the day that this Law comes into force;
 - (b) a female young person who is detained in prison as soon as reasonably practicable after this Law comes into force and in any event not later than one month after the day that this Law comes into force.”.

16 Children (Jersey) Law 2002 amended

The Schedule shall have effect.

17 Citation and commencement

This Law may be cited as the Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201- and shall come into force on the same date that the Criminal Justice (Young Offenders) (Jersey) Law 2014⁴ comes into force.

SCHEDULE

(Article 17)

CHILDREN (JERSEY) LAW 2002 AMENDED

1 Interpretation

In this Schedule references to the “Children Law” are to the Children (Jersey) Law 2002⁵.

2 Article 1 amended

In Article 1 of the Children Law –

- (a) after the definition “school” there shall be inserted the following definition –
 - “ ‘secure accommodation’ means accommodation provided by the Minister for the purpose of restricting a child’s liberty;”;
- (b) in the definition “voluntary organisation” for the full-stop at the end there shall be substituted a semi-colon and after the definition there shall be added the following definition –
 - “ ‘Young Offenders Law’ means the Criminal Justice (Young Offenders) (Jersey) Law 2014⁶.”;
- (c) paragraph (4) shall be deleted.

3 Article 1A inserted

After Article 1 of the Children Law there shall be inserted the following Article –

“1A References to a child who is looked after by the Minister

In this Law references to a child who is looked after by the Minister are references to any of the following –

- (a) a child in the care of the Minister;
- (b) a child, other than a child falling within the description in paragraph (c), provided with accommodation by the Minister for a continuous period of more than 24 hours in the exercise of the Minister’s functions under any enactment;
- (c) a child or young person within the meaning of the Young Offenders Law who is required to be detained in custody on remand or following sentence under any provision of that Law, where the place of custody is –
 - (i) secure accommodation,
 - (ii) a young offender institution, or

(iii) the prison,
within the meaning of that Law.”.

4 Article 20 amended

In Article 20 of the Children Law before paragraph (1) there shall be inserted the following paragraph –

“(A1) Nothing in this Article applies to a child or young person described in Article 1A(c).”.

5 Article 22 amended

In Article 22 of the Children Law –

(a) for the heading there shall be substituted the following heading –

“22 Secure accommodation other than for children on remand or following sentence”;

(b) before paragraph (1) there shall be inserted the following paragraph –

“(A1) Nothing in this Article applies to a child or young person described in Article 1A(c).”;

(c) in paragraph (1) for the words “accommodation provided for the purpose of restricting liberty (‘secure accommodation’)” there shall be substituted the words “secure accommodation”.

6 Article 22A inserted

After Article 22 of the Children Law there shall be inserted the following Article –

“22A Secure accommodation for children on remand or following sentence

The Minister may provide secure accommodation for a child or young person within the meaning of the Young Offenders Law who, in accordance with that Law, is required to be detained –

(a) in custody on remand in secure accommodation; or

(b) in custody under any provision of that Law in secure accommodation following the passing of a sentence.”.

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- ¹ *L.27/2014*
² *chapter 25.550*
³ *chapter 25.250*
⁴ *L.27/2014*
⁵ *chapter 12.200*
⁶ *L.27/2014*