

# **STATES OF JERSEY**

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## **YOUTH CUSTODY FOR PERSONS AGED 12 AND OVER**

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**Lodged au Greffe on 20th January 2004  
by the Deputy of St. Martin**

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**STATES GREFFE**

## PROPOSITION

**THE STATES are asked to decide whether they are of opinion –**

- (a) to agree, in principle, that the Criminal Justice (Young Offenders) (Jersey) Law 1994 and other legislation as appropriate should be amended to provide that, where a young person, who is aged not less than 12 but is under the school leaving age, is convicted of an offence which is, in the case of a person aged 21 or over, punishable with imprisonment, and the relevant Court is of the opinion that the young person is a persistent offender, the Court should be able pass a sentence of detention in a secure accommodation and learning centre, provided that the Court should not be able to pass such a sentence of detention until it has received appropriate background reports, including a report from a probation officer, and unless it considers that no other method of dealing with the offender is appropriate because it appears that –
- (i) the offender has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or
  - (ii) only a sentence of detention in a secure accommodation and learning centre would be adequate to protect the public from serious harm from the offender; or
  - (iii) the offence or the totality of the offending is so serious that a sentence other than detention in a secure accommodation and learning centre cannot be justified;
- and the court shall be required to state in open court its reasons for imposing a sentence of detention in a secure accommodation and learning centre;
- (b) to charge the Home Affairs, the Education, Sport and Culture and the Health and Social Services Committees to take the necessary steps to bring forward for approval the necessary legislation to give effect to the proposals within six months.

DEPUTY OF ST. MARTIN

## REPORT

At present where a person aged not less than 15 years but under 21 is convicted of an offence which is, in the case of a person aged 21 or over, punishable with imprisonment, the Court may pass a sentence of detention in a young offender institution.

At present Article 16(1) contains the power to remand a young person under school leaving age in custody and reads –

*“A person who is under the school leaving age who may lawfully be remanded in custody may be so remanded to a remand centre established under the Children (Jersey) Law 1969 and a person who is of or over school leaving age but under the age of twenty-one who may lawfully be remanded in custody may be so remanded to a Young Offender Institution.”*

Readers will therefore note that whilst the Law gives the Court the power to remand a young person under 15 years of age in custody, the Court has no power to impose a custodial sentence on a young person unless he/she is at least 15 years of age.

Crime committed by young people is nothing new. However, knowing how best to tackle the problem has over a lengthy passage of time concentrated the minds of a great number of learned people. As our society has become more liberal, tolerant and aware of its human rights obligations, tackling youth crime has become more difficult. Various schemes have been devised to divert young people away from criminal activity. However there has always been a small core of juvenile offenders who have exhausted all forms of non-custodial assistance.

Although the Island has invested large funds in the provision of educational and social services there is a disproportionate number of young people who suffer from emotional and behavioural difficulties and disorders. One only has to read the Final Report for the Education, Sport and Culture, Health and Social Services and Home Affairs Committees, which was published in December 2002, to see how depressing life is for a number of our young people. The Report's author Dr. Kathie Bull pulled no punches and clearly identified a number of shortcomings in the welfare of our young people.

In response to the Bull Report a tripartite working party was formed under the 3 Committee Presidents. As a result of the Working Party's consultation, it has made a number of recommendations, which will have considerable financial implications. They will also take some time before implementation. In the meantime life goes on and so too the problems for those with responsibility for the welfare of young people, and the maintenance of good government.

For some time prior to the Bull Report, those tasked with the administration of justice had been expressing concern at the growing number of young people below the age of 15 who were coming before the Courts. Not only was the number increasing but so too was the frequency of a small hard-core group of young people. It is apparent that a number of young people are well aware that although they could be remanded in custody as a temporary measure, the courts are powerless to give them custodial sentences.

In 2001 the Solicitor General arranged a meeting, which was attended by the Magistrate and representatives of the different interested parties. Recommendations similar to this Proposition were submitted to The Home Affairs Committee. On 28th February 2002, the previous Home Affairs Committee considered the matter. The Committee thought that agreeing to the recommendations would be a step too far in the treatment of young offenders, however serious the crime committed.

On 18th August 2003 Mr. Le Marquand wrote a letter to the President of Home Affairs expressing his concerns and seeking assistance (Appendix A). As the Presidents of the 3 Committees overseeing the implementation of the Bull Report were meeting on 15th September, Mr. Le Marquand's letter was referred to the Presidents for consideration at that meeting. At that meeting the Presidents decided that the Home Affairs Committee should consider the case initially and make a recommendation to the 2 other Committees in due course.

On 30th October Home Affairs considered the letter and recommended that the matter should be referred to the

next tri-partite meeting with Education, Sport and Culture and Health and Social Services which was due to meet on 10th December.

As a Member of the Health and Social Services Committee I was due to attend the meeting. However due to late unforeseen circumstances I was unable to attend. As I had strong feelings on the issue I e-mailed a message expressing my views. I stated that if the Magistrate's recommendations were not accepted I would take the matter to the States (Appendix B).

At that meeting it was decided not to support the Magistrate's recommendation but that the 3 Presidents should meet with Mr. Le Marquand to discuss his concerns. Clearly we have what can best be described as a game of "pass the parcel" where the winners are the procrastinators and the losers are the young people, the Courts and the public.

The public is also entitled to protection under the law and it is unacceptable that the law-abiding public are exposed to a handful of young offenders who consider themselves to be above the law. In his Christmas address the Magistrate, Mr. Le Marquand stated that the system for dealing with persistent offenders aged under 15 has broken down. In 2003, there had been an increase of 8.5% with 433 young people being brought before the court. A group of 10 youngsters who were under 15 faced more than a quarter of the total charges brought before the Youth Court.

We have failed to accept that there are an increasing number of children who are in great need of help and support away from their school or home. Les Chenes (now named Greenfields) presently provides support for young people remanded in custody, there is no reason why it should not accommodate children given custodial sentences. Generally children are only remanded in custody because they have been arrested for serious crimes or are recidivists. Therefore if they were given a custodial sentence they would remain at Greenfields or other suitable establishment where they could continue to receive professional guidance and education in secure and safe surroundings rather than returning to the environment where their crimes were committed. It is apparent that a small number of the children are continuing with their criminal activity until rearrested, returned and remanded in Greenfields. It is this cycle of criminal activity, which is not only unacceptable but is causing considerable frustration to the Courts.

As can be seen in Mr. Le Marquand's letter (Appendix A) there had been security problems at Greenfields however due to the secondment of a Senior Unit Manager from La Moye Prison, security has improved considerably. This has been achieved through the professionalism and dedication of the Officer concerned and the considerable structural work undertaken to make the premises much more secure.

Although there has been a considerable work carried out it is envisaged that a newly constructed campus will replace Greenfields, which if all consents are given and there are no building problems could be open by the end of 2005. Irrespective of if and when the campus is built, the question of allowing for young people aged under 15 to be given custodial sentences must be addressed. It is clear that none of the 3 Committees is prepared to address this question. I believe the law should be amended to allow, in exceptional cases, for young people aged 12 and over to be given custodial sentences.

With possible further adaptations, Greenfields could provide accommodation and care of the relatively small number of young people who are deemed to require custodial sentences.

Very few people derive any pleasure in depriving others of their freedom; it is unfortunate that there are occasions when such drastic action is necessary. Custodial sentences are given for a number of reasons not least in the belief that those who are given a period in custody will be given all the help and encouragement to make their life more meaningful on release.

It is in this belief that support for this Proposition is requested.

### **Financial and manpower implications**

At present Greenfields is able to provide residential accommodation for 10 young people. Fourteen staff are

engaged in providing care and security. They are permanently employed irrespective of its level of occupancy, which is known to fluctuate. Education is provided from a teaching pool. Therefore it may be possible that there would be no additional financial and manpower implications unless Greenfields became oversubscribed. Whatever costs may be involved could be seen as interim until the proposed campus is realised.

Appendix A: Mr. B.I. Le Marquand's letter dated 18th August 2003.

Appendix B: Deputy of St. Martin's e-mail to the Tri-partite meeting dated 10th December 2003.

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THE MAGISTRATES' CHAMBERS  
Cyril Le Marquand House  
The Parade  
St. Helier  
Jersey C.I.  
JE4 8YA

From: Mr. B.I. Le Marquand  
Magistrate

Your ref:  
Our ref: BILeM/M3

Senator Wendy Kinnard,  
President of the Home Affairs Committee,  
Home Affairs Department,  
11 Royal Square,  
St. Helier,  
Jersey, C.I. JE2 4WA

18th August, 2003.

Dear Senator Kinnard,

**The lack of appropriate secure custodial facilities for youths of school age**

I understand from Steven Austin-Vautier that you have been away on holiday and I hope that that was a relaxing and enjoyable time for you and your family.

Unfortunately, whilst you were away there were further major problems at Les Chenes. Although the Education Committee has taken some steps this year to improve security at Les Chenes and has recently installed a new care team to deal with issues which include security and discipline, it is still obvious that the premises remain unsuitable for containing safely a relatively small number of very difficult young people. The core problem is that the building was not built as a youth prison but as a residential school. There are only three available cells but in recent times we have had up to six youths there who needed to be kept in a cell overnight if there were not to be a high risk of them escaping from the premises. As a result of this, the staff have often had to assess who of the youths who needed to sleep in a cell was the least likely to escape and they were not always right. As a further result of this we have had at least 19 escapes since 1st February, 2003. We have also had 2 incidents in which youths armed themselves with metal bars, which were taken from items of furniture, and threatened staff with these. On the first occasion two out of the three youths involved escaped and on the second occasion, although nobody escaped, about £15,000 worth of damage was done to the premises and equipment.

There are two major problems as follows:-

- a) Firstly, there is the problem that some youths who are under the age of 15 know that until they are 15 the courts have no effective custodial sentence which they can give to them. This first became known amongst the regular offenders more than 2 years ago and has led to a most unsatisfactory situation in which youths can continue to offend, virtually with impunity, until they are 15. There is no coincidence that the 3 youths in the first iron bar incident and the 2 of these 3 youths in the second iron bar incident were under 15. One of these has escaped 6 times since 1st February, 2003, and another has escaped 4 times. Clearly, there is an urgent need for the courts to be given both a power to sentence youths who are under 15 to a period in custody at suitably secure premises and for suitably secure premises to be provided for those who are under 15 to be remanded to. I truly fear that one of the youths whom we have to release upon sentencing or one of the escapees will kill himself and others in a car accident or through the use of drugs or otherwise and the system will then have completely failed them and their victims.

- b) Secondly, there is the problem of youths who are 15 but cannot be remanded in custody to the Young Offender's Institution at La Moye until they pass the school leaving age. Such youths will be between 15 years 10 months and 16 years 10 months old when they reach school leaving age, depending up their date of birth. In the case of the 2 youths who have twice wielded metal bars inside Les Chenes, the elder will be 16 years and 3 months old before reaching the school leaving age and the younger will be 16 years and 6 months old before reaching the school leaving age. It is totally unacceptable that the staff at Les Chenes and other pupils should be put at risk from these youths for the additional periods after the respective 15th birthdays of these youths because we can only remand them in custody to Les Chenes prior to sentencing them although upon sentencing we can send them to the Young Offenders Institution.

The patience of the Magistrates and the Youth Panel members is now entirely exhausted in relation to these problems. There is a very simple solution in relation to the second problem and that is the designation of the Young Offenders Institution at La Moye as a remand centre for youths who are aged 15 and over. It would only be used by the courts for the small number of youths who are too violent or too uncontrollable to be kept safely and securely at La Moye. The remand would be reviewed regularly and if their status changed then they could be returned to Les Chenes or even released from custody. I truly fear that somebody at Les Chenes will be very seriously injured in an assault or in an escape attempt in the near future and if they are then I will have no doubt as to which States Committee will be to blame for this.

I suspect that, despite the best efforts of myself and my colleagues, you may not have appreciated that the type of youth within this very difficult hardcore with whom we are having to deal is far more disturbed and far more aggressive and dangerous than those whom you saw when you were a member of the Youth Panel. If that is so then please talk to Tom McKeon or Cliff Chipperfield or, indeed, Kathy Bull, who did an especial study of this, or indeed to some of the more senior Youth Panel members who have seen the change.

I write this to you forcefully because I am passionate about seeing the right things done for the benefit of our very difficult youths and for the protection of the general public. The present situation is a complete disgrace and it cannot continue without there being a substantial risk to the individuals and staff involved.

Yours sincerely,

-----Original Message-----

**From:** Bob Hill  
**Sent:** 10 December 2003 09:12  
**To:** Anton Skinner; Tom McKeon  
**Cc:** Lyn Houguez  
**Subject:** Kathie Bull Joint Meeting

“Morning All”

Something has just popped up which means that I can not attend the Kathie Bull meeting this morning but I will be able to attend the Health Meeting. I hope this message can get to you in time so that it is read to the meeting.

I have not been happy with a number of issues in the Report and the recommendations. Even if I was at the meeting whilst my views would be listened to, they would probably not be acted upon and I have to accept the majority view. However there is one issue of which I do have a view and can do something about it, that is the issue of youth Custody.

I would be grateful if the joint Committee was informed that I concur with the Magistrates views and if the Joint Committee does not wish to amend the current law I will take an amendment to the States.

I do have considerable experience involving young people similar to those identified in the Kathie Bull Report. I regret to say that a lot of what Kathie Bull was stating was the obvious and the “new” Jersey experience had been occurring at least 20 years ago in Inner London. Given that many of those working in Jersey had some Mainland experience you can see why I was most unhappy to see so many failings which had been identified in the Bull Report. They should not have occurred. The fact that “we are drawing a line in the sand” is typical of Jersey, but there again to quote Kathie Bull “that’s Jersey for you” I think we have not only drawn a line in the sand but we have also buried our heads in it. My discontent is based upon 17 years experience of involvement in all sorts of schemes in preventing and dealing with the problems identified in Kathie Bull’s Report. As we know that quite often what occurs on the Mainland takes some time before it comes to Jersey. However there have always been recidivists both in Jersey and on the Mainland they unfortunately are a way of life. Regretfully they are now at a much younger age They thrive on the generosity and often well intentioned soft approach from those who will listen to them. I have never been one to use a stick if there are other ways of dealing with a situation, but like the Magistrate I am aware of a hard core who use the soft approach to their own ends.

I have read the SWOT analysis but am not convinced with the recommendation not to alter the Law.

I would be grateful if my thoughts are made clear to everyone at the meeting and noted in the Minutes. I hope my concerns are noted and acted upon in a positive way.

*Regards,*

*Bob*

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