

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. IX of 2005 (Ordres en Conseil Vol. XLV, p. 181); as amended by the Prison (Guernsey) Ordinance, 2013 (No. XXIX of 2013); the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (No. VII of 2021); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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## **The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004**

### ARRANGEMENT OF SECTIONS

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## **The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004**

**THE STATES**, in pursuance of their Resolution of the 9<sup>th</sup> day of June, 1999<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have the force of law in the Bailiwick of Guernsey.

### **Supervision after release of persons sentenced to imprisonment.**

1. (1) An offender released from a sentence of imprisonment of less than 12 months may be released unconditionally.

(2) An offender released from a sentence of imprisonment of 12 months or more shall be under the supervision of a Probation Officer.

(3) Unless section 3 applies to an offender, and subject to the provisions of subsection (4), the period of supervision shall begin on the day of the offender's release and shall last –

(a) for a period equal to one quarter of the sentence (rounded up to the nearest whole day), or

(b) for a period equal to so much of the remainder of his sentence as he would have been liable to serve but for

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<sup>a</sup> Article IX of Billet d'État No. XI of 1999.

his release on remission,

whichever is the shorter.

(4) Where an offender is released on parole licence, the period of supervision shall begin on the date his licence expires and shall last –

- (a) for a period equal to one quarter of the sentence (rounded up to the nearest whole day), or
- (b) for a period equal to so much of the remainder of his sentence as he would have been liable to serve but for his release on licence or remission,

whichever is the shorter.

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**NOTE**

*The following cases have referred to this Law:*

*Mark Richard Gunter v. Law Officers of the Crown* (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 22/2011);

*Wicks, Sharp & Towers v. Law Officers of the Crown* (2012) (Unreported, Court of Appeal, 22nd March) (Guernsey Judgment No. 14/2012);

*Halker v Law Officers of the Crown* [2020]GCA079 (Unreported, Court of Appeal, 11th December);

*Hastie v Law Officers of the Crown* [2022]GCA005 (Unreported, Court of Appeal, 28th January).

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**Requirements of a period of supervision.**

2. (1) A person under supervision shall comply with such requirements as may be specified in writing by the States [Committee for Home Affairs] and given to him prior to release.

(2) The States [Committee for Home Affairs] may, by notice in writing given to a person under supervision –

- (a) specify additional requirements to be complied with by him, and
- (b) vary or revoke any requirement for the time being imposed on him under this section.

(3) A person who without reasonable excuse fails to comply with a requirement under this section is guilty of an offence and liable on conviction to –

- (a) a sentence of imprisonment not exceeding 6 months,
- (b) a fine not exceeding level 4 on the uniform scale, or
- (c) both.

(4) The provisions of subsection (3) do not prejudice any liability to supervision to which the person was previously subject, and that liability shall continue until the end of the supervision period.

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#### NOTES

*In section 2, the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of*

*the 2016 Ordinance.*

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**Extended sentences for sexual and violent offenders.**

3. (1) This section applies where a court which proposes to impose a sentence of imprisonment for a sexual or violent offence considers that the period (if any) for which the offender would, apart from this section, be subject to supervision under section 1 would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation.

(2) Subject to subsections (3) to (5), the court may pass on the offender an extended sentence, that is to say, a sentence of imprisonment the term of which is equal to the aggregate of –

- (a) the term of the sentence of imprisonment the court would have imposed if it had passed a sentence of imprisonment otherwise than under this section ("**the custodial term**"), and
- (b) a further period ("**the extension period**") for which the offender is to be subject to a licence (an "**extended sentence licence**") and which is of such length as the court considers necessary for the purpose mentioned in subsection (1).

(3) Where the offence is a violent offence, the court shall not pass an extended sentence the custodial term of which is less than 4 years.

(4) The extension period shall not exceed –

- (a) 10 years in the case of a sexual offence, and

(b) 5 years in the case of a violent offence.

(5) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.

(6) Before passing an extended sentence the court shall indicate that such a sentence is being considered and allow the defendant the opportunity to make representations.

(7) Where a court passes an extended sentence it shall explain in ordinary language to the defendant why such a sentence is being imposed and its effect.

(8) The States may by Ordinance amend subsection (4)(b) by substituting a different period, not exceeding 10 years, for the period for the time being specified in that subsection.

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**NOTE**

*The following cases have referred to section 3:*

*Mark Richard Gunter v. Law Officers of the Crown* (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 22/2011);

*Wicks, Sharp & Towers v. Law Officers of the Crown* (2012) (Unreported, Court of Appeal, 22nd March) (Guernsey Judgment No. 14/2012);

*Halker v Law Officers of the Crown* [2020]GCA079 (Unreported, Court of Appeal, 11th December);

*Hastie v Law Officers of the Crown* [2022]GCA005 (Unreported, Court of Appeal, 28th January).

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**Release on extended sentence licence.**

4. (1) This section applies to a prisoner serving an extended sentence.

(2) The existence of the extension period shall be ignored when

determining the release date of a prisoner under [section 29 of the Prison (Guernsey) Ordinance, 2013] or section 1 of the Parole Review Committee Ordinance, 1991<sup>c</sup>.

(3) Where apart from this subsection the prisoner would be released unconditionally –

- (a) he shall be released on extended sentence licence, and
- (b) the licence shall, subject to any revocation under section 4(1) or (2) of the Parole Review Committee Ordinance, 1991, remain in force until the end of the extension period.

(4) Prisoners released under this section shall, while on licence, be under the supervision of a Probation Officer or a social worker of the States [Committee for Health & Social Care].

(5) The licence shall be subject to such conditions as may be specified –

- (a) by the court at the time of sentencing, and
- (b) from time to time by the Parole Review Committee.

(6) Conditions imposed under subsection (5) may be varied or revoked by the court or (as the case may be) by the Parole Review Committee.

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**NOTES**

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<sup>c</sup> Recueil d'Ordonnances Tome XXV, p. 230.

*In section 4,*

*the words in square brackets in subsection (2) were substituted by the Prison (Guernsey) Ordinance, 2013, section 59, Schedule 7, with effect from 4th November, 2013, subject to the transitional and savings provisions in section 60 of, and Schedule 8 to, the 2013 Ordinance;*

*the words in square brackets in subsection (4) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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**Re-release of prisoners serving extended sentences.**

5. (1) This section applies to a prisoner serving an extended sentence who is recalled to prison under the provisions of section 4(1) or (2) of the Parole Review Committee Ordinance, 1991.

(2) Subject to section 3A of the Parole Review Committee Ordinance, 1991, the prisoner may require the States [Committee for Home Affairs] to refer his case to the Parole Review Committee at any time.

(3) On a reference under this section the Parole Review Committee shall direct the prisoner's release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise).

(4) A prisoner released under the provisions of subsection (3) shall be subject to a licence.

(5) The licence shall be subject to such conditions as may be specified –

- (a) by the court at the time of sentencing, and
- (b) from time to time by the Parole Review Committee.

(6) Conditions imposed under subsection (5) may be varied or revoked by the court or (as the case may be) by the Parole Review Committee.

(7) A licence issued under subsection (4) shall remain in force until the end of the extension period.

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**NOTES**

*In section 5, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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**Amendment to Parole Review Committee Law.**

6. After section 2(b) of the Parole Review Committee (Guernsey) Law, 1989<sup>d</sup> insert the following paragraph –

"(bb) the recall of prisoners released subject to a licence as part of an extended sentence passed under section 3(2) of the Criminal Justice (Supervision of Offenders) (Bailiwick of

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<sup>d</sup> Ordres en Conseil Vol. XXXI, p. 414.

Guernsey) Law, 2004;".

**Amendment to Parole Review Committee Ordinance.**

7. In section 1(1) of the Parole Review Committee Ordinance, 1991 after ("**the Law of 1989**") insert "or section 5(2) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004".

**Application of Parole Review Committee Ordinance.**

8. (1) The provisions of the Parole Review Committee Ordinance, 1991 listed in subsection (2) apply to prisoners serving extended sentences who are recalled under section 4(1) or (2) of that Ordinance.

(2) The provisions are sections 1(5)(b), (c), (d), (e) and (h); 1(6); 2; 3; 3A; 4(1), (2), (3) and (4); 5; 6; 7 and 8.

**Offenders sentenced to youth detention for sexual and violent offences.**

9. (1) Where a person under the age of 21 is sentenced to a period of youth detention –

(a) for a sexual offence, or

(b) for a violent offence, for a term of 4 years or more,

the provisions of sections 3 and 4 apply to him in place of section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>e</sup>.

(2) Where section 3 of this Law applies to a person sentenced to a period of youth detention the words "imprisonment" shall be replaced by "youth detention".

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<sup>e</sup> Ordres en Conseil Vol. XXXII, p. 106.

**Amendment to the Criminal Justice (Suspended Sentence Supervision Orders)**

**Law.**

**10.** (1) After section 1(7) of the Criminal Justice (Suspended Sentence Supervision Orders) (Bailiwick of Guernsey) Law, 1984<sup>f</sup> insert the following subsections –

" (8) In addition to the requirements of subsection (2), a person subject to a supervision order shall comply with such additional requirements as may be specified by the Court.

(9) Any additional requirements imposed under subsection (8) shall be included in the copy of the supervision order given under subsection (3) to the offender and to the person under whose supervision he is placed.

(10) The Court may, on the application of the Probation Officer or other person appointed by the Court or the offender, vary or revoke any additional requirements imposed under subsection (8)."

(2) In sections 2(1) and (2) of the Criminal Justice (Suspended Sentence Supervision Orders) (Bailiwick of Guernsey) Law, 1984, for "of section 1(2)" substitute "imposed by or under section 1(2) or (8)".

**Interpretation.**

**11.** (1) In this Law, unless the context requires otherwise –

"**extended sentence**" means an extended sentence passed under section 3(2),

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<sup>f</sup> Ordres en Conseil Vol. XXVIII, p. 540.

**"extended sentence licence"** has the meaning given by section 3(2)(b),

**"extension period"** has the meaning given by section 3(2)(b),

**"parole licence"** means licence under the Parole Review Committee Ordinance, 1991,

**"Probation Officer"** means a person employed in that capacity by the States [Committee for Home Affairs],

**"sexual offence"** means any of the following –

- (a) rape,
- (b) indecent assault,
- (c) an offence under the Law entitled "Loi Relative à la Sodomie", 1929<sup>g</sup>,
- (d) an offence under the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>h</sup>,
- (e) an offence under the Law entitled "Loi Relative à la Protection des Filles et des Femmes Mineures", 1914<sup>i</sup>,

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**g** Ordres en Conseil Vol. VIII, p. 273.

**h** Ordres en Conseil Vol. XXIX, p. 103.

**i** Ordres en Conseil Vol. V, p. 74.

- (f) an offence contrary to section 9 of the Theft (Bailiwick of Guernsey) Law, 1983<sup>j</sup>,
- [(fa) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020,]
- (g) an offence of conspiracy to commit any of the offences in paragraphs (a) to [(fa)],
- (h) an attempt to commit any of those offences,
- (i) an offence of inciting another to commit any of those offences,
- (j) any other offence prescribed for the purposes of this Law by the States by Ordinance,

**"supervision"** means the supervision of a Probation Officer under section 1,

**"violent offence"** means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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<sup>j</sup> Ordres en Conseil Vol. XXVIII, p. 5.

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**NOTES**

*In section 11,*

*the words in square brackets in the definition of the expression "Probation Officer" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;*

*first, paragraph (fa) of the definition of the expression "sexual offence" in subsection (1) was inserted and, second, the parentheses and letters in square brackets in paragraph (g) thereof were substituted by the Sexual Offences (Bailiwick of Guernsey) Law, 2020, section 111, Schedule 2, respectively paragraph 2(a) and paragraph 2(b) ("Amendments"), with effect from 1st March, 2022.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The Loi Relative à la Sodomie, 1929, the Protection of Children (Bailiwick of Guernsey) Law, 1985, the Loi relative à la Protection des Femmes et des Filles Mineures, 1914 have all since been repealed by the Sexual Offences (Bailiwick of Guernsey) Law, 2020, section 111, Schedule 2, respectively paragraph 4, paragraph 7 and paragraph 2 ("Repeals"), with effect from 1st March, 2022, subject to the savings in section 2 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (Commencement) Ordinance, 2022.*

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**Citation.**

**12.** This Law may be cited as the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004.

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**NOTE**

*The Law received Royal Sanction on 7th June, 2005 and was registered on the Records of the Island of Guernsey and came into force on 8th July, 2005.*

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