

PROJET DE LOI

ENTITLED

The Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXXII, p. 106; as amended by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (No. III of 2012); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Prison (Guernsey) Ordinance, 2013 (No. XXIX of 2013); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004 (No. IX of 2005, Ordres en Conseil Vol. XLV, p. 181).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 23rd day of February, 1989, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Youth detention for offenders under 21 years.

1. (1) No person aged under 21 years shall be sentenced to imprisonment for an offence.

(2) Where a person aged under 21 years but not under 14 years is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 years or over (not being an offence the sentence for which is fixed by law) and the court considers for reasons which shall be stated in open court that the only appropriate method of dealing with the offender is to pass a custodial sentence that sentence shall be one of youth detention.

(3) The maximum term of youth detention that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.

(4) Where an offender –

- (a) is convicted of more than one offence for which he is liable to a sentence of youth detention,
- (b) is serving a sentence of youth detention and is convicted of one or more further offences for which he

is liable to such a sentence,

the court shall have the same power to impose consecutive youth detention sentences as if they were sentences of imprisonment.

- (5) Where an offender –
- (a) is serving a sentence of youth detention, and
 - (b) has attained the age of 21 years,

and is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of youth detention.

[(6) A person serving a sentence of youth detention at the prison shall be deemed a prisoner for the purposes of the Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it.]

(7) A person aged under 21 years who, but for the provisions of this Law would have been liable to a period of imprisonment in default of payment of a fine, shall instead be liable to a period of youth detention and the provisions of sections 2 and 4 of this Law shall not apply thereto.

(8) A sentence of youth detention may be suspended and the provisions of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972^b shall apply in relation to sentences of youth detention as if they were sentences of imprisonment.

(9) A suspended sentence of youth detention shall be deemed to be a sentence of imprisonment when ordered to take effect in respect of an offender aged over 21 years.

[(10) Subject to any provision relating to custodial sentences for

^b Ordres en Conseil Vol. XXIII, p. 346.

life, a sentence of youth detention for life made under section 1(1A) of the Homicide (Guernsey) Law, 1965 is a sentence of youth detention for the purposes of this Law.]

NOTES

In section 1,

subsection (6) was 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;

subsection (10) was inserted by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011, section 20, Schedule, paragraph 3, with effect from 27th June, 2012.

The following cases have referred to this Law:

Law Officers of the Crown v. Peden (1991) 11.GLJ.33;
Law Officers of the Crown v. Kirk (1999) 27.GLJ.133;
Law Officers of the Crown v. Help (2003) (Unreported, Court of Appeal, 7th July) (Guernsey Judgment No. 26/2003).

Sentencing procedure.

2. (1) A court shall not pass a sentence of youth detention unless –
- (a) it is satisfied that the offender is unable or unwilling to respond to non-custodial penalties, or
 - (b) a custodial sentence is necessary for the protection of the public or the prevention of crime, or
 - (c) the offence was so serious that a non-custodial sentence cannot be justified.
- (2) Before passing a sentence of youth detention the court shall take into account any information before it which is relevant to the offender's character and physical and mental condition.
- (3) Before sentencing an offender to a term of 6 months or more youth detention, the court shall consider any report made in respect of the offender

by the States [Committee for Health & Social Care] or the Probation Officer and shall, unless satisfied that it would be undesirable to do so, cause a copy of any such report to be given to the offender or his Advocate; and in a case where the report is not given to the offender or his Advocate, it shall be summarised orally in open court.

NOTES

In section 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.¹

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.²

The following cases have referred to section 2:

Law Officers of the Crown v. Peden (1991) 11.GLJ.33;
Law Officers of the Crown v. Kirk (1999) 27.GLJ.133;
Law Officers of the Crown v. Help (2003) (Unreported, Court of Appeal, 7th July) (Guernsey Judgment No. 26/2003).

Treating sentences as imprisonment in certain cases.

3. (1) Subject to subsection (3) below, where –
- (a) an offender has been sentenced to youth detention, and
 - (b) either –
 - (i) he attains the age of 21 years, or
 - (ii) the conditions specified in subsection (2) below are satisfied,

the States Prison Board may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.

- (2) The conditions mentioned in subsection (1) above are –
- (a) that the offender has attained the age of 16 years, and
 - (b) that he has been reported by the Governor of the States Prison as exercising a bad influence on the other inmates or was behaving in a disruptive manner to the detriment of those inmates.

(3) A person who under this section is treated as if sentenced to imprisonment instead of youth detention is not to be so treated for the purposes of section 4 of this Law.

Supervision after release.

4. (1) An offender released from a sentence of youth detention exceeding 21 days shall be under the supervision of a Probation Officer.

(2) Subject to the provisions of subsection (3) below the period of supervision shall start on the day of the offender's release and end –

- (a) 3 months therefrom, or
- (b) on the date on which his sentence would have expired if he had not been granted remission,

whichever is the later.

(3) Where an offender is released on licence the period of supervision begins on the date his licence expires and ends on the date he would have been released if he had never been released on licence or granted remission.

(4) The maximum period of supervision in any case shall be 12 months.

(5) While a person is under supervision by virtue of this section

he shall comply with such requirements, if any, as may for the time being be specified in writing by the States Prison Board and given to him prior to release on supervision.

(6) A person who without reasonable excuse fails to comply with a requirement under subsection (5) above shall be guilty of an offence and liable on conviction –

(a) to an appropriate custodial sentence not exceeding 30 days, or

(b) to a fine not exceeding level 4 on the uniform scale,

or to both.

(7) In subsection (6) above "**appropriate custodial sentence**" means –

(a) a sentence of imprisonment if the person has attained the age of 21 years when he is sentenced, or

(b) a sentence of youth detention if he has not attained that age.

(8) A person released from an appropriate custodial sentence imposed under subsection (6)(a) above shall not be liable to a period of supervision in respect of that sentence, but this provision shall not prejudice any liability to supervision to which he was previously subject, and that liability shall continue until the end of the supervision period.

(9) In this section –

'licence' means a licence under section 2 of the Parole Review

Committee (Guernsey) Law, 1989^c,

"Probation Officer" means one or other of the Probation Officers for the time being employed by the States of Guernsey,

["remission" means remission under section 29 of the Prison (Guernsey) Ordinance, 2013].

NOTES

In section 4, the definition of the expression "remission" in subsection (9) was 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.

In accordance with the provisions of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, section 9, with effect from 8th July, 2005, 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,*

then the provisions of section 3 and section 4 of that Law apply to him in place of this section.

Appeals.

5. For the purpose of any enactment conferring rights of appeal, any sentence imposed under section 1 of the Law shall be treated as a sentence of imprisonment passed on the offender conferring a right of appeal.

Provision for Ordinances.

6. The States may by Ordinance vary any of the periods of time mentioned in this Law including making different provisions for different classes of offender.

Repeal.

^c No. XVI of 1989.

7. The Borstal Training (Guernsey) Law, 1963^d is repealed.

Transitional provisions.

8. (1) An offender who was sentenced to Borstal training on a date before the commencement of this Law and whose sentence has not expired at the commencement thereof shall be treated for all purposes of detention, arrest and supervision as if his sentence had been a sentence of youth detention for a term of 12 months.

(2) An offender who was sentenced to a term of imprisonment (not being for an offence the sentence for which is fixed by law) whilst under the age of 21 years on a date before the commencement of this Law and whose sentence has not expired at the commencement thereof shall be treated for all purposes of detention, arrest and supervision as if his sentence had been a sentence of youth detention for the same term.

(3) An offender who was convicted by any court of an offence punishable with imprisonment whilst under the age of 21 years on a date before the commencement of this Law and who falls to be sentenced on a date after the commencement of this law shall be dealt with as if the powers conferred by this Law were in force on the date of his conviction.

Citation and commencement.

9. (1) This Law may be cited as the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

(2) This Law shall come into force on such date as the States may by Ordinance direct.

NOTES

The Law was brought into force on 1st July, 1990 by the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990 (Commencement) Ordinance, 1990, section 1.

^d Ordres en Conseil Vol. XIX, p. 187.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 8, with effect from 6th May, 2004.

² The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Children Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 8, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.