

Jersey Law 14/2002

**CRIMINAL JUSTICE (ANONYMITY IN SEXUAL OFFENCE
CASES) (JERSEY) LAW 2002**

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**CRIMINAL JUSTICE (ANONYMITY IN SEXUAL OFFENCE
CASES) (JERSEY) LAW 2002**

A LAW to repeal and re-enact the provisions of the Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992 and to make new provision for the anonymity of victims of sexual offences other than rape; sanctioned by Order of Her Majesty in Council of the

26th day of MARCH 2002

(Registered on the 12th day of April 2002)

STATES OF JERSEY

The 20th day of November 2001

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“complainant” means a person against whom a sexual offence is alleged to have been committed;

“picture” includes a likeness, howsoever produced;

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme

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shall be taken to be so addressed) but shall not include an indictment or other document prepared for use in particular legal proceedings;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990 as that Act from time to time has effect in the Island by virtue of any Order in Council;

“sexual offence” shall be construed in accordance with Article 2.

- (2) For the purposes of this Law -
 - (a) where it is alleged that a sexual offence has been committed, the fact that any person has consented to an act which, on any prosecution for that offence, would fall to be proved by the prosecution, shall not prevent that person from being regarded as a person against whom the alleged offence was committed; and
 - (b) where a person is accused of an offence of incest or sodomy, the other party to the act in question shall be taken to be a person against whom the offence was committed even though he consented to that act.
- (3) For the purposes of this Law, where it is alleged or there is an accusation -
 - (a) that an offence of conspiracy or incitement of another to commit an offence mentioned in Article 2(a) to (g) has been committed; or
 - (b) that an offence of aiding, abetting, counselling or procuring the commission of an offence of incitement of another to commit an offence mentioned in Article 2(a) to (g) has been committed,

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the person against whom the substantive offence is alleged to have been intended to be committed shall be regarded as the person against whom the conspiracy or incitement is alleged to have been committed.

(4) In paragraph (3), “the substantive offence” means the offence to which the alleged conspiracy or incitement related.

(5) For the purposes of this Law, a person is accused of an offence if -

- (a) he is presented before the Magistrate’s Court by the Connétable of the parish where the offence is presumed to have been committed; or
- (b) he is brought before or committed for trial before the Royal Court on a charge for the offence,

and references in this Law to an accusation alleging an offence shall be construed accordingly.

(6) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(7) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(8) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

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ARTICLE 2

Sexual offences

For the purposes of this Law, “sexual offence” means any of the following -

- (a) rape;
- (b) incest;
- (c) sodomy;
- (d) indecent assault;
- (e) gross indecency;
- (f) any offence under the Loi (1895) modifiant le droit criminel,¹ other than an offence under Article 9;
- (g) any offence under Article 45 of the Mental Health (Jersey) Law 1969;²
- (h) any offence of attempt to commit any of the offences in paragraphs (a) to (g);
- (j) any offence of conspiracy or incitement to commit any of the offences in paragraphs (a) to (g);
- (k) any offence of aiding, abetting, counselling or procuring any of the offences in paragraphs (a) to (j).

¹ Tomes IV-VI, page 132, Volume 1968-1969, page 340 and Volume 1996-1997, pages 1053 and 1054.

² Volume 1968-1969, page 394.

ARTICLE 3

Anonymity of victim of sexual offence

(1) Where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the complainant.

(2) Where a person is accused of a sexual offence, no matter likely to lead members of the public to identify a person as the complainant shall, during the complainant's lifetime be included in any publication.

(3) This Article -

- (a) shall not apply in relation to a person by virtue of paragraph (1) at any time after a person has been accused of the offence; and
- (b) in its application in relation to a person by virtue of paragraph (2), has effect subject to any direction given under Article 4.

(4) The matters relating to a person in relation to which the restrictions imposed by paragraph (1) or (2) apply (if their inclusion in any publication is likely to have the result mentioned in that paragraph) include in particular -

- (a) the person's name;
- (b) the person's address;
- (c) the identity of any school or other educational establishment attended by the person;
- (d) the identity of any place of work of the person; and

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- (e) any still or moving picture of the person.

(5) Nothing in this Article prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or an appeal arising out of, a trial at which the accused is charged with a sexual offence

ARTICLE 4

Direction disapplying Article 3

(1) If, before the commencement of a trial at which a person is charged with a sexual offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to the Royal Court for a direction under this paragraph and satisfies the Royal Court -

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the Royal Court shall direct that Article 3 shall not, by virtue of the accusation alleging the said offence, apply in relation to the complainant.

(2) If, at a trial, the Royal Court is satisfied that the effect of Article 3 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, it shall direct that Article 3 shall not apply to such matter as is specified in the direction.

(3) A direction shall not be given under paragraph (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal against the conviction, or notice of an

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application for leave so to appeal, applies to the court to which the appeal is or would be made for a direction under this paragraph and satisfies that court -

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

that court shall direct that Article 3 shall not, by virtue of an accusation which alleges a sexual offence and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under this Article shall not affect the operation of Article 3 at any time before the direction is given.

(6) If, after the commencement of a trial at which a person is charged with a sexual offence, a new trial of the person for the offence in question is ordered, the commencement of any previous trial shall be disregarded for the purposes of paragraph (1).

ARTICLE 5

Special rules for cases of incest or sodomy

(1) Article 3 shall not apply to a person against whom incest is alleged to have been committed if that person is accused of having committed incest against the other person who is alleged to have committed incest against him.

(2) Article 3 shall not apply to a person against whom sodomy is alleged to have been committed if that person is accused of having committed sodomy against the other person who is alleged to have committed sodomy against him.

(3) Paragraph (1) or (2) shall not affect the operation of this Law in relation to anything done at any time before the person mentioned first in that paragraph is accused.

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(4) In this Article, a reference to incest includes an attempt to commit that offence and a reference to sodomy includes an attempt to commit that offence.

ARTICLE 6**Offences**

(1) If any matter is included in a publication in contravention of Article 3, the following persons shall be guilty of an offence and liable to a fine -

- (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) where the publication is a relevant programme -
 - (i) any body corporate or limited liability partnership engaged in providing the programme service in which the programme is included, and
 - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
- (c) in the case of any other publication, any person publishing it.

(2) Where a person is charged with an offence under this Article in respect of the inclusion of any matter in a publication, it shall be a defence, subject to paragraph (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the sexual offence is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person

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giving the consent, with intent to obtain consent or that the person was under the age of 16 at the time when it was given.

(4) Where a person is charged with an offence under this Article, it shall be a defence to prove that, at the time of the alleged offence, he was not aware and neither suspected nor had reason to suspect, that the publication included the matter in question.

(5) Where -

- (a) a person is charged with an offence under this Article; and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of Article 3(1),

it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

(6) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

ARTICLE 7**Offences by bodies corporate, etc.**

(1) Where an offence under Article 6 committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company;
or
- (b) any person purporting to act in any such capacity,

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the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

ARTICLE 8

Prohibitions, etc. in other enactments

Nothing in this Law shall affect any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a relevant programme.

ARTICLE 9

Courts-martial

(1) This Law shall have effect with the modifications set out in paragraph (2) in any case where, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as those Acts from time to time have effect in the Island by virtue of any Order in Council, a person is charged with a sexual offence.

- (2) The modifications are -
- (a) any reference to a trial shall be read as a reference to a trial by court-martial;
 - (b) in Article 1(5), for sub-paragraphs (a) and (b) there shall be substituted the words “he is charged, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as those Acts from time to time have effect in the Island by virtue of any Order in Council, with a sexual offence”;

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- (c) in Article 4(1), any reference to the Royal Court, in relation to the person charged with a sexual offence, shall be read as a reference to the judge advocate appointed to conduct proceedings under that paragraph relating to the offence, whether or not he is also appointed to conduct other preliminary proceedings relating to the offence; and
- (d) in Article 4(2), any reference to the Royal Court shall be read as a reference to the judge advocate appointed to be a member of the court-martial.

(3) Where any provision of an Act referred to in this Article is repealed and re-enacted, with or without modifications, by a provision of another Act having effect in the Island, references in this Article, and in the modifications made by it, to the provision so repealed and re-enacted shall be construed as references to the provision so re-enacted, as it has effect in the Island.

ARTICLE 10

Regulations

The States may by Regulations amend the definitions “publication” and “relevant programme” in Article 1(1).

ARTICLE 11

Repeal

The Criminal Justice (Anonymity in Rape Cases) (Jersey) Law 1992³ shall be repealed.

³ Volume 1992-1993, page 81.

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ARTICLE 12

Citation and commencement

This Law may be cited as the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002 and shall come into force on the seventh day after it is registered.

M.N. DE LA HAYE

Deputy Greffier of the States.