



Jersey

DRAFT CRIME (PREJUDICE AND PUBLIC DISORDER) (JERSEY) LAW 201-

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DRAFT CRIME (PREJUDICE AND PUBLIC DISORDER) (JERSEY) LAW 201-

A LAW to provide for new criminal offences and increased sentencing powers in relation to criminal behaviour motivated by prejudice against certain protected groups of people, to create new offences relating to public order, to consolidate existing offences on disorderly conduct, to enable Centeniers to inflict and levy fines for certain additional minor offences and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

PART 1

PRELIMINARY

1 Interpretation

(1) In this Law –

“dwelling” means any structure or part of a structure occupied as a person’s home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means;

“motor vehicle” has the same meaning as in the Motor Vehicle Registration (Jersey) Law 1993;

“prejudice” means hostility towards a person based on religion or any characteristic listed in Schedule 1 to the Discrimination (Jersey) Law

2013 (other than paragraphs 3, 6 and 7) as a characteristic protected from discrimination under that Law;

“programme” means any item included in a programme service;

“programme service” has the same meaning as in section 200 of the Broadcasting Act 1990 as it extends to Jersey;

“public theatrical performance” includes any theatrical performance in a public place and or to which the public or a section of the public are permitted to attend, whether on payment or otherwise;

“public place” includes any highway and any other premises or place to which, at the material time, the public have or are permitted to have access, whether on payment or otherwise;

“recording” means any record from which visual images or sounds may, by any means, be reproduced and “play” and “show” and related expressions, in relation to a recording, are to be construed accordingly;

“script”, in relation to a theatrical performance, means the text relating to the performance (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not;

“theatrical performance” means any dramatic piece, whether involving acting, singing, playing a musical instrument, dancing or other entertainment –

- (a) in which one or more live actors or performers take part; and
- (b) that is performed, or is intended for performance, before an audience;

“written material” includes any sign or other visual representation.

(2) References in this Law to –

- (a) the publication or distribution of written material are to its publication or distribution to the public or a section of the public;
- (b) the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

PART 2

OFFENCES MOTIVATED BY PREJUDICE

2 Increase in sentences for offences motivated by prejudice

- (1) This Article applies where a court (whether at first instance or on appeal) is considering the seriousness of an offence and considers, on its own motion, on an application by or on behalf of the Attorney General or by the person presenting the defendant in the Magistrate’s Court, that –
 - (a) at the time of committing the offence or immediately before doing so, the offender demonstrated prejudice towards the victim; or
 - (b) the offence was motivated wholly or partly by prejudice.
- (2) Where this Article applies the court –

- (a) must treat that motivation as an aggravating factor; and
- (b) must state in open court that the offence was so aggravated.

3 Use of words or behaviour or display of written material

- (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material that is threatening, abusive or insulting, commits an offence if –
 - (a) the person intends by that action to stir up prejudice; or
 - (b) having regard to all the circumstances prejudice is likely to be stirred up by that action.
- (2) An offence under this Article may be committed in a public or a private place.
- (3) However, no offence is committed where the words or behaviour are used or the written material is displayed –
 - (a) by a person inside a dwelling; and
 - (b) are not heard or seen, as the case may be, except by persons inside that or any other dwelling.
- (4) In proceedings for an offence under this Article it is a defence for a person to prove that he or she was inside a dwelling and had no reason to believe that that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.
- (5) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action, does not commit an offence if the person proves that he or she did not intend his or her words or behaviour, or the written material, to be threatening, abusive or insulting and was not aware that they might be so.
- (6) This Article does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

4 Publishing or distributing written material

- (1) A person who publishes or distributes written material that is threatening, abusive or insulting commits an offence if –
 - (a) the person intends by that action to stir up prejudice; or
 - (b) having regard to all the circumstances prejudice is likely to be stirred up by that action.
- (2) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action, does not commit an offence if the person proves that he or she was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

5 Distributing, showing or playing a recording

- (1) A person who distributes, or shows or plays, a recording of visual images or sounds that are threatening, abusive or insulting commits an offence if –
 - (a) the person intends by that action to stir up prejudice; or
 - (b) having regard to all the circumstances prejudice is likely to be stirred up by that action.
- (2) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action, does not commit an offence if the person proves that he or she was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
- (3) This Article does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

6 Broadcasting or including programme in programme service

- (1) A person mentioned in paragraph (2) commits an offence where a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service if –
 - (a) the person intends by that action to stir up prejudice; or
 - (b) having regard to all the circumstances prejudice is likely to be stirred up by that action.
- (2) The persons are –
 - (a) the person providing the programme service;
 - (b) any person by whom the programme is produced or directed; and
 - (c) any person by whom offending words or behaviour are used.
- (3) If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up prejudice, it is a defence for the person to prove that –
 - (a) he or she did not know and had no reason to suspect that the programme would involve the offending material; and
 - (b) having regard to the circumstances in which the programme was included in a programme service, it was not reasonably practicable for him or her to secure the removal of the material.
- (4) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action does not commit an offence if the person proves that he or she did not know and had no reason to suspect –
 - (a) that the programme would be included in a programme service; or
 - (b) that the circumstances in which the programme would be so included would be such that prejudice would be likely to be stirred up.
- (5) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up

by that action does not commit an offence if the person proves that he or she did not know and had no reason to suspect –

- (a) that a programme involving the use of the offending material would be included in a programme service; or
 - (b) that the circumstances in which a programme involving the use of the offending material would be so included, or in which a programme so included would involve the use of the offending material, would be such that prejudice would be likely to be stirred up.
- (6) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action does not commit an offence if the person proves that he or she did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

7 Public theatrical performance

- (1) If a public theatrical performance is given that involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance commits an offence if –
 - (a) that person intends by that action to stir up prejudice; or
 - (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) prejudice is likely to be stirred up by that action.
- (2) If a person presenting or directing the performance is not shown to have intended to stir up prejudice, it is a defence for that person to prove that he or she did not know and had no reason to suspect that –
 - (a) the performance would involve the use of the offending words or behaviour;
 - (b) the offending words or behaviour were threatening, abusive or insulting; or
 - (c) the circumstances in which the performance would be given would be such that prejudice would be likely to be stirred up.
- (3) This Article does not apply to a theatrical performance given solely or primarily for one or more of the following purposes –
 - (a) rehearsal;
 - (b) making a recording of the performance; or
 - (c) enabling the performance to be included in a programme service.
- (4) However, if it is proved that the performance was attended by persons other than those directly connected with –
 - (a) the giving of the performance; or
 - (b) the doing of the things mentioned in paragraph (3)(b) or (c),unless the contrary is shown, the performance is taken not to have been given solely or primarily for the purposes mentioned in paragraph (3).
- (5) For the purposes of this Article –

- (a) a person is not be treated as presenting a theatrical performance by reason only of his or her taking part in it as a performer;
 - (b) a person taking part as a performer in a theatrical performance directed by another person is treated as a person who directed the performance if, without reasonable excuse, he or she performs otherwise than in accordance with the other person's direction; and
 - (c) a person is taken to have directed a theatrical performance given under his or her direction even though that he or she was not present during the performance.
- (6) A person is not be treated as aiding or abetting the commission of an offence under this Article by reason only that the person takes part in a theatrical performance as a performer.

8 Evidence of offence under Article 7

Where a theatrical performance was based on a script then, in any proceedings for an offence under Article 7 alleged to have been committed in respect of that performance –

- (a) an actual script on which that performance was based is admissible in evidence of what was performed and of the manner in which the performance or any part of it was given; and
- (b) if such a script is given in evidence on behalf of any party to the proceedings then, except in so far as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance is taken to have been given in accordance with that script.

9 Power to make copies of scripts

- (1) If an officer above the rank of Chief Inspector has reasonable grounds for suspecting –
- (a) that an offence under Article 7 has been committed by any person in respect of a theatrical performance; or
 - (b) that a theatrical performance is to be given and that an offence under Article 7 is likely to be committed by any person in respect of that performance,
- the officer may make an order in writing relating to that person and that performance.
- (2) Every order made under this Article must –
- (a) be signed by the officer by whom it is made;
 - (b) name the person to whom it relates; and
 - (c) describe the performance to which it relates in a manner sufficient to enable that performance to be identified.
- (3) Where an order has been made under this Article, any officer on production of the order (if so required) require the person named in the order –
- (a) to produce, if it exists, the script on which the performance was or, as the case may be, will be based; and

- (b) if so produced and available only in written form, allow the script to be copied.
- (4) A person who, without reasonable excuse, contravenes paragraph (3) commits an offence and liable to a fine of level 3 on the standard scale.
- (5) Where, in the case of a theatrical performance based on a script, a copy of a script on which that performance was based has provided to an officer under paragraph (3), Article 8 applies in relation to that copy as it applies in relation to the original script.
- (6) In this Article “officer” means an officer of the States of Jersey Police Force.

10 Power to attend theatrical performance

- (1) The Bailiff or a Jurat may issue a warrant if satisfied, by evidence on oath, that there are reasonable grounds for suspecting, as regards any premises specified in the information –
 - (a) that a theatrical performance is to be given at those premises; and
 - (b) that an offence under Article 7 is likely to be committed in respect of that performance.
- (2) A warrant issued under paragraph (1) empowers any police officer at any time within one month from the date of the warrant to enter the premises and attend any theatrical performance that may be given there.

11 Possession of inflammatory material

- (1) A person who has in his or her possession written material that is threatening, abusive or insulting, or a recording of visual images or sounds that are threatening, abusive or insulting, with a view to –
 - (a) in the case of written material, its being displayed, published, distributed, or included in a programme service, whether by himself, herself or another; or
 - (b) in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself, herself or another,commits an offence if the person intends by that action to stir up prejudice or, having regard to all the circumstances, prejudice is likely to be stirred up by that action.
- (2) For the purpose of paragraph (1) regard must be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as the person has, or it may reasonably be inferred that he or she has, in view.
- (3) A person who did not intend by his or her action to stir up prejudice but having regard to all the circumstances prejudice is likely to be stirred up by that action does not commit an offence if the person proves that he or she was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

12 Power to order forfeiture

- (1) A court by or before which a person is convicted of –
 - (a) an offence under Article 3 relating to the display of written material; or
 - (b) an offence under Article 4, 5 or 11,must order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.
- (2) An order under paragraph (1) does not take effect, until the expiry of the time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned.
- (3) Until an order under paragraph (1) takes effect the written material or recording to which it relates must be retained by the police or by the court and after it takes effect the police or the court must arrange for its destruction,.
- (4) For the purposes of paragraph (2) –
 - (a) an application for a case stated or for leave to appeal is treated as the institution of an appeal; and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

13 Protection of freedom of expression

- (1) Nothing in this Part is to be read or given effect in a way that prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule or insult of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.
- (2) For clarity of this Part any discussion or criticism of –
 - (a) sexual conduct or practices or the urging of persons to refrain from or modify that conduct or practice; or
 - (b) marriage that concerns the sex of the parties to marriage,is not of itself to be taken to be threatening or intended to stir up prejudice.

14 Savings for reports of States Assembly or judicial proceedings

- (1) Nothing in this Part applies to a fair and accurate report of the proceedings of the States Assembly.
- (2) Nothing in this Part applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report

of them contemporaneously, as soon as publication is reasonably practicable and lawful.

15 Penalty

A person guilty of an offence under this Part (other than Articles 2 or 9(4)) is liable to imprisonment for a term of 5 years and to a fine.

PART 3

PUBLIC ORDER OFFENCES

16 Riot

- (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose commit riot.
- (2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.
- (3) The common purpose may be inferred from conduct.
- (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (5) Riot may be committed in private as well as in public places.
- (6) A person guilty of riot is liable to imprisonment for a term of 10 years and to a fine.

17 Affray

- (1) A person commits affray if the person uses or threatens unlawful violence towards another and his or her conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.
- (2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of paragraph (1).
- (3) For the purposes of this Article a threat cannot be made by the use of words alone.
- (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (5) Affray may be committed in private as well as in public places.
- (6) A person guilty of affray is liable to imprisonment for a term of 5 years and to a fine.

18 Threats to kill [or cause serious harm][, rape or cause serious physical injury]

A person who, without lawful excuse, makes to another person a threat by any means, intending that the other person would believe that it would be carried out, to kill [or cause serious harm][, rape or cause serious physical injury] to that other person or a third person commits an offence and is liable to a term of imprisonment of 10 years and to a fine.

Note: words in square brackets are alternatives for the purposes of consultation

19 Threatening, abusive or disorderly conduct

- (1) A person commits an offence if he or she –
 - (a) uses words that are threatening or abusive;
 - (b) behaves in a threatening or abusive way; or
 - (c) engages in disorderly behaviour,
within the hearing or sight of another person likely to be caused alarm or distress by the words or behaviour.
- (2) An offence under paragraph (1) may be committed in a public or a private place (including a dwelling), except that no offence is committed if the words, or behaviour, are used by a person inside a dwelling and the other person is also inside that dwelling.
- (3) A person commits an offence under paragraph (1) only if –
 - (a) in a case referred to in paragraph (1)(a) or (b), he or she intends his or her words, or behaviour, to be threatening or abusive, or is aware that the words, or the behaviour, may be threatening or abusive; or
 - (b) in a case referred to in paragraph (1)(c), he or she intends his or her behaviour to be, or is aware that it may be, disorderly.
- (4) For the purposes of this Article a person whose awareness is impaired by intoxication is taken to be aware of that of which he or she would be aware if not intoxicated, unless he or she shows either that his or her intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.
- (5) It is a defence for the accused to prove that –
 - (a) he or she had no reason to believe that there was any person within hearing or sight who was likely to be caused alarm or distress;
 - (b) he or she was inside a dwelling and had no reason to believe that the words or behaviour used would be heard or seen by a person outside that dwelling; or
 - (c) his or her conduct was reasonable.
- (6) A person guilty of an offence under paragraph (1) is liable to imprisonment for a term of 12 months and a fine of level 3 on the standard scale.

20 Harassment

- (1) A person commits an offence if he or she pursues a course of conduct –
 - (a) that amounts to harassment of another person; and
 - (b) that he or she knows, or ought to know, amounts to harassment of another person.
- (2) For the purposes of this Article, a person ought to know that his or her course of conduct amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.
- (3) A person guilty of an offence under paragraph (1) is liable to imprisonment for a term of 5 years and to a fine.
- (4) In this Article, to harass a person includes to alarm the person or to cause the person distress.
- (5) In this Article and Article 21, a course of conduct –
 - (a) includes speech;
 - (b) includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion; and
 - (c) does not include conduct that occurs on only one occasion.

21 Defence to charge of harassment

It is a defence for a person accused of an offence under Article 20(1) in relation to a course of conduct pursued by the person to prove that –

- (a) the course of conduct was pursued for the purpose of preventing or detecting an offence;
- (b) the course of conduct was pursued under an enactment or customary law or so as to comply with a condition or requirement imposed by a person under an enactment or customary law; or
- (c) in the particular circumstances the pursuit of the course of conduct was reasonable.

22 Restraining orders

- (1) If a court convicts a person of an offence, a person presenting or prosecuting the case against the convicted person may apply to the court to make a restraining order against the convicted person.
- (2) A court to which an application is made under paragraph (1) may, in addition to any other order or penalty that it may make or impose, make a restraining order against the person to whom the application relates if satisfied on the balance of probabilities that it is appropriate to do so for the purpose of protecting the victim of the offence, or any other person named in the order, from conduct by the person against whom the order is made, that would, if carried out –
 - (a) amount to harassment of the victim or other person named in the order; or

- (b) be likely to cause the victim or that other person to be in fear of being subjected to violence.
- (3) A restraining order prohibits the person against whom it is made from engaging in conduct of the kind specified in the order.
- (4) A restraining order may prohibit the driving of a motor vehicle by the person or the driving of a motor vehicle by the person other than in circumstances specified in the order, if a motor vehicle was used by the person in committing an offence under Article 20(1).
- (5) A restraining order must specify the period for which it is to remain in force (which period may be specified to indeterminate).

23 Breach of order

- (1) A person against whom an order is made under Article 22 who breaches the order commits an offence.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for a term of 5 years and to a fine.

24 Amendment or revocation of restraining order

- (1) An order under Article 22 may be amended or revoked by the court that made the order, on the application of –
 - (a) the Attorney General; or
 - (b) the person against whom the order was made.
- (2) The court to which an application is made under paragraph (1) may amend or revoke the order if (and to the extent that) the court is satisfied that it is appropriate to do so.

25 Power to inflict and levy fines summarily

- (1) If a person is charged with –
 - (a) an offence under Article 19 (threatening, abusive or disorderly conduct); or
 - (b) the customary Law offences of being drunk and disorderly, committing a breach of the peace or common assault,and accepts the decision of a Centenier having jurisdiction in the matter, that Centenier may inflict and levy summarily a fine of level 1 on the standard scale.
- (2) A Centenier who has levied a fine under this Article –
 - (a) must give a receipt for it; and
 - (b) must as soon as reasonably practicable, inform the Chief Officer of the States of Jersey Police Force of the details of the fine.
- (3) A fine levied under this Article is to be awarded –
 - (a) as to one half, for the benefit of the annual income of the States; and

- (b) as to the other half, for the benefit of the parish in which the Centenier who levied it had jurisdiction.
- (4) Regulations may amend this Article so as to vary the offences mentioned in paragraph (1).

PART 4

MISCELLANEOUS

26 Parties to offences

A person who aids, abets, counsels or procures the commission of an offence under this Law is also guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

27 Offences by bodies corporate etc.

- (1) Where an offence under this Law committed by a body corporate or a limited liability partnership 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 body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the body corporate or partnership to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

28 Repeal and minor amendments

- (1) The Loi (1797) sur les rassemblements tumultueux and the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 are repealed.
- (2) After Article 28 (Penalties) of the Misuse of Drugs (Jersey) Law 1978, there is inserted –

“28A Power to inflict and levy fines summarily

- (1) If a person is charged with an offence under Article 8(1) (restriction on possession of controlled drugs) in relation to the possession of a Class B drug or a Class C drug and accepts the decision of a Centenier having jurisdiction in the matter, that Centenier may inflict and levy summarily a fine of level 1 on the standard scale.
- (2) A Centenier who has levied a fine under this Article –
 - (a) must give a receipt for it; and

- (b) must as soon as reasonably practicable, inform the Chief Officer of the States of Jersey Police Force of the details of the fine.
- (3) A fine levied under this Article is to be awarded –
 - (a) as to one half, for the benefit of the annual income of the States; and
 - (b) as to the other half, for the benefit of the parish in which the Centenier who levied it had jurisdiction.”.
- (3) In Part 2 of Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003, after paragraph 17 there is inserted –
 - “18. Article 11 of the Crime (Prejudice and Public Disorder) (Jersey) Law 201-”.

29 Abolition of customary law offence

The customary law offence of affray is abolished.

30 Citation and commencement

This Law may be cited as the Crime (Prejudice and Public Disorder) (Jersey) Law 201- and shall come into force 7 days after its registration.