

REVIEW OF CRIMINAL JUSTICE POLICY IN JERSEY

Final Report prepared for the Home Affairs Committee

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He is author of *Prisons and the Process of Justice* (1984), *Growing out of Crime* (1986), *Criminal Justice and the Pursuit of Decency* (1992) and *Transforming Criminal Policy* (1996). He is co-editor of *Capital Punishment, Global Issues and Prospects* (1996) and *Criminal Policy in Transition* (2000). Between 1984-1999 he was chair of the Howard League for Penal Reform. He has served on the editorial boards of a number of criminal justice journals and over recent years has undertaken a variety of consultancy tasks, including being an expert member of the Council of Europe's Committee on the Prevention of Torture and Inhumane Treatment. Since 2001 he has been a member of the Parole Board for England and Wales.

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1 INTRODUCTION

In November 2001, I was invited by the Home Affairs Committee to carry out a review of Jersey's criminal justice policy. By means of its terms of reference the Review was asked, "to concentrate on the following aspects of the criminal justice process:

- the values that underpin criminal justice policy
- local trends in crime, victimisation and the fear of crime
- methods of preventing and addressing offending and recidivism, particularly amongst young people
- the significance of substance misuse offences
- the structure of the criminal justice system and how effectively the agencies within it interact
- sentencing options and the balance between custodial and non-custodial measures

As part of the Review, recommendations may be made on any aspect of the above. As appropriate, comment may be made on any other areas which the reviewer considers to be relevant to criminal justice policy in Jersey."

I have been extraordinarily well served by the Review Team. Assistance of the highest order on all aspects has been given by Antonia Jameson LLB, MA and a barrister practising in England. Further research assistance has been ably provided by Mark Telford, LLB, MSc and PhD candidate, Stuart Macdonald, LLB and PhD candidate and Mark T Bamford, LLB. In the final stages the production of this report was superbly managed by Aloma Hack.

As Director of the Home Affairs Department, Steven Austin-Vautier played an invaluable role in facilitating the work of the Review. Always respectful of the Review's independence, he efficiently paved the way to persons and data. His sharp eye for detail and constant encouragement for the task at hand was crucial to our work.

The Review also greatly benefited from a Steering Group consisting of:

Senator W Kinnard - Vice-President, Home Affairs Committee

Jurat P Blampied OBE - retired Jurat of the Royal Court

M Kirby - Governor, HMP La Moye

B Heath - Chief Probation Officer

Centenier E Gallichan - Chairman, Centeniers' Association

Crown Advocate C Whelan (representing the Attorney-General)

G Power QPM - Chief Officer, States of Jersey Police Service

R Fairhurst - Headmaster, Hauté Vallee School

I Rogan - Executive Officer, Crime and Community Safety Strategy

C Audrain - member of the Youth Court Panel

S Austin-Vautier - Director, Home Affairs Department

The Steering Group's function was to provide information and to offer informed comment on the main issues under consideration. It is not the case that the Steering Group shared in the formulation of recommendations or that individual members support all of them. The Review commenced its work on February 1 2002 when I met with the Home Affairs Committee, followed later that same day by a well-attended meeting of invited persons in St Helier. Over the subsequent months more than thirty key participants from across the criminal justice process have been interviewed, discussions held with a variety of other individuals and groups and we have been able to observe aspects of the process including the courts, Parish Hall Enquiries and HM Prison La Moye. The Review also gained from the results of a survey of views held by a wider group of participants, from responses submitted by members of the public and from a survey organised at the request of the Governor by inmates at the Prison. Finally, an

extensive amount of material relating to criminal justice and related policy issues was made available to the Review team. We are indebted to persons from across the criminal justice process who put together reliable sets of crime and criminal justice data. This effort was encouraged and co-ordinated by two meetings, attended by key officers, which were convened to examine the status and gaps with respect to data on crime and criminal justice in Jersey.

The absence of criminal justice policy

In large part, the Review was commissioned because it was widely agreed that the Island has no coherent criminal justice policy. We did not encounter any suggestion that challenged this presupposition. Traditionally, the Island has not perhaps been well equipped to develop strategic and co-ordinated policy.¹ This situation has been especially striking with reference to criss-crossing issues such as criminal justice where policy is most noticeable in its absence. Indeed criminal justice has been described to us as lacking in terms of both political responsibility and accountability and is as an arena perhaps least under control in terms of overall expenditure by the States.

An important although tentative step to address this situation was made at the end of 1999 with the placing of responsibility for the States of Jersey Police, the Fire and Rescue Service, the Prison, Customs and Immigration within the auspices of a newly established Home Affairs Committee. For budgetary but not for operational matters the Probation and After -Care Service was also placed within the ambit of the Committee. While the Home Affairs Committee has taken the lead for the Crime and Community Safety Strategy (initiated by the former Defence Committee and adopted by the States in November 1999) it was apparent that this initiative, a rare if not unique example of co-ordinated aspirations, has remained rather thin in terms of strategic implementation. Furthermore, despite a joint report by the Home Affairs and Health and Social Services Committees,² the Crime and Community Safety and Substance Misuse Strategies have remained largely detached from progress made in addressing drug misuse.

These issues, expressed in general terms, were to the fore of considerations addressed by the Review Panel on the Machinery of Government in Jersey which reported in December 2000 and now the reforms flowing from this have been agreed by the States. A central feature of these reforms is the need for a more 'joined-up' form of government. The States accepted, and the debate about reform over the last two years has had as its starting-point, that the reforms arose from 'a widespread perception that the Island's government is inefficient, indecisive, poorly co-ordinated, and out of touch with the

¹ For an excellent exposition see, Le Hérisier, R., 'Jersey: exercising executive power in a non-party system', *Public Administration and Development* (1998) 18, 169-184

demands and pressures of a modern society'.³ The States has now clearly agreed that this 'silo mentality' must be overcome by means of the proposed constitutional reforms and other measures. This Review, coming as it does two or perhaps three years before the proposed ministerial structure takes effect, may play a useful role that extends beyond criminal justice and tackles issues that cut across established policy domains.

Context for the Review

The Review was described as being especially timely by several of our interviewees. Brief mention has already been made of the constitutional reconstruction now being taken forward, the most comprehensive and radical since 1948. As a result of decisions now taken by the States, Home Affairs will be one of ten ministerial departments of Government with, *inter alia*, specific responsibility for criminal justice policy. The remit of the new Home Affairs Department is a matter of cardinal importance with regards to taking forward the matters considered by this Review.

A second contextual feature of paramount importance is the agreed budget deficit of no more than £7 million in 2003 and which is resulting in 2% cuts by some committees, including Home Affairs.⁴ This new budgetary situation presents difficult fiscal choices which in turn enhance the need for a more strategic approach to policy-making. The days are over when buoyant reserves enabled Jersey to address its public expenditure objectives with relative ease. In this sense, the implications of the current fiscal situation reinforce the far-reaching constitutional reforms embarked upon in the wake of the Review Panel on the Machinery of Government. The situation is made the more challenging because of growing international political pressure against the Island's "offshore" tax regime and its relationship in this and other respects with the United Kingdom Government. A commentary on 'micro-states' put the matter rather neatly. 'Somewhat paradoxically, Jersey's association with the British Crown preserved the Island's distinctive legal and political systems, which became valuable assets when

²Home Affairs Committee and Health and Social Services Committee, *Presidents' Policy Group Report on the Crime and Community Safety and Substance Misuse Strategies 1999-2004*

³ Policy and Resources Committee, *Machinery of Government: Proposed Departmental Structure and Transitional Arrangements*, April 2002, 4

⁴ States of Jersey, *Resource Plan 2002*, 2002, iii-iv

Jersey set up as an offshore financial centre ... The micro-state's external relations, no less than its domestic policies, create significant tasks and stresses for its governing institutions.⁵

Third, there is the distinctive nature of Jersey's rich cultural, constitutional and legal traditions, which were described to us as 'a patchwork of interacting threads'. Jersey's constitution (as is the case for the other Channel Islands) is both home made and *sui generis*.⁶ To the forefront of this heritage are the Island's close, parochial qualities. Not only has Jersey been able to rely on concise intelligence networks throughout the local community but also upon endemic community systems that were designed to promote unity and tackle minor problems as they arose at the parochial level. Indeed, of particular relevance to the Review is the place of the twelve parishes with respect to governance, social control and the everyday life of the Island. While the power base may have now largely shifted to central government the Parish and the process of Parish Hall Enquiries remain a cornerstone of the Island's approach to tackling crime and anti-social behaviour. Further significant examples of active community involvement with regards to criminal justice are the role of the Jurats within the Royal Court and the Youth Panel members in the Youth Court. Overall at the start of the twenty-first century, the influence and contribution of persons who are not professionally qualified in law or criminal justice remain very significant. Achieving a workable balance between the professional and non-professional is a theme that runs throughout this Report and it represents one of the most important challenges facing the Island's criminal justice process today.

Fourth, it is noteworthy that several new appointments have recently been made at key junctures of the criminal justice process. In addition to the creation of the Home Affairs Department and the appointment of a Director, there are new chief officers at the Prison, the States of Jersey Police and the Probation Service. Additionally, a single chief executive officer has been appointed to head the Customs & Excise and Immigration and Nationality departments. These key players, some of whom have been recruited from the

⁵ Warrington, E., 'Gulliver and Lilliput in a new world order: the impact of external relations on the domestic policies and institutions of micro-states', *Public Administration and Development*, 1998, 18, 101-105, 104

⁶ le Patourel, J.H., 'The Political development of the Channel Islands' *Transactions of La Société Guernesaise*, 1946, 27-34

United Kingdom, have injected a variety of new ideas and enthusiasm. It is clear that this new generation of leadership bodes well for the development of coherent criminal justice policy.

Jersey has embarked upon an extraordinarily exciting period of self-exploration in terms of new governmental structures and approaches to policy formulation. Included is a new willingness to address criss-crossing issues such as criminal justice. The advent of human rights legislation provides a further dimension that impacts on all aspects of public policy. The Island's worsening fiscal position at the present time has added further impetus to the need for a more strategic approach to the policy-making process.

2 PROFILE OF CRIME AND CRIMINAL JUSTICE DATA

Crime and public order offences in Jersey

‘Acts are not, they *become*. So also with crime. Crime does not exist. Crime is created. First there are acts. Then follows a long process of giving meaning to those acts’.⁷

The point being made by Nils Christie that crime is by no means an uncontested social fact reminds us to proceed with caution when embarking upon a discussion of crime trends in any society. The main source of information on crime in Jersey is the States of Jersey Police recorded crime figures.⁸ However, these data do not tell us the extent and nature of crime in Jersey. An act and/or an event occurring in Jersey will be subject to a range of judgements (moral and legal) from members of the public and from officials before it ends up being recorded as a crime in police statistics. An incident which, for whatever reason, the police do not hear about will obviously not feature in the recorded statistics.⁹ Incidents or behaviour which the public or officials decide to control (or ignore) by more informal means may also not be included.¹⁰ Moreover, police statistics will leave out those incidents where it has been decided, for whatever reasons, not to so record as crimes.¹¹ In essence, the States of Jersey recorded crime statistics represent the pool of incidents that form the starting point for the formal law enforcement process.

Accordingly, when considering the level of recorded crime it is imperative to maintain an awareness of the limitations of the data. A consideration of trends in such data presents further problems because the legal definitions and the administrative procedures for classifying incidents as crimes (for example, the counting rules) can, and

⁷ N. Christie, ‘Between civility and state’ in *The New European Criminology: Crime and Social Order in Europe*, eds. V. Ruggiero, N. South, and I. Taylor (1998) 121.

⁸ For this report we have had access to figures on recorded crime from 1992 to 2001 and on public order offences from 1994 to 2001.

⁹ It is to attempt to attain an indication of this unreported level of crime, the “dark figure”, that many jurisdictions complement their recorded police statistics with crime survey data. However, for Jersey there is only crime survey data for the year 2000.

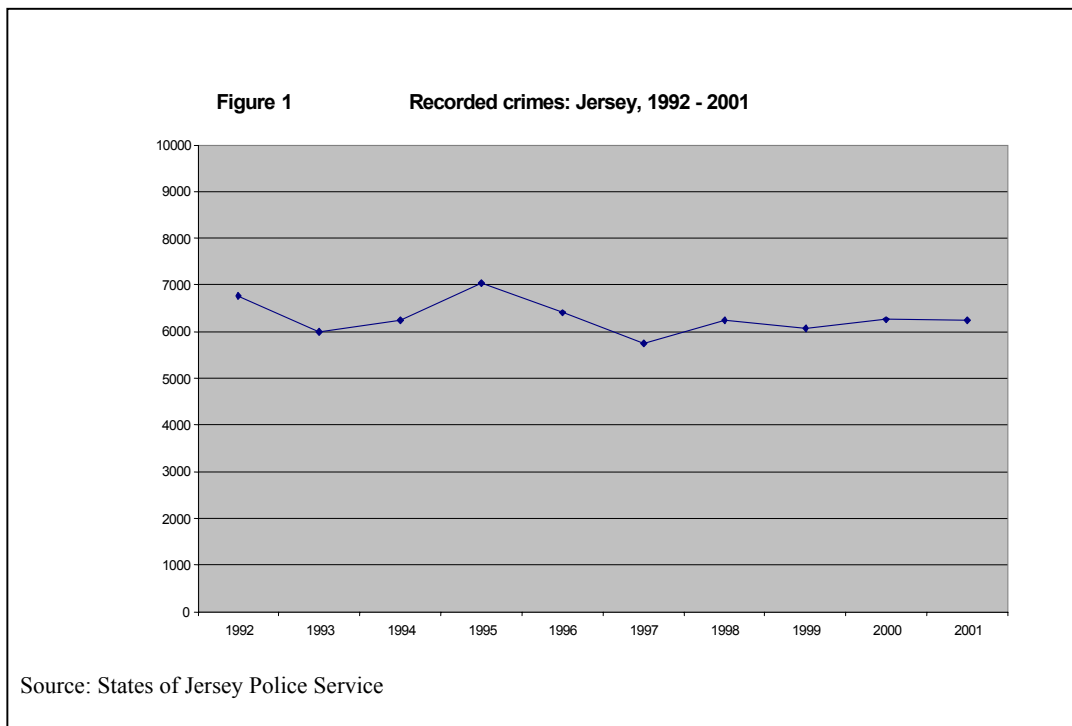
¹⁰ This may be especially important in Jersey because of the honorary police services which are inclined towards informal resolution of problematic situations.

¹¹ Although it appears that the States of Jersey Police Force is a relatively ‘high recording’ organisation compared with many forces in the United Kingdom.

have, changed over time. It is noteworthy that new counting rules were adopted by the States of Jersey Police in 2002.

Recorded crime in Jersey

With these preliminary points in mind, a useful starting point is to examine the overall level of recorded crime in Jersey. Figure 1 shows the trend in recorded crime in Jersey between 1992 and 2001. Between 1992 and 1997 there was some fluctuation in the figures. Having fallen from 6,757 in 1992 to 5,993 the following year, recorded crime (excluding public order offences) rose to reach a peak of 7,037 in 1995. Between 1995 and 1997, recorded crime fell to a low of 5,752. Since 1998, the total number of recorded offences has not fluctuated to the same extent and has more or less levelled off to an annual total of around 6,200 crimes.



Public order offences

The States of Jersey Police also maintain a computerised record of offences against public order. Figure 2 shows the trend in public order offences between 1994 and 2001. There was a steady rise in public order offences recorded by the police between 1994 and

1997, rising from 1,031 to 1,719, representing a 67 percent increase. Since then, the recorded level has dropped off and in 2001 it was 1,108, which represents a return to 1994/95 levels. It is important to be particularly cautious when considering trends in public order offences as, in contrast to most of the crime categories, they are more likely to be a direct product of the process of law enforcement. Public order offences are most often a consequence of pro-active police work whereas most crimes (with the important exception of drug offences) tend to be reported to the police by the public. Accordingly, the level of public order offending may be determined as much by the nature and extent of police activity as by changes in the behaviour of the public.¹² Consequently, if police recorded figures are to be used to provide an indication of any changes in the nature and extent of actual behaviour (and the opening paragraphs to this report have cautioned against overdoing this) recorded crimes excluding public order offences are likely to provide a better indicator.¹³



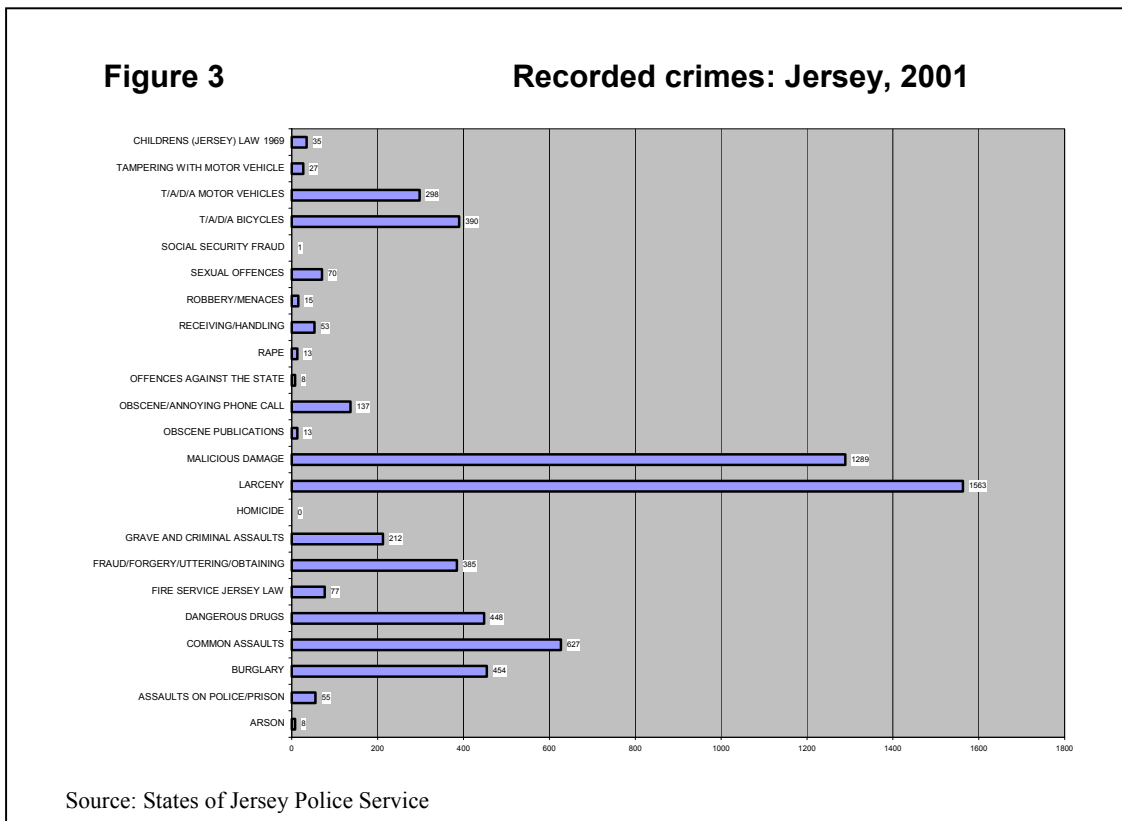
¹² In fact the States of Jersey Police Service has recently run ‘Operation Focus’, which mainly addresses public order problems.

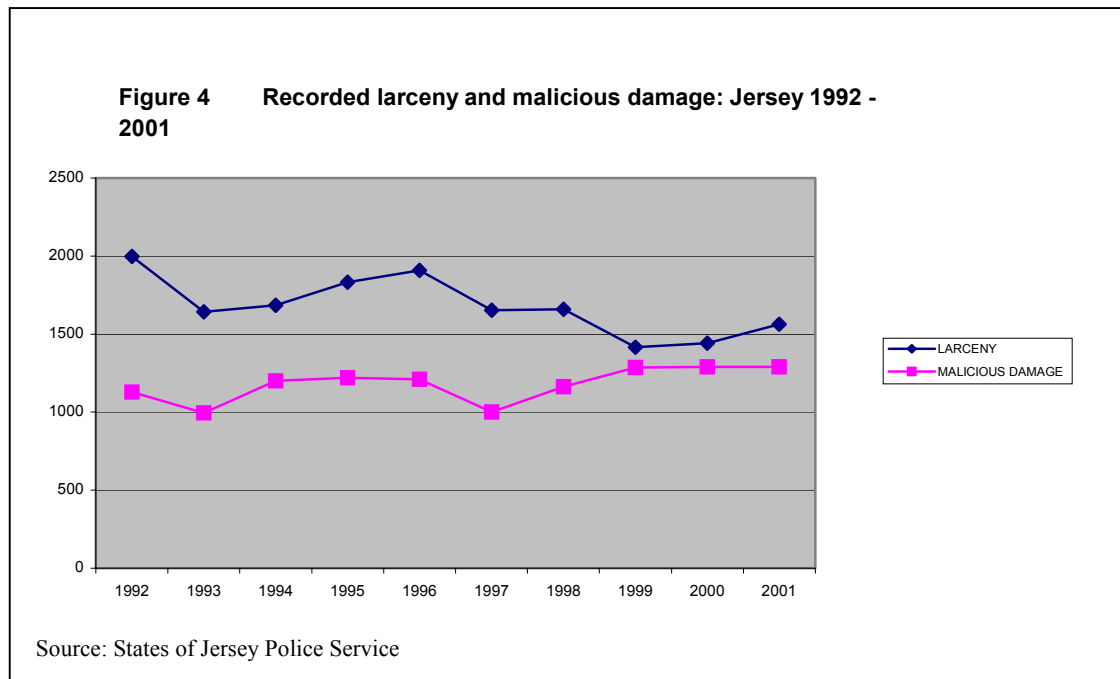
¹³ This is particularly true when combined with trend data from victimisation surveys as they do not provide a complementary perspective to the police figures on public order offences.

Breakdown of recorded crimes

Crimes of larceny and malicious damage to property predominate in the recorded crime data for each of the years available (1992-2001). This can be seen clearly in Figure 3 which shows the distribution of the main offences recorded by the police in Jersey in 2001. As shown in Figure 4, larceny accounted for over one quarter of the crimes recorded between 1992 and 2001, while malicious damage cases represented 19 percent of the total. These categories are important in proportionate terms. Between 1992-2001 recorded larceny offences initially peaked and troughed from the 1992 figure of 1,998 to 1,642 in 1993 and then peaked again at 1,908 in 1996. There then followed a steep drop to a low of 1,415 in 1999, although by 2001 the figure had again climbed to 1,563. The overall effect of this fluctuating trend over the whole period 1992-2001 has been a decline of approximately 22 percent.

Recorded instances of malicious damage cases were 1,286 in 1999 and 1,289 in 2000 and 2001, showing a remarkably consistent pattern in recent years. Over the whole period between 1992-2001 there was an increase of approximately 14 percent.





In respect of trends in other specific offences over the period the most significant increases are in the categories of assaults. 255 common assaults were recorded by the police in 1992. This increased steadily from 1993 to reach 620 in 1999. Since then, the number of assaults in the police statistics have levelled off and 627 were recorded in 2001. There were 372 more assaults in 2001 than in 1992 representing a 146% increase over the period. Similarly, assaults on police and prison staff rose from a base of 19 recorded crimes in 1992 to a peak of 93 in 1997 before falling to a level of 55 in 2001.

The COPS database¹⁴ shows that in 1992 there were a total of 292 drugs offences where a conviction (or other 'successful outcome') was achieved. This figure increased by 93% to 563 in 2001. Of these 563 drugs offences, the COPS data reveals that 350 (62%) were for offences involving cannabis. In 1992, 211 (72%) of the 292 drugs offences involved cannabis. Against this decline in the proportion of drugs offences involving cannabis is the increase which COPS reveals in offences involving heroin. While only 2 of the 292 drugs offences in 1992 involved heroin, this figure grew to 110 of the 563 offences in 2001 (20%). Figure 5 also shows a noticeable decline in the proportion of drugs offences involving amphetamine sulphate (8% in 1992 to 2% in

¹⁴ COPS (Convictions or Pending System) contains information on every *offence* for which there is an outcome at the Parish Hall Enquiry, the Magistrate's Court, the Youth Court and the Royal Court.

2001), and an increase in the proportion of offences involving MDMA (ie. Ecstasy, from 3% in 1992 to 10% in 2001).

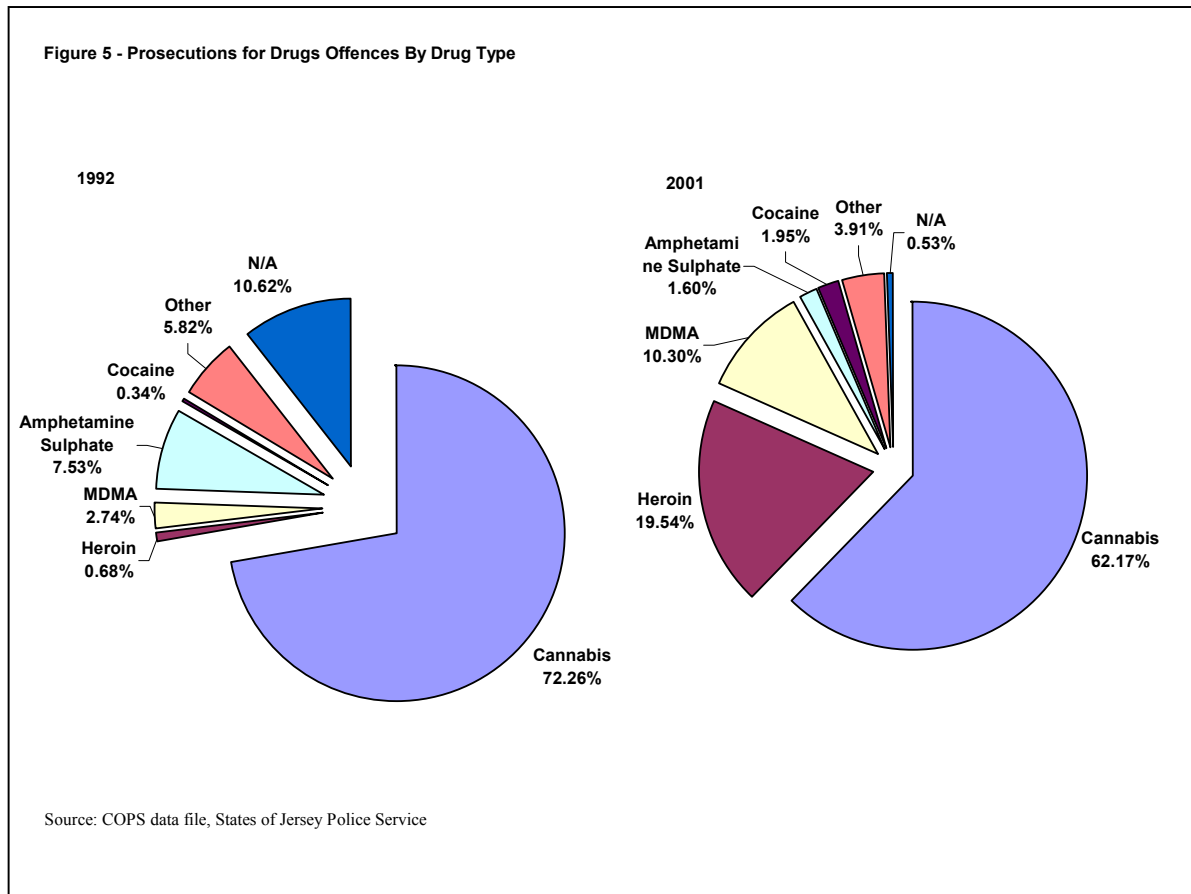
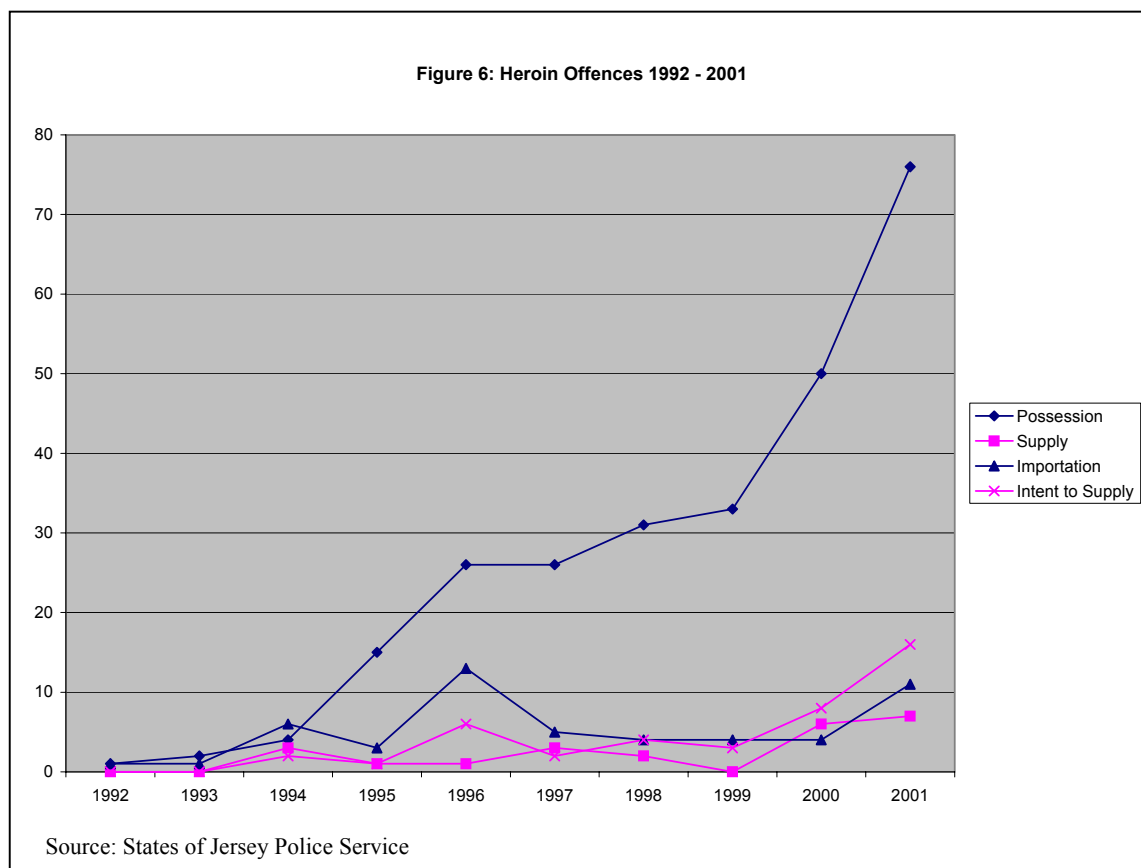


Figure 6 shows that the number of convictions (or other ‘successful outcomes’) for possession of heroin has grown steadily each year since 1992, from just 1 in 1992 to 76 in 2001. Having peaked at 13 in 1996, the number of convictions for importation of heroin fell to 4 for each year from 1998-2000, but rose again to 11 in 2001. A similar trend can be seen in relation to intent to supply, which peaked at 6 in 1996, fell to 2 in 1997, but then rose again to 16 in 2001. Finally, the number of convictions for supply of heroin had not risen beyond 3 in any one year from 1992-1999. However, in 2000 the number of convictions rose to 6, and then again to 7 in 2001.



The drug trends revealed by the COPS data may be compared to the figures for the number of persons appearing before the Magistrate’s Court for drugs offences. As shown in Tables 1 and 2, in 1992 a total of 204 people appeared before the Magistrate’s Court for either possession, possession with intent, supply or importation of drugs.¹⁵ Of these, 171 (84%) appeared for offences relating to class B drugs. Whilst the number of people appearing before the Magistrate’s Court for drugs offences has remained relatively stable, 206 in 1996 and 220 in 2001, the trend has been for people to appear for more serious offences¹⁶. So in 1996, only 146 (71%) defendants appeared before the Magistrate’s Court in respect of offences relating to class B drugs, and by 2001 this figure had fallen to 116 (53%)¹⁷. However, the number of people appearing before the Magistrate’s Court

¹⁵ Other drugs offences (producing drugs, misuse of drugs Articles 9 & 18, proceeds of drugs, and utensils) have not been included. For the years on which data is available (1992, 1996, 2001), the total number of persons appearing for these offences does not exceed 9 (in 1996)

¹⁶ This decline seems likely to reflect a Directive that more such cases be handled at the level of the Parish Hall Enquiry. {see below p.27}

¹⁷ As noted {below p.45} the sentencing powers of the Magistrate’s Court were increased in October 2000.

for offences relating to class A drugs had risen, from 33 in 1992 (16%) to 60 in 1996 (29%) and 104 in 2001 (47%). Of these 104, 56 appeared for possession of a class A drug, compared to 10 in 1992, whilst 29 appeared for importation of a class A drug, compared to an equivalent figure of just 6 in 1992. In contrast to this overall increase in the numbers of people appearing before the Magistrate’s Court in respect to Class A drugs offences, only 4 people appeared for supply of a class A drug in 2001, compared to 10 in 1992.

Table 1 – Persons appearing before the Magistrate’s Court for drugs offences by drug class

	1992	1996	2001
Possession/Possession with Intent/Supply/Importation of a Class B Drug	171 (84%)	146 (71%)	116 (53%)
Possession/Possession with Intent/Supply/Importation of a Class A Drug	33 (16%)	60 (29%)	104 (47%)
Total	204	206	220

Table 2-Persons appearing before the Magistrate’s Court for drugs offences by drug class and offence

		1992	1996	2001
Class A Drugs	Possession	10	29	56
	Possession With Intent	7	5	15
	Supply	10	6	4
	Importation	6	20	29
	Total	33	60	104
Class B Drug	Possession	117	97	92
	Possession With Intent	3	8	5
	Supply	9	11	5
	Importation	42	30	14
	Total	171	146	116

Source: Magistrate’s Court records

Criminal justice data

It has only been possible to incorporate a limited amount of criminal justice data into this report, primarily because of the paucity of available material. Due to the considerable efforts of the Director and colleagues in the Home Affairs Department we are in possession of Magistrate’s Court statistics for the three years 1992, 1996 and 2001, and the Youth Court from 1997 to 2001. These data sets describe the number of persons convicted in these courts and the use of the available sentences. The figures also provide

a breakdown of the main offence that each defendant was convicted of in these years. These data permit us to say something about any changes in the numbers of people and the nature of offences passing through each of the courts. They also enable descriptions of any changes in the use of various penalties.

Obviously a limitation of these data is that we are prevented from saying anything about the practice of the courts for the years for which we do not have figures. Moreover, although we can study changes in the proportionate use of different sentences, these court data will not allow us to measure any changes there may have been in the *length* of sentence handed out by the courts over the period.

Along with the somewhat patchy state of the court data, a major problem we have in presenting an adequate statistical picture of criminal justice in Jersey is the paucity of statistical material on the work of Parish Hall Enquiries.

An attempt has been made, in collaboration with research officers in the States of Jersey Police Force, to make use of COPS. Although a potentially rich source of statistical material, at present the data are organised in such a way that it is only possible to produce figures for *offences*. The problem with this is that it is difficult to break these data down into, for example, the number of *people* who received a custodial sentence for a particular offence category. The problem arises because one person can commit multiple offences. An example may help to clarify this point. A figure produced from COPS as presently organised in Microsoft Excel produces a pivot table suggesting that in 2001 there were twenty-two offences of cannabis possession that resulted in custodial sentences. However, it is not possible to tell (at least without doing a manual count) what other charges each defendant may have faced at the same time and how these might have impacted upon the sentence imposed. Analyses of COPS data hold out some promise of useful disaggregation. Although, unless there is a way found to use COPS to count only the principal offence for which the defendant is charged and the principal sentence handed out by the court or disposition at the Parish Hall, it will be difficult to produce meaningful data for analysis.

Again, taking drugs as an example, COPS tells us that in 1992 there were a total of 292 drugs offences where a conviction (or other 'successful outcome') was achieved, with this figure increasing by 93% to 563 in 2001. This information from COPS may be

contrasted with the recorded crime figures, which show a total of 457 dangerous drugs offences in 1992, with this number decreasing by 2% to 448 in 2001 (see Table 3).

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of recorded dangerous drugs offences	457	314	290	589	413	453	316	459	543	448
Number of drugs offences recorded by COPS	292	327	257	349	396	359	422	320	460	563

Source: Recorded crime figures and COPS datafile, States of Jersey Police Service

A number of factors may contribute to these anomalous results. Firstly, offences are entered into the recorded crime data at the time of commission, whereas they are entered into the COPS database when a successful outcome is achieved. So the increase from 316 recorded dangerous drugs offences in 1998 to 543 in 2000 is apparently mirrored in the COPS data by the increase from 320 successful outcomes in 1999 to 563 in 2001. Secondly, where an offence involves several parties, this is entered in the recorded crime figures as one offence, whereas if successful outcomes are achieved against all the parties involved, this will be entered in COPS as several offences. Hence, the COPS figures for some years are higher than for the recorded crime data. Finally, it was found during the Review that for the period 1992-96 successful outcomes against drugs offences in Parish Hall Enquiries were not being entered into the COPS database. Hence, the number of drugs offences according to COPS may be artificially low for those years.

3 OVERVIEW OF THE CRIMINAL JUSTICE PROCESS

It is useful to view criminal justice as a *process* of decision-making stages from the initial response to an apparent offence through to the disposition of sentenced offenders. From this perspective, it becomes highly problematic to regard any notion of criminal justice as constituting a *system* capable of being co-ordinated and directed to achieve the instrumental aims of the state. The process perspective is also especially instructive in delineating underlying values and purposes and thereby highlighting choices for criminal justice policy.¹⁸ For example, the criminal justice process might be identified as being on an escalatory or de-escalatory course and it is a matter for policy-makers to determine whether such a course is consistent with intended outcomes.

The process perspective of criminal justice also allows for an appreciation of the independence and inter-dependence inherent to its various stages. The independence of decisions, for example, made by the prosecutor and the courts, reaches to the heart of criminal justice arrangements in a liberal democracy. The inter-dependent nature of decision-making across the process draws attention to the various and sometimes neglected ways in which decisions connect with each other. The challenge for rational and coherent criminal justice policy-making is to eschew a simplistic pursuit of joined-up efficiency and rather to engage with the more complex task of taking full account of these inter-connections thereby ensuring that efficacy and efficiencies are not pursued at the expense of fundamental values.

The description which follows of the various stages of Jersey's criminal justice process is largely based on our interviews and observations. It is, of course, important to recognise not only the dynamic nature of this process but also the mix of formal and informal influences which shape content and direction. As a general rule, we have also resisted the temptation to compare what we have found with the situation in other jurisdictions. While comparative analyses can play a useful part, it is not always helpful to be comparing this or that situation with what is said to exist in England and Wales or

¹⁸ See generally, Rutherford, A., *Criminal Justice Choices: What is Criminal Justice For?*, London: IPPR, 2001

any other jurisdiction. After all Jersey, as a European 'micro-state', is in the enviable position of being able to choose its own criminal justice future.

Policing

In effect, the Island is policed by thirteen different police organisations represented by the States of Jersey Police Service and the twelve forces located at the parish level of government.

States of Jersey Police Service

The States of Jersey Police Force comprises some 240 police officers and 90 civilian employees. This represents a relatively high ratio of States Police officers to the general population of 1:353, compared, for example, to 1:461 for provincial forces in England and Wales.¹⁹ A succinct history of the “paid police”, as the force was known until 1960, is included in the report of the Independent Review Body on Police Services in Jersey²⁰ (hereinafter referred to as "the Review Body"). The Review Body was in large part concerned with the relationship of the States Police and the honorary police, which is explored at the close of this section. Since the appointment of the present chief officer some two years ago, a more proactive, strategic style of policing has been introduced to target particular problems. An example is Operation Focus, which largely addresses public order problems. The aim is to address genuine public concerns about crime generally, particularly drunken behaviour, using and dealing in drugs and speeding which had been highlighted, along with other matters, in the recent Public Satisfaction Survey.²¹ The new policing initiative has received the operational co-operation of the honorary police, but there has been no honorary involvement at a strategic level. This development

¹⁹HM Inspectorate of Constabulary, *Report of HM Chief Inspector of Constabulary 2000/01*, London: HMSO, 2001. Comparisons of this sort need to take account of those police resources in Jersey which address ‘national’ issues. The chief officer estimates that no more than about half of his Service's resources are devoted to ‘local’ policing. According to the *Police Almanac 2000*, Jersey's authorised police strength per 1,000 of the general population in 2002 was 2.74 which, for example, compares with Guernsey {2.96} and Welsh forces {2.38}. Jersey's actual figure for 4 July 2002 was 2.43.

²⁰*Independent Review Body on Police Services in Jersey, Report*, 1996.

²¹States of Jersey Police, *Public Satisfaction Survey*, 2001, 5-7

reflects a notable difference between the States and the honorary services: the States police are embracing rather more proactive methods of policing in contrast with the honorary police who traditionally operate reactively.

Until 1998, the States of Jersey Police had, as noted by HM Inspector of Constabulary, unsophisticated and unreliable methods of data collation.²² During the last 18 months an off-the-shelf information technology system has been purchased for the Force to record information from point of arrest to prosecution. This system has the potential to link to other criminal justice agencies and to the Parishes. It forms part of a two-year criminal justice IT strategy by the States Police and may herald the start of a process that shares and co-ordinates information across other agencies.

The States of Jersey Police have a degree of discretion when dealing with individuals who challenge the law. It is this initial discretionary judgement that determines whether a person is to be reprimanded for his/her actions and, if so, whether the matter stops with the police or whether it is to be pursued further. Individuals that the police believe not to be a threat to the community but which they consider require more than a police reprimand, are referred to the appropriate Parish Hall for an Enquiry. States Police do not have the power to charge suspects and their discretion ceases when they make their recommendation to the centenier.

The States Police are actively involved in local schools: each school shares a School Liaison Officer, supported by local community officers. The focus is on 'policing' rather than 'community' and officers attend schools when shift patterns permit. The Chief Officer is emphatic that the community policing initiative is intended to provide communities with a *policing* service.

As in other aspects of Jersey life, the States of Jersey Police suffer from a lack of training and career development opportunities on the Island. Isolation is the essential problem: the service is nurturing promising officers but they need more diverse experience. Secondments to the United Kingdom have helped to address the problem but as well as being costly, they are fraught with legal difficulties and there is a lack of

²² HM Inspectorate of Constabulary, op cit, n17, 32

alternative forces to send officers to for experience. Recruitment of officers from the UK is made difficult by the Island's housing and employment regulations. Since the creation of the Home Affairs Committee, the States Police have been provided with some positive support in this respect.

The Honorary Police Services

Each of the twelve parishes has a constabulary comprising a connétable (constable), centeniers, vingteniers and constables' officers, all of whom are elected by the people of the parish to a three-year term. They are elected on the basis of the abilities and life experience they are able to bring to policing. The connétable is responsible for overseeing the daily running of the parish and is a member of the States of Jersey Assembly. In practice, the connétables' policing responsibilities and authority are delegated to centeniers, in particular those who serve as the chefs de police in their parish, and who are supported by vingteniers and constables' officers. Officers of the honorary police operate on the basis that they know their parish and their parishioners. In this context centeniers will, for example, attend domestic disputes within their parish, deal with road traffic incidents and meet with various departments to discuss and resolve parish issues in the wider Island context. Centeniers from every parish are incorporated into the Centeniers' Association. Vingteniers and constables' officers form a separate Association. The existence of these Associations, however, does not guarantee consistency between the parishes or any view about policing with which the connétables might agree. As concluded by the Review Body, the root of what is unsatisfactory about the honorary police is the inability to see themselves as one force serving one community. In sharp contrast to this conclusion is the response to the recommendation of the *Report of the Working Party on Policing of the Island*²³ that there be a chief of the honorary police: this recommendation was considered to be too radical. It was thought that such a sudden shift to centralisation would inflict considerable damage on this ancient service.

²³ Working Party on the Policing of the Island, *Report*, December 1997, 6.0

It is the duty of every honorary police officer to exercise personal discretion, under the

authority of the Attorney-General, in dealing with offenders and reporting offences. Not every identified offence is reported for prosecution: matters of training and personal decision founded upon the oath of office dictate the course of action that an officer takes. As such the honorary police service acts as a filter for the criminal justice process.

A centenier is empowered to search, charge, investigate, grant bail, conduct Parish Hall Enquiries and present matters in the Magistrate's Court. As members of the local community who are not trained specifically in criminal justice procedures, they are widely considered to be of significant benefit in dealing with minor public disputes or relatively minor infractions of the law. Above all, the honorary police service plays a key part in the Island's criminal justice process in that it operates as a gate-keeper, determining who should, and who should not, enter into the criminal justice process.

It was put to the Review that a consistent approach may not always be followed by honorary police forces with regard to road traffic incidents and domestic violence. Certain procedures adopted by the States Police, for example on the use of breathalysers, are not invariably applied by their honorary counterparts. As to domestic violence, constables' officers will speak to their respective centeniers, but information is rarely forwarded to Victim Support. Indeed, there is very little in the way of contact between the honorary police services and Victim Support or with the Women's Refuge. There is a possibility that such incidents are reported by the perpetrator of the violence within the home and that the centenier decides not to pursue the matter or report it to the States Police.

Island-wide policing

The honorary and States forces have the potential to combine to provide a balanced service to Islanders that strives to detect instances of crime and protect the community. While the relationship between the two services has taken some useful steps in recent years, there remains a running debate as to the meaning and merits of 'integrated policing'. There are, as the aftermath to the Review Body demonstrated, significant political and constitutional ramifications in any movement towards a more unified honorary system. Nonetheless, the States Police have attempted to promote an integrated and consistent policing service for the Island. One of the difficulties facing the States

Police in this regard is that there is no single voice uniting the twelve parishes and representing the views, ideas, and perspectives of the honorary service as a whole. There is a lack of consistency in the various Parishes' approach to the States Police generally: some members of the honorary police are keen to pursue a common agenda, others are not. These factors combined thwart any attempt at aligning performance measurements, professional standards, or specific objectives. While some degree of co-ordination between honorary and States Police is apparent at operational level the real difficulties arise at strategic level.

A working party was set up in the light of problems anticipated in implementing some aspects of the Review Body. It would appear that the principal difficulty, as seen by the working party, was that it is not possible to impose radical changes on individuals who give their time on an honorary basis. By taking forward one of the findings of the Review Body, that an independent body be created, the working party were able to reach agreement about the institution of a Police Authority 'to modernise and co-ordinate policing strategies and resources across both the States and honorary police forces'. It was envisaged that the Police Authority would be chaired by someone of independence, stature and diplomatic energy.

While a shadow Jersey Police Authority has been established, this has had limited success in overseeing or supporting the Island's policing bodies. It had been anticipated that, once fully operational, the Authority would advance the move towards one association and one voice to represent and promote the honorary services. A Chairman of the Committee of Chefs de Police has been appointed and meetings have taken place with the Chief Officer of the States of Jersey Police. The Authority has also funded a training programme for the honorary police which has been delivered by a recently-retired chief inspector.²⁴ But overall, very little progress has been made since the Review Body in this respect or in the direction of integrated policing more generally.

The honorary service provides an opportunity for those who want to contribute to the community and also serves as a mechanism to keep people away from the criminal justice

²⁴ It was reported in May 2002 that six induction courses had been run, involving a total of fifty officers; for recently sworn officers a brief introduction to notebooks had been provided. Among matters under consideration by the Honorary Police Training Panel were conflict resolution and first aid.

process. While the general view appears to be that the honorary police service should be retained, the question is how to retain a modern honorary police service that serves a modern society. Some consider the term 'police' in the context of the honoraries to be anomalous: very rarely does a member of the honorary service get involved in the investigation of crime. The Island is nevertheless steeped in tradition and the centenier's position remains highly regarded. Members of the public, particularly in the rural parishes, will often call the centenier rather than the States Police.

The Review Body suggested that the honorary police take on a more professional role. While individual members of the service need to maintain an appropriate level of proficiency in their dealings, a professional role is not widely considered to be within their proper remit: they benefit the Island by bringing a non-professional, independent element to the system. Jersey has a body of volunteers that represent a relatively unique secondary source of law enforcement and an informal procedure for the administration of justice.

Parish Hall Enquiries

The Parish Hall Enquiry is presided over by a sworn honorary police officer: a centenier. It is not a court but represents a local means of addressing anti-social behaviour which may divert individuals away from the formal criminal justice process. On identification of a suspect, a police officer, be it honorary or States Police, decides whether the matter should go to Parish Hall or directly to court. In reaching the decision, a Criminal Records Office check is run and the matter is referred to the States Police for investigation. Where a Parish Hall Enquiry is considered appropriate, the officer will give the individual a written warning to attend on a specified date, which records in brief what the individual is reported for. Where a Parish Hall Enquiry is considered inappropriate, because for example the offence is too serious to be dealt with at that level, a centenier will be called in to charge the individual and warn him/her for court. If the centenier disagrees with the recommendation to charge he/she retains the option to give the individual a written warning to attend a Parish Hall Enquiry instead. A centenier must offer bail pending the Parish Hall Enquiry or court appearance unless the offence is so serious, there is concern that the individual might not appear, will re-offend or will

interfere with witnesses. There is no power for centeniers to impose conditions on bail, save a condition that the individual produces money.

There is no compulsion to attend a Parish Hall Enquiry, nor can an individual be compelled to answer questions relating to the charges or make or sign a statement during the course of the Enquiry. Non-attendees lose their chance to be dealt with at Parish Hall and will receive a summons to attend court. If an individual attends, it is the centenier's responsibility to enquire into the case and decide whether to instigate a formal prosecution or deal with the matter at Parish Hall level.

All attendees are instructed to attend at the same time and are seen by the centenier on a first come, first served basis. The centenier conducting the Enquiry is assisted by one or two duty officers who take a note of attendees and keep a record of the results in the diary. There is an investigative and administrative burden on the States Police to prepare a full file of evidence and a report for the Enquiry. This is essential at this early stage because only the centenier can decide whether to charge or not and this decision must be based on all the available evidence. This report is prepared by the investigating officer and checked over by the custody sergeant before it is sent to the Parish Hall. This operates as a safeguard to ensure that any recommendation for charge is founded on proper grounds. If the centenier considers that the investigation has been inadequate, then he/she will request further investigation. The preparation of a full file for the purposes of Parish Hall Enquiry increases the resources involved and can serve to delay the process. The States Police maintain that a full file of evidence should be produced only where the evidence is likely to be challenged.

At the enquiry, the police report is read out by the centenier so that the individual has full knowledge of the evidence against him/her. The individual is asked to comment on the contents of the report. Having considered the material the centenier decides whether there is sufficient evidence to justify a prosecution or whether the Enquiry should be adjourned to allow further information to be gathered. If the centenier concludes that there is sufficient evidence to justify a prosecution, then he/she considers (with due regard to the Attorney General's *Code on the Decision to Prosecute*)²⁵, whether

²⁵ Attorney General, *Code on the Decision to Prosecute*, January 2000

prosecution is in the public interest or whether it is appropriate to deal with the case outside the court system.

A centenier cannot find an individual guilty, and in order for the matter to be dealt with at Parish Hall level the attendee must accept the facts. If he/she does not accept the facts then the matter will be sent to Court. If the facts are accepted, then the attendee is invited to give his or her version of the events in question. The attendee is entitled to be accompanied by a lawyer should he/she so wish. It is a matter for the centenier as to what part the lawyer is allowed to play.

Included in the police report is the States Police's recommendation, but the centenier is not bound by that recommendation. Any decision not to prosecute is made in the knowledge that the Attorney General can override it and order a prosecution. The centenier will indicate how he/she intends to deal with the matter. If the matter is to remain at Parish Hall level, then the attendee will be asked whether he/she is willing to be dealt with by the centenier. If the attendee is so willing the centenier will deal with the matter in one of four ways:

- take no further action: this is not recorded. It is utilised where the attendee accepts the facts and the centenier considers it inappropriate to proceed. It may involve words of advice or a verbal warning/caution;
- impose a fine: the maximum fine has recently been increased for road traffic offences to one fifth of a level 2 fine on the standard scale of fines (currently £100). A record of the fine is kept by the police and may be made available at any future appearance in court or at a Parish Hall Enquiry, although it will not amount to a conviction. Fines can only be imposed if specified by statute, mainly for offences under the Road Traffic Law. As far as the payment of fines is concerned, payment must be made within the centenier's duty week. Payment in instalments is not permitted as this would be unworkable. The fines system operates in this way largely because enforcement would be problematic: a fine issued by a centenier is unenforceable because the centenier cannot issue an enforceable judgment. The problem is resolved if the centenier requires payment and gives the alternative of being summonsed in the event of non-payment.

- give a written caution: this is entered onto the CRO and will appear on the Honorary Police records. It does not constitute a conviction. It will nevertheless be produced at future matters dealt with at Court or Parish Hall and so forms part of an individual's criminal record.²⁶
- defer the decision for a period of up to six months (but the practice is usually three months), possibly with conditions. All options remain open to the centenier following a period of deferment. The course of action taken depends upon what transpires during that period. If the individual re-offends during that period, then he/she will be dealt with for both offences. The deferred decision is considered to be a most useful tool for centeniers in dealing with both juveniles and adults.

In deferring a decision, centeniers can impose a condition of voluntary supervision. Voluntary supervision includes the Pitstop and other programmes. Class C and B drugs offences (mostly cannabis) and drunk and disorderly can also be dealt with in this way. In respect of these types of offences, the centenier may ask the individual to attend the Alcohol & Drug Service in order to participate in a Drugs Awareness Course.²⁷ The Service has a designated worker to deal with the youths that are referred for voluntary supervision. There are about ten such referrals each month. The Service has developed a sound working relationship with centeniers so that referrals are expeditious. A youth has between one and six sessions with the Service. The Service reports to the Parish Hall before the individual is seen again by the centenier.

If the matter is to be sent to court, then the attendee will be charged. A formal caution will precede charge and the attendee will be warned for court. Guidelines specify that the court appearance must be on the first available date after the Parish Hall Enquiry, so as to avoid further delay. The centenier may also admit the attendee to bail in such sum as the centenier may reasonably determine, pending appearance at court. Once charged, a centenier should inform the attendee of the availability of legal aid and the procedure for obtaining such assistance if required.

²⁶ Attorney General, *Directive 1/97, Parish Hall Enquiries - Criminal Records*

²⁷ Attorney General, *Directive 1/98*, specifies that this arrangement is applicable only to first offenders, for small personal amounts and is conditional upon attendance at the Drugs Awareness Course.

The centenier is not obliged to hear every matter in a Parish Hall Enquiry. For serious cases that will inevitably end up in court it is an unnecessary delay. Moreover, guidelines dictate that some cases cannot be dealt with at Parish Hall level (for example, persons charged with speeding 15 mph or more over the limit). Conversely, many offences are ideally dealt with at a parochial level. There is considerable potential for inconsistency throughout this process, both in the recommendations of the States Police and the actions of the honorary police. Perceived inconsistencies within the honorary service threaten its credibility and thereby its continued existence: consistent application across the Island is considered by some to be of paramount importance for the maintenance of a credible process. With a view to assuring consistency within the Parish Hall Enquiry process, the Attorney General issues guidance notes for centeniers that should be displayed in every Parish Hall. The guideline process, like the Parish Hall Enquiry process as a whole, is not determined by legislation or rules and regulations and remains relatively informal. There was a move towards a more formal system of guidelines in 1997, with a suggestion that they be called Directives and numbered so that they could be easily listed and referred to, but this has not been systematically followed through. Indeed, at times members of the honorary service appear to look elsewhere for guidance on particular issues.

Any guidance in respect of Parish Hall Enquiries has the potential to shape criminal justice policy on the Island, particularly because of the centenier's prominent position within the process. Increased formality in this respect may afford greater credence to the process, avoid the potential for other criminal justice officials attempting to standardize the actions of the centeniers and ensure that issues which arise are referred to the Attorney General. Guidelines as to the nature of the penalties and the level of fines to be imposed for various offences are issued by the Centeniers' Association and circulated between the parishes to promote consistency.

Many professionals involved in the criminal justice process value the Parish Hall Enquiry system as a useful process that provides an independent, lay assessment as to whether prosecution is in the public interest. For a significant number of people, it is their first and last 'brush' with the law. The process acts as a filter for minor offences and provides a diversion mechanism in cases that might otherwise result in court proceedings,

convictions and the associated stigma. Centeniers strive to deal with the individuals that come before them fairly, justly and courteously. They get a sense that many go away with confidence in the proceedings, avoiding the stigma associated with the formal court process. It is unfortunate that its contribution in this respect appears to have been eroded in recent years in a drive for speed and consistency.

For young people, the Parish Hall Enquiry is considered to have particular value, offering a paternalistic approach that avoids a criminal conviction. The process has the potential to divert youths away from the criminal justice process and may provide youths with an opportunity to attend the Probation Service voluntarily, thereby delaying the decision as to whether to prosecute. Not only does it serve as an early caution to juveniles of the consequences if they persist with their anti-social behaviour, it also serves to inform parents, who are sometimes unaware, of what their children are up to. If a centenier intervenes at the right time in a young life, he/she can turn the child's life around. Schools have been known to provide evidence for Parish Hall Enquiries, safe in the knowledge that the Enquiry can offer constructive alternatives that will not result in a criminal record.²⁸

At first glance Parish Hall Enquiries, as closed tribunals where people are subject to sanctions, would appear to raise human rights concerns. In the Review Body a number of such issues were expressed which arose from a 'fog of confusion'. The point was made that the presiding centenier may be the same person who investigated the incident under scrutiny; and that the centenier will often proceed to make a disposition without adequate enquiry as to whether the alleged facts are admitted. The Review Body also concluded that the existing manual was contradictory as to whether or not the proceedings constituted a court. In accordance with the Review Body's recommendation, some progress has been made through the guidance issued by the Attorney General which is aimed at ensuring that Parish Hall Enquiries abide by appropriate and consistent procedures.

²⁸ A descriptive and evaluative study on the workings of the Parish Hall Enquiry is being carried out by Helen Miles of the Jersey Probation and After-Care Service

A critical issue to be addressed is whether the Parish Hall Enquiries should be recognised, as was proposed in the Review Body, as a court or be unequivocally located *outside* the criminal justice process. While rejecting the path recommended by the Review Body, the report of the *Working Party on Policing of the Island* has attempted to locate a mid-way point for the Parish Hall Enquiry as an adjunct of the courts. Maximum fines have been increased and penalties (including written warnings) appear in the criminal record of an offender. This may not be the most satisfactory way forward from a human rights perspective. Furthermore, with appropriate training, there may be opportunities to exploit the relative informality of Parish Hall Enquiries, by for example, using them as a forum for non-stigmatising resolutions across the Island.

A great strength of the Parish Hall Enquiry, which has evolved over many years but which has stood the test of time, resides in its parochial grass roots. The Review Body has been particularly impressed by the proposals in the *Crime and Community Safety Strategy*,²⁹ as to how this ancient institution might best be further developed, so as to effectively divert individuals *away* from the formal processes of criminal justice. The conclusion reached by the Review Body is that the Parish Hall Enquiry should not be afforded the status of being a court. This stance is in line with many of the local responses to the Review Body on this point, which were usefully summarised in the *Report of the Working Party on Policing of the Island*.³⁰ The Working Party did welcome what it described as the 'positive observation' by the Review Body that more important cases could be handled by Parish Hall Enquiries. It urged that the Police Authority consider the level of awards for current cases and the range of categories handled. Although the Police Authority has not, as yet, carried out this review some movement in this general direction has flowed from guidelines issued by the Attorney General. In addition to an increase in the level of fines, the Attorney General issued a Directive (1/98) on personal amounts of Class B and C controlled drugs which might be dealt with by the Parish Hall Enquiry by means of a written caution instead of prosecution.

²⁹ Presidents' Policy Group, *Crime and Community Safety Strategy 1999-2009*, 1999, Chapter 7

³⁰ *Op cit.*, n.21, 9.1-9.3

Statistics pertaining to the work of Parish Hall Enquiries are sparse and not easily available. The only Island-wide source relates to *attendances by probation officers* at Parish Hall Enquiries with respect to persons aged 17 and younger. These data are set out in Table 4.

Table 4-PHEs involving persons aged under eighteen attended by the Probation Service

	PHEs attended	Referrals to Probation Service
1996	374	
1997	400	
1998	381	29
1999	384	31
2000	381	25
2001	358	24

Source: Probation and After-Care Service, *Annual Report for 2001 and Business Plan 2002* February 2002. Commenting on the 2001 figures, the Report describes the decline in attendance of probation officers as ‘odd’ given the increasing caseload of the youth court. The fact that no adults received voluntary supervision orders as an alternative to prosecution is described as ‘disappointing’ (ibid. 5)

In just two years the number of people attending St. Helier Parish Hall Enquiries fell by 23%, from 3,665 in 1999 to 2,814 in 2001 (see table 5). Whilst there was a significant decline (18%) in the number of juveniles attending, from 467 in 1999 to 383 in 2001, the greater decline was in the number of adults attending. The fall from 3,198 adults attending in 1999 to 2,431 in 2001 represented a 24% decrease.

Table 5 - Number of Persons Attending St Helier Parish Hall

(excluding those who failed to attend)

	Juveniles	Adults	Total
1999	467	3198	3665
2000	485	3015	3500
2001	383	2431	2814

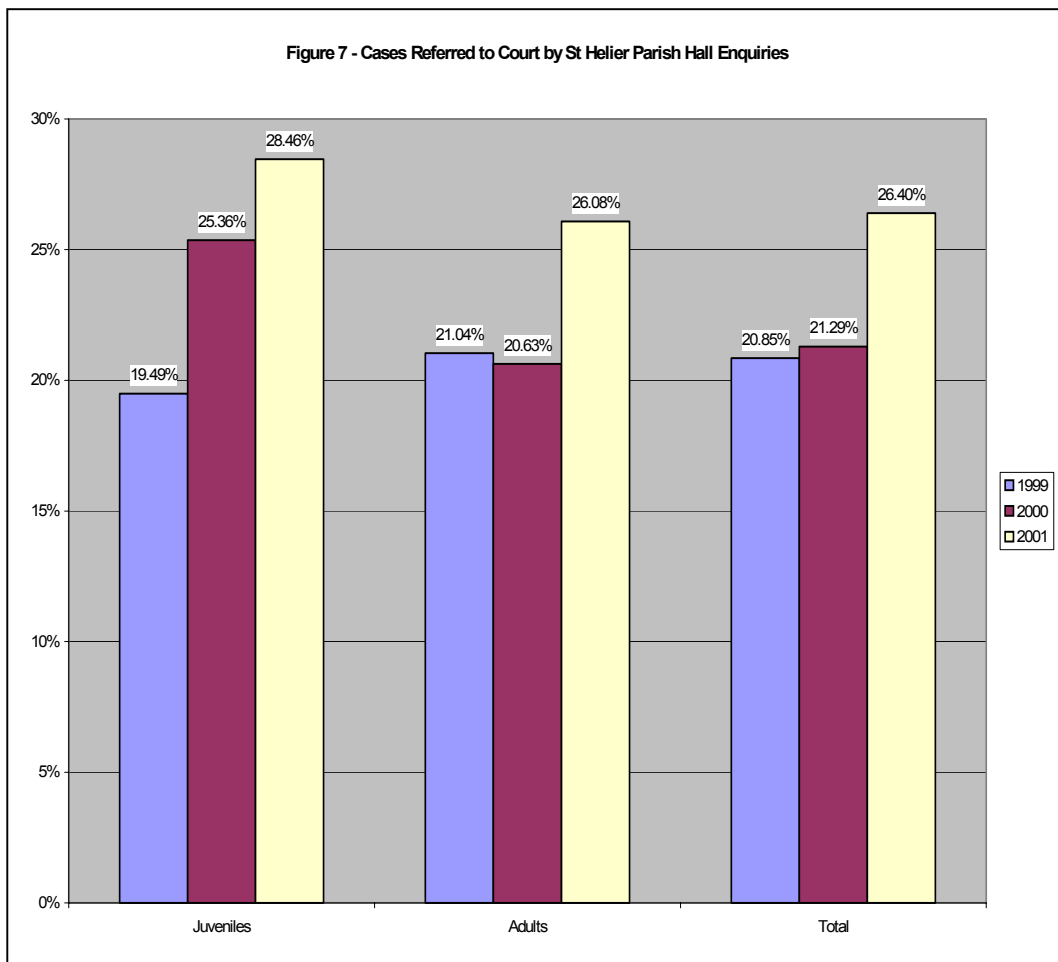
Source: St Helier Parish Hall records

Despite this decline in the number of people attending St Helier Parish Hall Enquiries, as shown in Table 6, the numbers referred to court remained relatively stable, with a total of 764 referred to court in 1999, compared to 745 in 2000 and 743 in 2001.

Table 6 - Cases Referred to Court By St Helier Parish Hall

	Juveniles	Adults	Total
1999	91 (19%)	673 (21%)	764 (21%)
2000	123 (25%)	622 (21%)	745 (21%)
2001	109 (28%)	634 (26%)	743 (26%)

Source: St Helier Parish Hall Records



These two trends show that St Helier Parish Hall increased its referrals to court, as illustrated by figure 7. Whilst in 1999 21% of attendees were referred to court, this figure had grown to 26% by 2001. This increase was even greater in relation specifically

to juveniles; whereas 19% of juvenile attendees had been referred to court in 1999, this figure had grown to 28% in 2001.

These figures suggest that Parish Hall Enquiries are being used less to divert individuals, particularly juveniles, away from the formal processes of criminal justice.

These trends may be compared to the equivalent statistics from St Brelade Parish Hall. Unlike the available data for St Helier Parish Hall Enquiries, which date back only to 1999, the data from St Brelade Parish Hall, as shown in Table 7, are available from 1990 onwards (although these statistics do not differentiate between juveniles and adults).

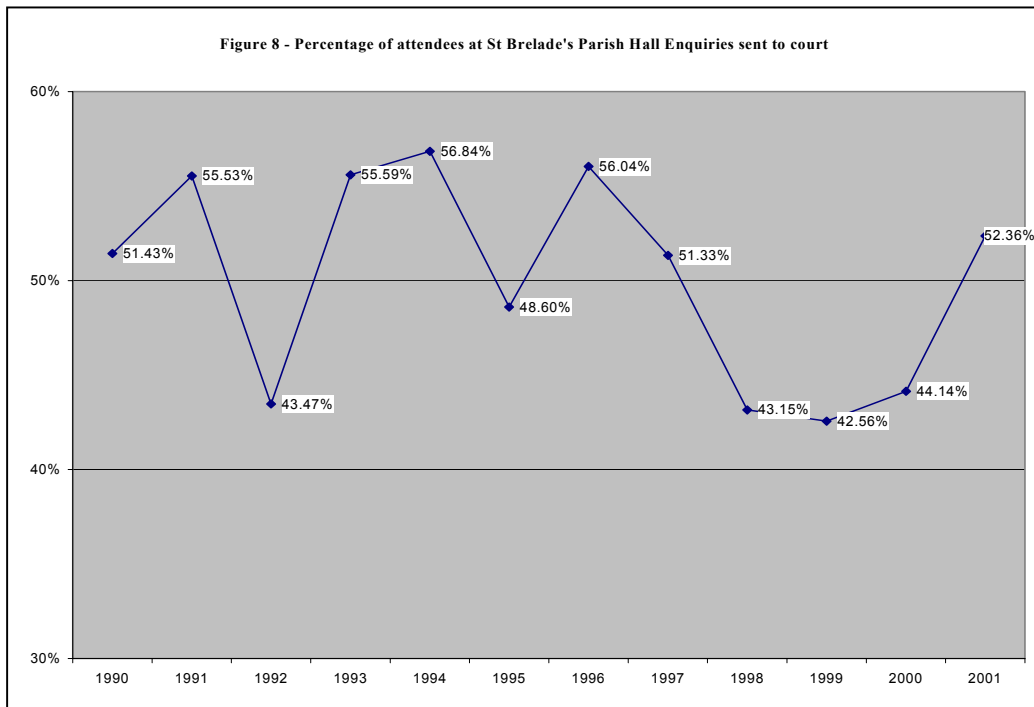
Table 7 – Numbers attending St Brelade Parish Hall Enquiries and numbers sent to court

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of attendees	525	470	490	304	285	214	298	376	336	383	290	275
Number sent to court	270	261	213	169	162	104	167	193	145	163	128	144
Percentage sent to court	51%	56%	43%	56%	57%	49%	56%	51%	43%	43%	44%	52%

Source: St Brelade Parish records

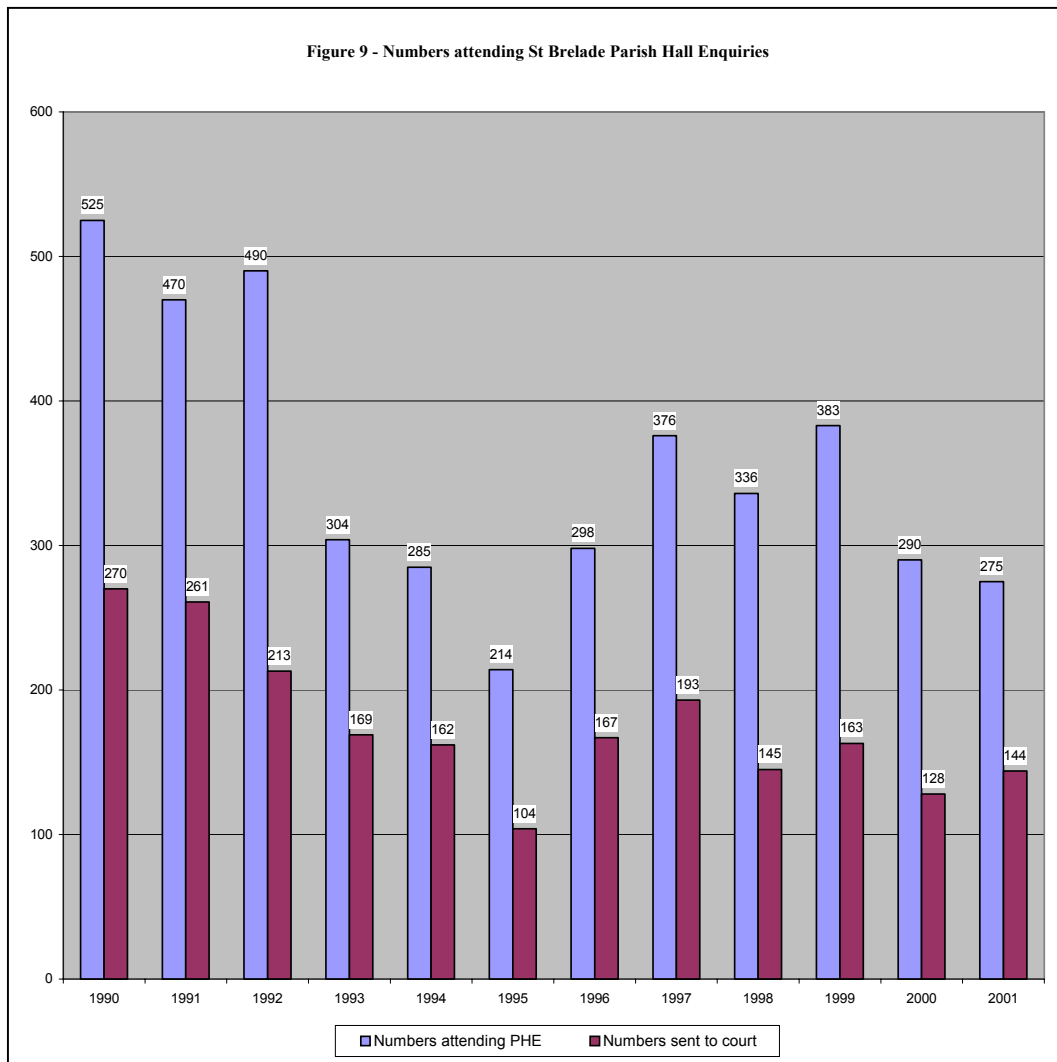
The statistics show that, like St Helier, the number of attendees at St Brelade has been falling for the last two years, from 383 in 1999 to 275 in 2001, a decrease of 28%. The greater statistics available allows us to see that the number of attendees peaked in 1999, following a low of 214 in 1995. Although the number of attendees in 1999 was still far fewer than the numbers in 1990-92, when there were consistently around 500 attendees per year. Figure 8 illustrates the fluctuating levels of attendees, which suggest some confusion regarding the precise role of the Parish Hall Enquiry.

The proportion of attendees sent to court has, again like in St Helier Parish Hall Enquiries, risen since 1999, from 43% to 52%. Figure 8 shows that the 1999 figure was in fact the lowest percentage of any of the years for which data is available, with the proportions in 1991, 1993, 1994 and 1996 all being around 56%. The fluctuating levels in the percentage of attendees sent to court, illustrated by Figure 8, again suggests confusion regarding the precise role of the Parish Hall Enquiry. One conclusion which



can be drawn, however, is that since 1999 St Brelade Parish Hall Enquiries, like St Helier, have been used less, as shown in Figure 9, to divert individuals away from the formal processes of criminal justice.

Figure 9 - Numbers attending St Brelade Parish Hall Enquiries



Prosecution

In introducing this section, a word is required regarding the pivotal position occupied by the Attorney General within Jersey's criminal justice process. The considerable number of functions brought together within this office extend well beyond the arena of prosecution and include being titular head of the honorary police services, ordering and leading investigations, deciding whether intrusive and covert operations are appropriate, ultimately deciding whether prosecution is appropriate and in the public interest and providing sentencing guidance in the form of 'conclusions' to Royal Court. It is evident that the office of Attorney General is crucially significant in terms of the strategic development of criminal justice policy.

The decision-making process in respect of prosecution relies upon guidelines from the Attorney General. If an incorrect decision is made, whether by a centenier or a legal adviser, this can be over-ruled by the Attorney General who is, in effect, the director of public prosecutions. Until recently, centeniers presented all cases in the Magistrate's Court. The issue was under constant review for much of the 1990s following recommendations reached by the Jersey Judicial and Legal Services Review Committee which saw the way forward in terms of centeniers being better equipped and trained to perform prosecutorial duties.³¹ This and other recommendations were further considered during 1997-98 by a working party which agreed that the status quo was unacceptable and that centeniers could not be expected to act as prosecutors. It was acknowledged by the working party that if all cases were presented by a prosecutor this would lead to a clear and unambiguous adversarial system, to more accurate and appropriate charges being brought and to the more effective screening out of charges where the evidence was insufficient. Furthermore, the working party accepted that the concerns of victims would be better represented. Against this, the working party concluded (with two of its members dissenting) that in most cases the centenier was able to adequately present the facts to the court. Moreover, it was reluctant to see the end of the historical role of the centenier in the Magistrate's Court.³²

³¹ Jersey Judicial and Legal Services Review Committee, *Second Interim Report*, October 1990, 7.38-7.46

³² Working Party on Magistrate's Court Practice and Procedures, *Report*, March 1998, 7.1-7.7

Since 1998 legally qualified personnel, have, at the request of centeniers, prosecuted trials, guilty pleas and objections to bail of a complex nature, and committals, with centeniers dealing with the rest of the lower court's caseload. At the time this move towards professional prosecution was strongly resisted by the Centeniers' Association. The move also represented a shift away from an 'inquisitorial' style of court, where the Magistrate tended to play a part in leading the evidence and questioning witnesses and the accused, towards a more adversarial system.

There are now two full-time and two part-time legal advisers based at the States of Jersey Police Headquarters, who occupy posts established within the Law Officers' Department. Problems still arise where unqualified, inexperienced centeniers present the facts for guilty pleas. There can be a situation where the only lawyer present in the court is the Magistrate. With the increasing sophistication of prosecution in all areas, trained prosecutors are becoming increasingly necessary. If centeniers are to continue prosecuting, consideration needs to be given to creating a branch of the honorary police service that specialises in prosecuting and that receives specific training in that regard. Such an arrangement would ensure better co-ordination of the honorary service and greater efficiency in respect of time. Alternatively, legally qualified prosecutors should present all cases in the Magistrate's Court.

In the Royal Court, all prosecutions are presented by, or on behalf of, the Attorney General. Traditionally, it was the Attorney General or Solicitor General who prosecuted but, in 1987, legislation created the position of Crown Advocate, who is a member of the local Bar to whom powers are delegated by the Attorney General. The Attorney General also draws some twelve individuals from the private bar who have been sworn into office and are available to prosecute most routine cases. These advocates are employed by the Law Officers' Department on a daily basis. There remains some difficulty in placing trials as they have to find time away from private work, usually at a lower rate than they would otherwise command.

Legal Aid

Before turning to the Jersey courts, a brief account is required about the arrangements for legal aid in Jersey. Legal aid, as it exists today in Jersey, dates back to the beginning of the last century. The Scheme is designed to make legal services in respect of both criminal and civil matters quickly and easily available. It is not regulated by legislation, operates with minimum formality, employs no staff and utilises minimum public funds.

The Scheme relies upon the good will of Jersey lawyers. All new Jersey lawyers, whether advocates or solicitors, take an oath which, *inter alia*, requires them to look after the interests of all persons requiring legal aid. This obliges them to accept legal aid clients for the first 15 years of practice. Each newly qualified lawyer is added to the list – the ‘tour de role’- of legal aid lawyers. The system is administered manually, on a rota basis. The Acting Bâtonnier, who is an advocate nominated by the Bâtonnier, allocates the next case to the next lawyer on the list. An individual who uses the Legal Aid Scheme has no choice of lawyer. Generally, no consideration is given to the suitability of the nominated lawyer to the particular case and so, for example, a criminal case can be assigned to an advocate who specialises in commercial law. In practice, there is some flexibility within the Scheme: cases of exceptional gravity are nominated to lawyers with suitable experience; a lawyer who has done an unusually long and demanding legal aid case may be exempted from 1 or 2 nominations; criminal matters have to go to an advocate. The nominated lawyer is not obliged to take the case on him/herself, although he/she is responsible for ensuring that another lawyer does the case.

The granting of legal aid is not dependent upon an individual’s means, nor is it dependent upon the strength or seriousness of the case: a legal aid certificate will be issued in the name of the nominated lawyer as long as the Acting Bâtonnier is satisfied that the individual requires legal advice. The Acting Bâtonnier does not undertake a detailed investigation of an individual’s means before issuing the certificate. The lawyer nominated under the Scheme is nevertheless entitled to charge a fee: he/she will therefore investigate the individual’s means so as to ascertain what is a reasonable fee. Services provided under the Scheme are generally only free for those who have no income.³³

³³ Up until about 30 years ago Legal Aid in Jersey was always free.

Everyone else is billed on the basis of loose guidelines and details of their financial status. Limited funds are available from what is called the ‘legal aid vote’. These funds are provided by the Finance and Economics Committee and are used to pay experts and lawyers involved in complex and excessively long trials.

The Acting Bâtonnier sees the majority of applicants in person and informs them that the nominated lawyer is entitled to make a reasonable charge. Applicants are also told that requests for unreasonable fees should be referred back to the Acting Bâtonnier or the Bâtonnier. Unfortunately, not everyone appreciates that they might be billed. Problems arise particularly when the Acting Bâtonnier does not have the opportunity to meet a defendant in person so as to explain the Scheme, and the fact that he/she is likely to receive a bill at the end of it. Where an individual is in custody, for example, a legal aid application form will be faxed to the prison. The result is that many of those in custody do not appreciate the unique nature of criminal legal aid in Jersey.

Legal aid clients express dissatisfaction at the fact that many of the lawyers required to undertake legal aid work are young and inexperienced, some never having appeared in Court before. The system is such that it is often more cost effective for law firms to send unqualified legal assistants to do most of the research, and take instructions from the client. The consequence is that many defendants have limited pre-court contact with their advocate. Such practices are also a source of dissatisfaction for legal aid clients.

There are two voluntary schemes under legal aid that operate in addition to the ‘tour de role’:

Duty advocate scheme

Every day that the Magistrate’s Court sits there is an advocate on duty. The duty advocate is available to give basic advice and represent individuals where necessary. Work under the scheme is rewarded with credit under the ‘tour de role’, so that the volunteer misses a turn in the list. If the volunteer is not on the ‘tour de role’ then the credit will go to someone in the law firm who is on the role.

Duty lawyer scheme

Legal aid does not cover attendance at the police station: if arrested all that an individual can demand under the Legal Aid Scheme is a telephone call. If arrested during the day then the suspect can ring the duty lawyer. In practice it tends to be the Acting Bâtonnier or an advocate in the firm in which the Acting Bâtonnier works who gives police station advice during the day. Every night from 1700-0830 hours another rota operates, under the duty lawyer scheme. A duty lawyer is on-call to give telephone advice and reassurance during these hours, for one week at a time. Volunteers for this scheme are either solicitors or advocates. They are not necessarily specialists in criminal law. Again, benefit from volunteering for this Scheme accrues in respect of the 'tour de role'. It is very difficult to give advice over the telephone. In practice, a lawyer will usually attend the police station if someone is being questioned on really serious matters or if it is clear that they really need a lawyer, for example, because they are particularly vulnerable. There is, however, no written policy or obligation in this regard. Moreover, there are no guidelines for dealing with people with mental health problems. Sometimes the Acting Bâtonnier will intervene to try and persuade a lawyer that it is necessary to attend the police station.

The duty lawyer scheme is not much used. A number of reasons for this have been advanced, for example, suspects do not see the point, they are intending to plead guilty anyway or they are going to reserve their plea. Some defendants feel pressured in to answering police questions without the benefit of satisfactory legal advice from a lawyer in person. The availability of legal advice before questioning by the police is something that will have to be seriously considered in the context of Jersey's Police Procedures and Criminal Evidence (Jersey) Law provisions and its forthcoming human rights law.

There is no legal aid for Parish Hall Enquiries: the majority of attendees have received no legal advice in respect of the Enquiry. The implications of individuals being dealt with by non-legally qualified centeniers and without the benefit of legal advice need to be considered carefully. While the current system might not allow for better advice to be given at an earlier stage, the provision of such advice might instil greater confidence in the Parish Hall Enquiry process.

As regards the administration of the Scheme, every 2 years the position of Acting Bâtonnier passes to the next big law firm on the list of Jersey's 10 largest law firms. The firm then appoints an employee as Acting Bâtonnier. The Acting Bâtonnier's name and the names of 2 other lawyers in the firm are taken off the tour de role in return for administering the Legal Aid Scheme.

At present, there is nothing to inform the new Acting Bâtonnier of how to operate. The current Acting Bâtonnier is in the process of writing a policy handbook. The Scheme makes very great demands on the Acting Bâtonnier, who continues to practise within his/her speciality: at present between 5-7 hours per day is spent on legal aid.

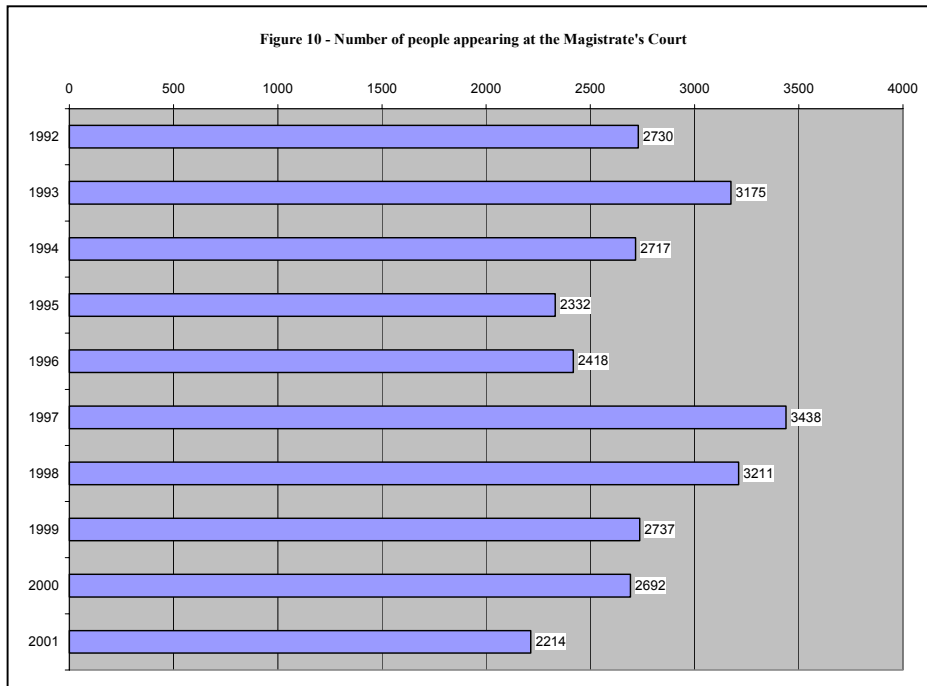
The Magistrate's Court

The Magistrate's Court, the lowest level of judicial authority in the Island's criminal justice process, is presided over by one of the two legally-qualified Magistrates, assisted by a non-legally qualified court clerk. Where a defendant is legally represented, the legal representative will specify whether a plea is to be entered and, if so, what the plea is. Otherwise, the defendant is asked whether he/she reserves their plea, or pleads guilty or not guilty to the matter. In respect of non-attendees, an 'arrest order' is made, which can be with or without bail.

As regards bail, an application is made by or on behalf of the defendant. The prosecution, whether a centenier or a legal adviser, responds. The prosecutor gives reasons for any opposition to the application. Reasons for opposing bail include, risk of absconding, risks of re-offending and risks of interfering with witnesses. In deciding on bail, the Magistrate balances the interests of the defendant against the interests of the community and, where appropriate, the victim. In an attempt to address concerns about absconding, re-offending or witness interference, conditions of bail can be imposed. Conditions which are tailored to the nature of the offence and defendant may include surety, exclusion from licensed premises, reporting to a police station, surrendering passports and avoiding contact with witnesses. If bail is granted, defendants are released on warning to attend the next court hearing. There is no Bail Law to regulate the use of bail, nor are there custody time limits. Until very recently the seriousness of the offence was a main factor in deciding whether to grant bail. Practice is now more similar to England and Wales, with the presumption being in favour of bail and with consideration given to the likelihood of re-offending, absconding or interfering with witnesses. It seems likely that this development has contributed to the recent reduction in the number of persons held on remand at HMP La Moye.

A probation officer attends every Magistrate's Court hearing where issues of sentencing are likely to arise. The probation officer is available to provide 'on-the-spot' assessments of defendants and to obtain information that is required by the presiding Magistrate: in this regard the Magistrate will specify matters that require to be investigated.

The powers of the Magistrate’s Court were increased in October 2000 to a £5,000 fine and/or 12 months’ imprisonment. As a result, more cases were expected to be retained in the Magistrate’s Court, including some assaults and small-scale supply of



cannabis.³⁴

Where an offence warrants a greater penalty (including confiscation orders in the context of drugs) the case must be committed to the Royal Court.

The Youth Court

The Youth Court (which since 1994 has jurisdiction over persons aged from ten up to eighteen) comprises one of the Magistrates and two members of the Youth Panel who are not legally qualified. More youths are entering the Youth Court rather than being diverted away from the formal process and through the Parish Hall Enquiry. This reflects a view within the Youth Court that the Parish Hall Enquiry has been over-used (especially in some parishes) and that more formal interventions are in order. In the view of the Magistrate, the Parish Hall Enquiry should issue no more than one caution and perhaps

³⁴ However, a [Source: Magistrate’s Courts records] s Court declined by 47% (18%) from 2000-2001

consider one other minor matter. At that point, any further referral should be to the Youth Court. It follows, if the Parish Hall Enquiry is to be regarded as an adjunct of the Youth Court, there cannot be inconsistency from one parish to another.

The Youth Panel

The Youth Panel, which was introduced under the Children (Jersey) Law 1969, has twelve non-qualified members. Currently, eight of these are women. The statute prescribes that at least one of the Youth Court tribunal be a woman. The Panel is very much in the tradition of Jersey's spirit of community service and the position attracts high quality applicants. Appointments are for a three year period which may be renewed twice. Some Panel members feel that this ceiling results in experience being wasted. The Magistrate, however, contends that the turn-over is beneficial, with most Panel members being appointed at around the age of 40.

The Magistrate and the two Youth Panel members enjoy an equal say as to adjudication and sentence. The Magistrate, who is relied upon for matters of law and procedure, seeks to serve as a “moderator” rather than to impose his own view. If necessary, and in practice rather rarely, any disagreement is settled by means of a vote. Where only one Youth Panel member is present, the Magistrate holds the casting vote. Panel members are rostered to take part in about one out of every six sittings. While the Magistrate considers that this degree of involvement is about right, some Panel members believe they sit too infrequently.

Sentencing powers of the Youth Court

The Magistrate considers that the sentencing powers with respect to persons under the age of 15 are inadequate. The options are: a probation order with or without a condition of residence;³⁵ a bind-over or conditional discharge. The young person also has to consent to a bind-over (or conditional discharge). For persons of 15 and over, a sentence of youth detention may only be passed if the court considers that no other method of dealing with the youth is appropriate because there is a history of failing to respond to non-custodial

³⁵ The condition of residence may refer to Les Chênes, a residential and day school. See generally pp 66-7

penalties and an inability or unwillingness to respond, only custody would be adequate to protect the public from serious harm, or the offending behaviour is so serious that a non-custodial sentence cannot be justified. The reasons for imposing a sentence of youth detention must be stated in open court. The criteria should ensure that thought is given to the use and objectives of imprisonment and to the possible advantages and disadvantages of prison over and above other sentences. There is no equivalent statutory guidance for the sentencing of adults.

Until quite recently the Youth Court was regarded as rather lenient in stance, imposing small fines, compensation orders and bind-overs. However, practice has changed and speed is now considered to be of the essence. The average time between offence and first court appearance in May and June 2002 was 24 days and 11 days respectively, and to completion from offence was 44 and 39 days respectively. Bypassing the Parish Hall Enquiry and getting youths to court more quickly is considered to be a significant achievement but the Youth Court Magistrate nonetheless feels that there is further progress to be achieved in speeding up the process.³⁶ To this end, priority A and B lists of youths, who have offended repeatedly or most seriously, have been compiled by the Magistrate and made available to centeniers and the States Police. The A List consists of young people who are seen as being at high risk of re-offending. These are the “hard-line offenders” and “ring-leaders”. If these youngsters keep out of court for 6 months they are relegated to the B List which constitutes a slightly lower risk. Those on the B List who avoid offending for 3 months are removed from the List. As of 10 July 2002, there were 23 persons on the A List and 20 on the B List, compared with a total of 59 on both Lists combined in July 2001. Of the 43 youngsters on the A and B Lists in July 2002, 30 were aged between 14-16.

Partly as a consequence of these local policy initiatives, the Youth Court is now dealing with more young people and at an earlier stage of their offending than previously. While this increase in the Youth Court’s caseload (especially sharp since 2000, as shown in Table 8) does not appear to be linked to any increase in crime as recorded by the States

³⁶ Centeniers' Study Evening: The Youth Court (undated).

Police, its effect has been to perpetuate the perception of a growing problem of youth crime.³⁷

1997	162
1998	172
1999	140
2000	189
2001	251

Source: data assembled from court records for the Review

The Royal Court

The Bailiff and Deputy Bailiff are the two permanent judges in the Royal Court, although “qualified persons” can be appointed as Commissioners for a specified term or for particular cases where necessary.³⁸ In 1990, it was generally agreed that the appointment of a third permanent judge was not necessary.³⁹

The Royal Court sits either in its ‘Inferior Number’, presided over by the Bailiff or the Deputy Bailiff (or a commissioner), sitting with two Jurats, or in its ‘Superior Number’ when the Bailiff or Deputy Bailiff (or a commissioner) sit with at least five Jurats. All cases are initially brought before the Inferior Number for a plea to be entered. The Inferior Number hears any trial or sentence that the Crown concludes will attract a prison sentence of four years or less. The Superior Number can impose an unlimited period of imprisonment and/or an unlimited fine. Statutory offences have to be heard by the Inferior or Superior Number. Where a not guilty plea is entered to a common law offence, the accused may elect to be tried by jury in which case the matter is referred to

³⁷ It remains to be seen whether 2001 was influenced by unusual circumstances. It has, for example, been suggested that a particular cohort of young offenders were very much in evidence over the course of the year. The shift away from the Parish Hall Enquiry may have been further encouraged by the Youth Court’s decision to disqualify in cases of taking away a motor vehicle and/or driving without insurance. This power is not available at the Parish Hall Enquiry.

³⁸ Article A of the Royal Court (Jersey) Law 1948 (as amended) empowers the Bailiff to appoint “Qualified Persons” as Commissioners. While some of the commissioners who have been appointed are Queen’s Counsel, Jersey Advocates have also been appointed. Advocates and Solicitors of the Royal Court who have been in practice for ten years can be appointed as can individuals who have been in practice at the bar for at least ten years in other specified territories.

³⁹ Jersey Judicial and Legal Services Review Committee: *Second Interim Report*, October 1990, 6.81

the Assize Court. The Assize Court is presided over by the President of the Court alone, with a jury of twelve. Ten out of twelve jury members are required to convict, or nine if the jury is reduced to ten. In the event of conviction the court is reconvened in either its Superior or Inferior Number according to level of sentence.

The interaction between professional and lay judges is quite distinct to Jersey. The presiding judge sums up and identifies points of law in open court. Where the matter is before the Inferior or Superior Number, the judge will retire and remain with the Jurats and, if necessary, will advise them of the law during the course of their deliberations. They do not return to open court for this purpose. It is the responsibility of Jurats to decide the facts and, in the event of a conviction, the sentence. Their decisions do not have to be unanimous. The presiding judge only has a role if the Jurats are divided equally. The Judicial and Legal Services Review put the matter well. ‘The Bailiff is the sole judge of law in the Royal Court and the Jurats are the judges of fact (subject to the Bailiff’s casting vote if they are equally divided). We do not favour any fundamental change of these functions. We believe that a judge and two laymen make a better tribunal of fact than a judge sitting alone. We should therefore regret any change which interfered with the normal constitution of the Inferior Number’.⁴⁰

The twelve Jurats are the oldest honorary group on the Island and play a vital part in the administration of civil and criminal justice. They have no link with the legislature and have not sat in the States Assembly since 1948. They are elected by a body that includes all members of the legal profession, all States members and all Jurats. Remuneration, arising from the proceeds of Jurats Stamps, amounts to about £1,500-£2,000 per annum. The Jurats do not, collectively, formally consider policy issues such as the relationship between custody and community penalties. They are involved in discussions when the “full court” (comprising all Jurats, Bailiff and Deputy Bailiff) assembles up to eight times per year. These discussions include the examination and approval of developments in the probation service. However, they rarely touch on criminal justice issues.

Sentencing process and policy

⁴⁰ *ibid.*, 6.41

The prosecutor, most commonly a Crown Advocate, reaches “conclusions” as to sentence to assist the Royal Court. Such conclusions, which are authorised by the Attorney General, the Solicitor General or the Senior Crown Advocate before being presented to the Court, are in accord with the facts of the case, academic references and sentencing principles as articulated by the Superior Jersey Courts. In seeking to reflect the views of ‘right thinking’ people the Attorney General also plays a key ‘minister of justice’ role in determining the public interest: when a reconsideration of a particular matter is required the Attorney General may urge a departure from established principle on this basis.

Social enquiry reports prepared by the Probation Service are sent to the prosecutor and are available to the Bench for sentencing purposes. Until about six years ago the prosecutor would discuss the contents of the report with its author when considering conclusions. While it remains open for prosecutors to refer to the Probation Service with any queries about the report, such consultation is now rare. In making a conclusion which recommends a prison sentence, the prosecutor will invite a period of deduction in sentence for any mitigation advanced or to matters raised in the social enquiry report.

The responsibility for sentence rests exclusively with the Jurats who have regard to the Crown’s conclusions, to the sentence sought by defending counsel in a plea of mitigation and to precedent. On passing sentence, the judge gives a short judgment stating whether the Court agrees with the prosecution or the defence and giving reasons for any departure from the recommendations.

The Court follows precedent unless it is convinced that the precedent, established by a previous judgment of a court of equal standing, is flawed. Reasons are always given if a precedent is not to be followed. Decisions of the Privy Council and of the Jersey Court of Appeal are binding on the Royal Court. Guideline judgments play a central role in shaping the Island’s sentencing practice.

While the courts in Jersey take account of sentencing developments in England and Wales and consult works such as David Thomas’ *The Principles of Sentencing*⁴¹ where appropriate, they are able to, and indeed do, set their own policies. The Royal Court has stated on several occasions that it has a more severe sentencing policy for some

⁴¹ Thomas, D., *The Principles of Sentencing*, London, Heinemann, 1970.

categories of crime than the United Kingdom. The Court of Appeal has upheld the Island's right to be different. The "Pagett principle" that 'the systems have different traditions and different modalities'⁴² is well established. Categories of crime that tend to attract more severe penalties include fraud, crimes of dishonesty that involve breaches of trust, street violence and drugs. In establishing sentencing principles the Jersey courts respond to perceptions of the prevalence and seriousness of particular offences. Notably in this respect, the Royal Court has responded by imposing significantly higher sentences for drug traffickers than the United Kingdom. The guiding principle for the Island is that of deterring others from importing drugs.

The principles of sentencing for drug trafficking were established in 1995 by, uniquely, a five judge Court of Appeal, in the case of *Campbell, Mackenzie and Molloy*⁴³. Inconsistencies had been identified in drug sentencing, including the amount of credit to be given to persons pleading guilty as well as to good character. Furthermore, the drug problem had changed and heroin was becoming a particular problem. There was an adversarial argument over sentence length and the Attorney General had to gather evidence and reason his proposed increase in the tariff. Customs and Excise and the States Police were consulted, but not the Probation Service. Public opinion, including concerns about the extent of the heroin problem, were also considered. The Court of Appeal accepted the Attorney General's view, although it was concerned that the word "deterrence" should not feature in the justification. It should be noted that while legislation increased the maximum sentence for the supply of Class 'A' drugs to a maximum penalty of life imprisonment in 1988, by a legislative oversight the offence of importing Class A drugs into Jersey remained on a maximum sentence of 14 years' imprisonment. This anomaly was corrected by the States of Jersey Assembly in 1996.

While courts, prosecution and defence strictly adhere to the starting point and principles that were established in *Campbell*, there has been some refinement in recent pronouncements. In particular in *Buesnel*⁴⁴ the Royal Court reviewed sentencing policy

⁴² *Pagett* (1984) JJ 57, and see generally, Whelan, C.E., *Aspects of Sentencing in the Superior courts of Jersey*, 2002

⁴³ (1995) JLR 136

⁴⁴ (1996) JLR 265

with respect to the possession of small quantities of Class A drugs. The general rule of imprisonment (established in *Young*⁴⁵ in 1980) was regarded in this case (a conviction, *inter alia*, for possession of an ecstasy tablet) as too rigid. The court determined that it needed the discretion to tailor a sentence to the individual offence and offender.

The Jersey Probation and After-Care Service and Community Penalties

The Service is a department of the Island's judiciary and is managed by a Probation Board comprising five Jurats appointed by the Bailiff. Board meetings are attended by the Vice-President of the Home Affairs Committee. Those parts of the Home Affairs Committee meetings where relevant matters are under discussion, notably the Service's budget, are attended by the Chief Probation Officer. The Probation Board deals with staffing and administration and does not consider individual cases, nor, as a general rule, does it review policy issues such as the balance and relationship between probation and prison usage.

It was originally envisaged that the Probation Service would be located within the newly created Home Affairs Committee. While the previous Chief Probation Officer had favoured such a move⁴⁶ this view is not held by the present incumbent. Under the proposed ministerial structure it appears now to have been accepted by the States that the Probation and After Care Service will be located within the same sphere as the judiciary and the judicial departments. In 1998, a review reported that the full-time equivalent of staff in the service was 20.5 and that officers' time for client supervision had not risen in line with the increased amount of supervision work to be carried out.⁴⁷ By 2002 the Service had a budget of £1,184,366 and, at the end of 2001, it employed 39 people (full-time equivalent = 28.51). While it can be seen that additional resources have since been made available, the Service would currently be hard-pressed to perform the pivotal role across the criminal justice process essential to any sustained reduction in the Island's high reliance on imprisonment.

⁴⁵ (1980) JJ 281

⁴⁶ Deloitte & Touche, *Review of Probation and After-Care Service*, Manchester, 1998

⁴⁷ *ibid.*, 14.

The non-custodial sentencing options include absolute discharge, binding over, binding over to leave the Island for a specified time, fine, exclusion order, community service order in its own right or as a condition of probation. By way of the Criminal Justice (Community Service Orders) (Jersey) Law 2001, community service orders were afforded a statutory footing as a direct alternative to custody. This development has not stopped the order being imposed where a sentence of custody would not have been appropriate.⁴⁸ The fact that not all the one hundred or so people currently serving community service orders warrant custodial sentences epitomises the inherent tendency of intermediate penalties to complement, rather than replace, the use of imprisonment. For a clearly defined sentencing policy to overcome this problem, however, practitioners within the courts need to be conversant with the rationale and objectives of the tariff as a whole. Some members of the legal profession appear to have an inadequate grasp of sentencing options. The result is that defence lawyers, on occasion, fail to argue that community service orders are too punitive in cases where custody is not an issue.

In Jersey, a probation order is given instead of a sentence and legislation does not require a threshold of seriousness to be reached before it is imposed. In other words, probation orders run across the tariff and can be imposed instead of any punishment. In practice, probation orders are recommended where there is a moderate or high risk of re-offending. The offender must consent to an order being made and to conditions being imposed. Probation orders are underpinned by a strong social work ethos and officers actively work with people to address their problems. The Probation Service has its own internal threshold under which a probation order is not recommended but this is not always adhered to by the courts. At the request of the Probation Service conditions may be attached to probation orders that require contact with outside agencies, for example, for psychiatric treatment or to attend an alcohol study group. On occasion, the court will impose conditions of its own volition. It is the Probation Service's responsibility to manage the order and direct the individual. If the individual fails to comply with the terms of the order as imposed by the court, or with the requirements of the Probation

⁴⁸ Jersey Probation and After-Care Service, *Internal Monitoring and Inspection, Community Service*, May 1994. The point was made in this report that relatively short community sentence orders appeared to be

Service then the Service, within standards approved by the full court, has the discretion to return the individual to court. The Probation Service is entrusted to utilise this discretion appropriately. The Royal Court seems to be more generally content with the Service in this regard than the Magistrate's Court, which sometimes views the Service as being too lenient. In a community such as Jersey, natural controls are enhanced by means of word travelling fast in respect of individuals undergoing supervision. Against this, however, is the inherent constraint arising in small and often rural locations where the demand for highly specialised programmes addressing specific types of offending is often not sufficient to warrant the necessary training and resources.

Taking non-custodial options as a whole, there is no hierarchy endorsed by statute along the lines attempted in England and Wales under the Criminal Justice Act 1991. An objective of the Probation Service is to promote sentences that will reduce the risk of re-offending, with the emphasis on community penalties. The Service provides information to the courts that contributes to the decision-making process through social enquiry reports, which provide detailed information on the individual's history, offending behaviour and attitudes. Where the court has a clear-cut policy of custodial sentencing there must be "exceptional circumstances" for any recommendation of a non-custodial disposition. This impacts principally on large-scale drug importation and trafficking cases.

Sentencing Practice

This discussion of sentencing practice is divided into two sections:

The first section reviews the use made of probation orders, community service orders and custodial sentences by the Youth Court and Magistrate's Court. It outlines the proportionate use within each Court of the three dispositions and, as far as is possible, examines how each Court's use of the three dispositions has changed in recent years.

The second section reviews the distribution of probation orders, community service orders and custodial sentences between the Magistrate's Court, Youth Court and Royal Court. It outlines the proportion of the total number of each disposition being imposed

located at the lower end of the tariff. Given the reduction in shorter prison sentences over the last decade the strategic role of community service requires re-assessment.

by each of the three Courts and, where possible, examines how this distribution has changed in recent years.

Use of probation orders, community service orders and custodial sentences

Table 9 shows the use made of custodial sentences, probation orders and community service orders by both the Youth Court and the Magistrate’s Court (unfortunately it was not possible, with the data available, to add information on the Royal Court - for all the available data see Table 10).

Table 9 – Dispositions from the Magistrate’s Court 1992, 1996, 2001, and from the Youth Court, 1997-2001

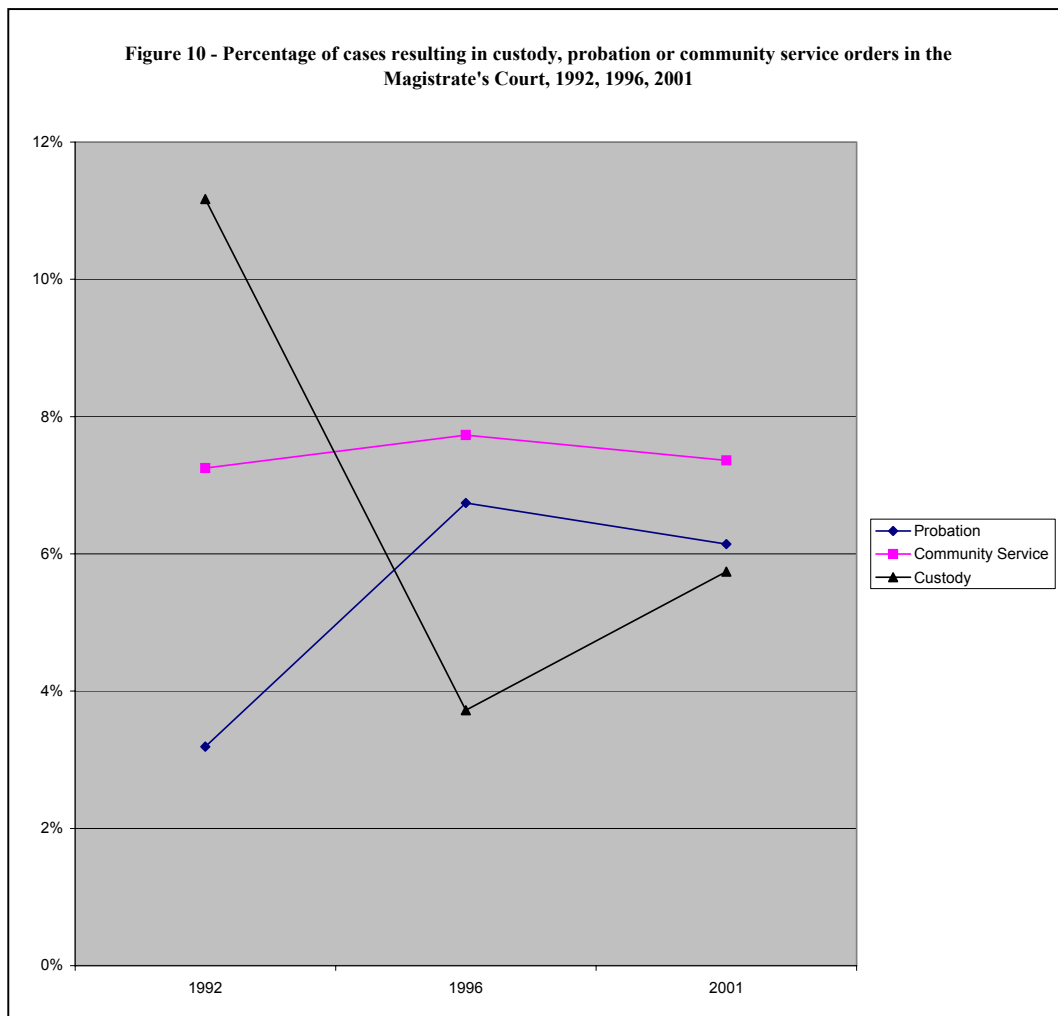
	Magistrate’s Court			Youth Court				
	1992	1996	2001	1997	1998	1999	2000	2001
Total Number of Cases*	2730	2418	2214	162	172	140	189	251
Number of Probation Orders**	87	163	136	38	43	32	44	85
Percentage of Total Cases	3.19%	6.74%	6.14%	23.46%	25.00%	22.86%	23.28%	33.86%
Number of Community Service Orders**	198	187	163	11	19	21	14	34
Percentage of Total Cases	7.25%	7.73%	7.36%	6.79%	11.05%	15.00%	7.41%	13.55%
Number of Custodial Sentences*	305	90	127	4	9	8	2	8
Percentage of Total Cases	11.17%	3.72%	5.74%	2.47%	5.23%	5.71%	1.06%	3.19%

Source:
 * Data from Magistrate’s Court and Youth Court records
 ** Data from Probation Service annual reports (community service orders include both community service orders and probation orders combined with community service) (as noted below, these figures are not in agreement with the information from the Youth Court and Magistrate’s Court records—see tables 12 and 13)

The number of cases in the Magistrate’s Court resulting in custodial sentences fell considerably from 1992 to 1996, both in volume, and as a proportion of the total number of dispositions. Whereas in 1992 11% of cases in the Magistrate’s Court resulted in a

custodial sentence, by 1996 this had fallen to under 4%, and despite rising in 2001 to almost 6%, this was still significantly lower than 1992.

It is noteworthy that the proportion of cases which resulted in community service orders remained practically unchanged during these years, at around 7-8%. Although the percentage of cases resulting in probation orders rose slightly, from 3% in 1992 to just over 6% in 1996 and 2001, this is insufficient to explain the much lower proportion of cases in the Magistrate's Court resulting in custodial sentences (see Figure 10). The information in Table 10 below would appear to suggest that such cases are instead more frequently being dealt with by the Royal Court.

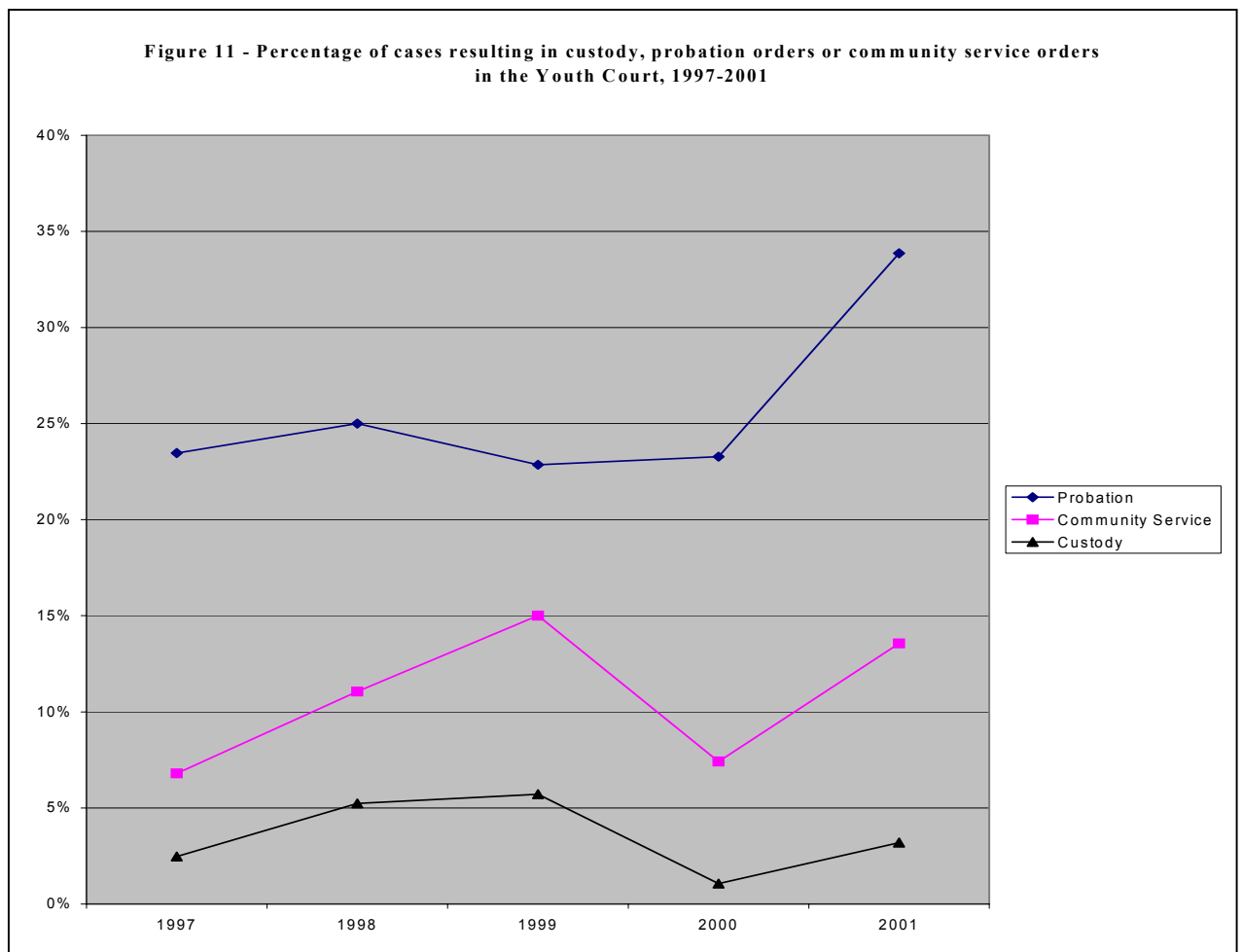


The number of cases resulting in probation orders in the Youth Court was relatively stable, until a sharp increase from 23% of all cases in 2000 to 34% in 2001. This may be contrasted to the more fluctuating proportion of cases resulting in community service

orders, which rose from less than 7% in 1997 to 15% in 1999, before falling in 2000 to 7%. It rose again in 2001 to 14%.

The number of cases resulting in a custodial sentence in the Youth Court was significantly greater in 1998-9 than in 1997, both in terms of volume and as a proportion of cases dealt with by the court. There was then a decline in custodial sentences in 2000, before the figure increased to 8 in 2001 (3% of the total number of cases dealt with by the Court).

Figure 11 illustrates this data. It is noteworthy that from 2000 to 2001, the proportion of cases resulting in custodial sentences increased, as well as the proportion of cases



resulting in probation or community service orders. In 2000 a total of 60 youths received one of these three dispositions; in 2001 this number had risen to 127, an increase of more than 100%. Similarly, in 1997 to 1998 the proportion of cases resulting in a custodial

sentence rose, as did the percentage resulting in community service and probation orders. These trends raise questions about the use of these dispositions by the Youth Court.

Distribution of probation orders, community service orders and custodial sentences

Table 10 shows the distribution of probation, community service and custody in the

	Magistrate’s Court	Youth Court	Royal Court	Total	Total from Probation Service Annual Report
Total persons dealt with	2214**	251***	149****	2614	N/A
Percentage of total cases	84.70%	9.60%	5.70%	-	-
Total number of Probation Orders*	136	85	15	236	237
Percentage of total Probation Orders	57.38%	35.86%	6.33%	-	-
Total number of Community Service Orders*	163	34	29	226	226
Percentage of total Community Service Orders	72.12%	15.04%	12.83%	-	-
Total number of Custodial Sentences	127**	8***	100****	235	253
Percentage of total Custodial Sentences	50.20%	3.16%	39.53%	-	-

(percentages were calculated using the totals from Probation Service annual report)

Source:

* Data from Probation Service annual report (community service orders include both community service orders and probation orders combined with community service)

** Data from Magistrate’s Court records

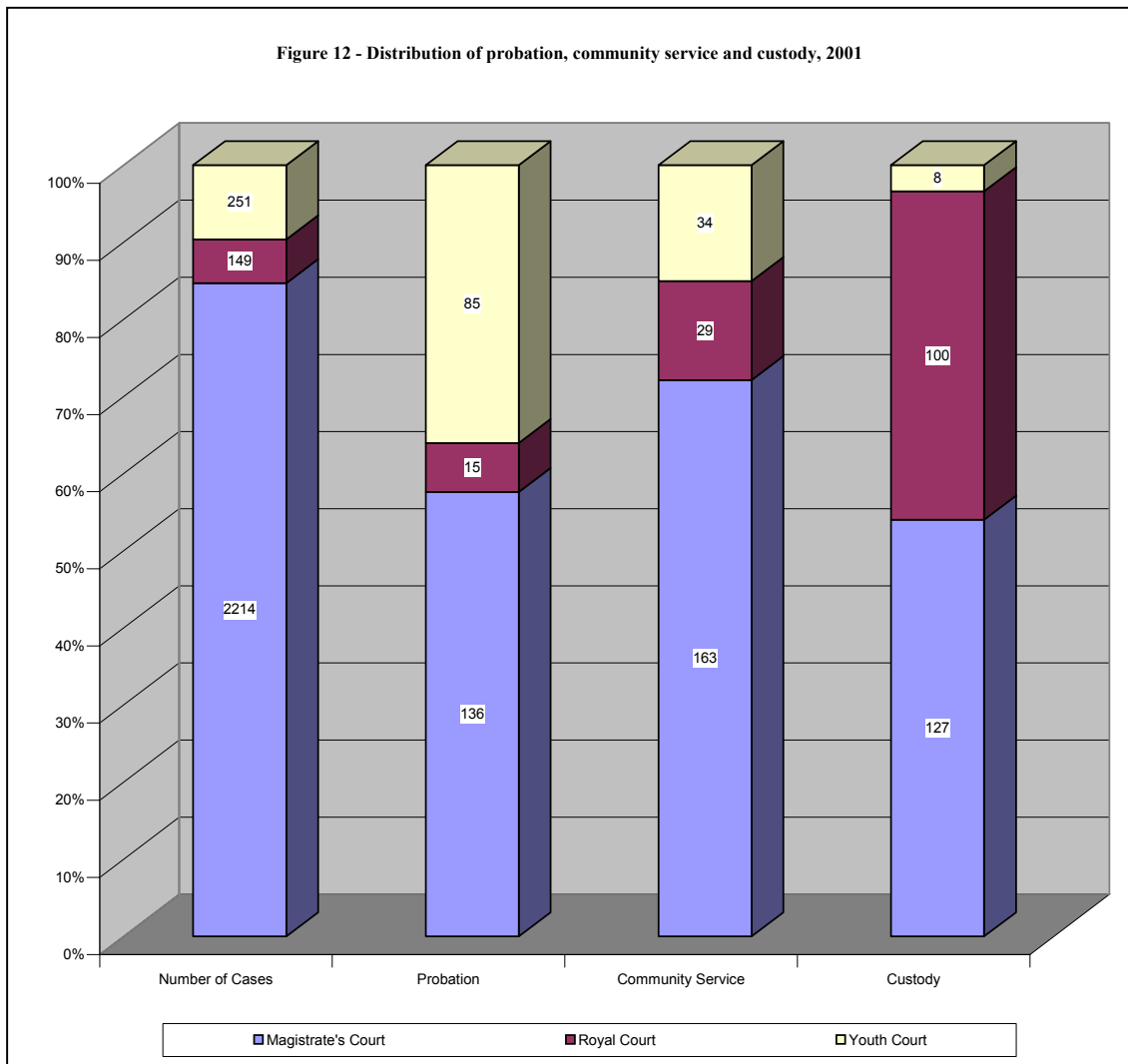
*** Data from Youth Court records

**** Data from Royal Court records (it should also be noted that both the Youth Court and Magistrate’s Court supplied data on the number of probation orders and community service orders imposed. These figures were not in agreement with the information found in the Probation Service annual reports. The Magistrate’s Court recorded 108 probation orders and 152 community service orders; the Youth Court recorded 67 probation orders and 36 community service orders). These disparities illustrate the general problems arising from the absence of shared counting rules.

Youth Court, Magistrate’s Court, and Royal Court in 2001. It shows that of the 2,614 cases dealt with by the three courts, 85% of disposals were from the Magistrate’s Court.

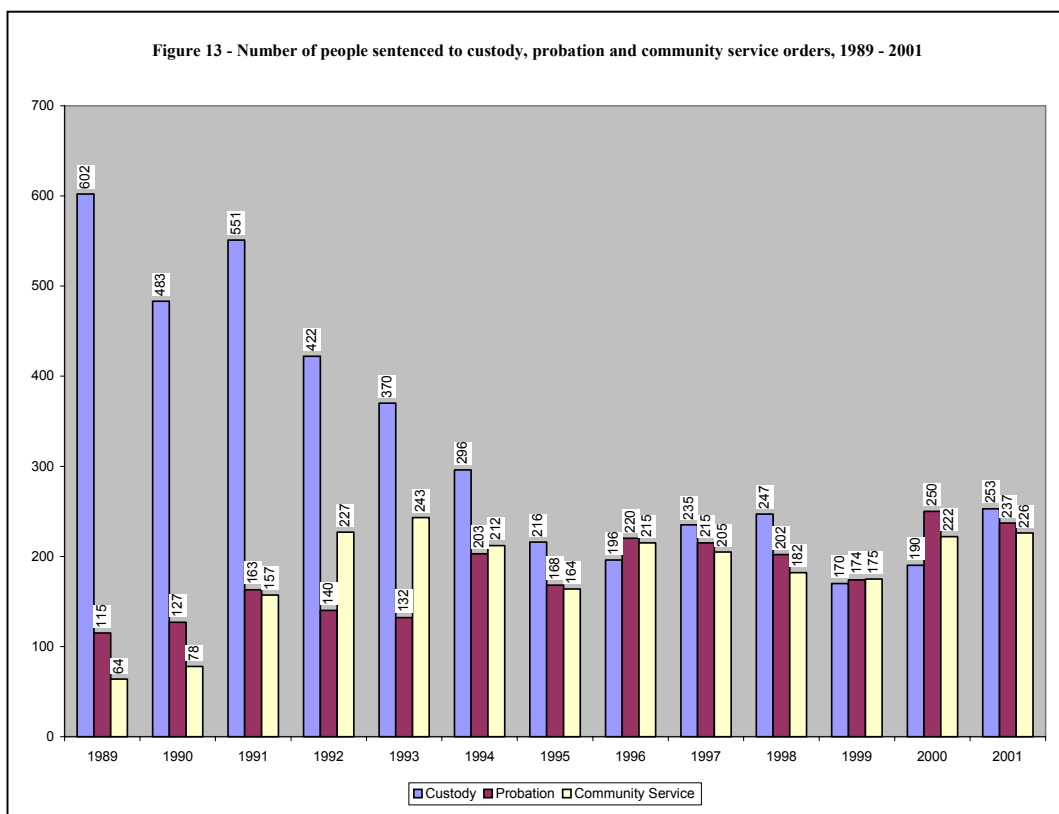
Although the Youth Court was responsible for only 10% of disposals, it made 36% of all probation orders and imposed only 3% of all custodial sentences. The Royal Court

was responsible for 149 sentences in 2001, and of these 100 were custodial sentences. This represented 40% of the 253 custodial sentences imposed in total. The Magistrate's Court imposed 127 custodial sentences, just over half of the total number of custodial sentences. In the 2,214 cases it dealt with, the Magistrate's Court imposed 136 probation orders (57% of the 237 probation orders imposed in total), and 163 community service orders (72% of the 226 imposed in total). These facts are illustrated by figure 12.



Due to the lack of data, it is difficult to place the information for 2001 in its broader context. A limited attempt can, nevertheless, be made. Figure 13 presents data from Jersey Probation and After-Care Service annual reports on the number of people sentenced to probation and community service orders, and from HM Prison La Moye annual reports on the number of people sentenced to custody, from 1989-2001.

It can be seen from Figure 13 that the number of people sentenced to custody each year has declined considerably since 1989-91. In 1989, over 600 people received a custodial sentence. From 1991-92 there was a decrease of 23%, from 551 to 422, in the



number of people sentenced to custody; this was followed by further decreases of 12% (to 370) from 1992-93, of 20% (to 296) from 1993-94, and of 27% (to 216) from 1994-95. In 2001, the number of people receiving a custodial sentence reached its highest level since 1994, with 253 custodial sentences, but this is still far short of the numbers in 1989-93.

Table 11 shows, first of all, the lack of data available relating to the use of custodial sentences. It can be seen that the Youth Court has not, from 1997-2001, imposed any more than 9 custodial sentences in one year. During these years, the greatest proportion of all custodial sentences for which the Youth Court was responsible was just under 5% (in 1999).

Table 11– Distribution of custodial sentences

		Number of custodial sentences imposed by the Court	Total number of custodial sentences imposed that year****	Proportion of the total number of custodial sentences
Youth Court*	1997	4	235	1.70%
	1998	9	247	3.64%
	1999	8	170	4.71%
	2000	2	190	1.05%
	2001	8	253	3.16%
Magistrate's Court**	1992	305	422	72.27%
	1996	90	196	45.92%
	2001	127	253	50.20%
Royal Court***	2001	100	253	39.53%

Source:

* Data from Youth Court records

** Data from Magistrate's Court records

*** Data from Royal Court records (36 people were give custodial sentences by the Superior Number of the Court; 64 were given custodial sentences by the Inferior Number of the Court; 32 were given non-custodial sentences by the Inferior Number of the Court)

**** Data from HM Prison La Moye annual reports

The information from the Magistrate's Court shows that the number of custodial sentences it imposed fell significantly between 1992-96, from 305 to 90, a decrease of 70%. Besides this decrease, the proportion of custodial sentences which were imposed by the Magistrate's Court also fell sharply, from 72% to 46%. Although this proportion rose slightly between 1996-2001 to 50%, it was still considerably lower than the level in 1992.

Unfortunately, the only data available for the Royal Court is for 2001. However, the small proportion of custodial sentences for which the Youth Court is responsible, and the decrease in the proportion of custodial sentences imposed by the Magistrate's Court, suggest, that since 1992, an increasing proportion of those receiving custodial sentences

have been sentenced by the Royal Court. In 1992, 72% of custodial sentences were imposed by the Magistrate's Court, meaning that only 28% of custodial sentences were imposed by other courts (including the Royal Court). This may be contrasted with 2001, when the Royal Court records show that it was responsible for 40% of all custodial sentences.

Figure 13 also shows the increase in the quantity of probation orders imposed each year during the period 1989-2001. Between 1989-93 the greatest number of orders imposed in any one year was 163, in 1991. There was then a sharp increase in the number of probation orders, from 132 in 1993 to 203 in 1994, and since then there have been over 200 orders imposed each year, with just two exceptions (1995, 1999). The

Table 12 – Distribution of Probation Orders, 1992-2001

	Total number of Probation Orders made	Number of Probation Orders made by Youth Court	Number of Probation Orders made by Magistrate's Court	Number of Probation Orders made by Royal Court	Total
1992	140	32	87	21	140
1993	132	17	100	14	131
1994	203	40	148	15	203
1995	168	36	128	4	168
1996	220	29	163	28	220
1997	215	38	159	18	215
1998	202	43	130	27	200
1999	174	32	117	23	172
2000	250	44	161	45	250
2001	237	85	136	15	236

*Data from Probation Service annual reports (note that both the Youth Court and Magistrate's Court supplied information on the number of probation orders imposed, which was not in agreement with the information found in the Probation Service annual reports. The Youth Court records (from 1997-2001) recorded 26 probation orders in 1997, 35 in 1998, 23 in 1999, 37 in 2000, and 67 in 2001. The Magistrate's Court records (1992, 1996, 2001) recorded 66 probation orders in 1992, 146 in 1996, and 108 in 2001)

** A fuller version of this table may be found in the Appendix, Table A7, which shows what proportion of the total number of probation orders were imposed by each of the three courts every year.

year 2000 saw

the greatest number of probation orders in a single year, 250, and the levels remained high in 2001, at 237.

Table 12 shows a large increase in the number of probation orders imposed by the Youth Court, from 44 in 2000 to 85 in 2001. Before 2001, the Youth Court had not

imposed any more than 23% of the total of all probation orders (in 1992). In 2001, however, this figure grew considerably; the Youth Court was responsible for over 36% of all probation orders that year.

Table 12 also shows that a decreasing proportion of probation orders are being imposed by the Magistrate's Court. For each year from 1993-97 over 70% of all probation orders were imposed by the Magistrate's Court; this figure fell to 65% in 1998, and, despite rising slightly in 1999, fell in 2000 to 64% and again in 2001 to 58%.

In the Royal Court, meanwhile, the number of probation orders peaked at 45 in 2000. This represented 18% of all orders that year, and was considerably greater than the 23 imposed in 1999. However, the number of orders fell sharply in 2001 to 15, the smallest number of orders in a single year since 1995.⁴⁹

Finally, Figure 13 shows the use of community service orders. In 1989 and 1990 less than 100 of these were imposed each year, but this figure began to grow in 1991, and peaked in 1993 at 243. The number of orders then began to drop, reaching 164 in 1995, before rising above 200 again in 1996 and 1997, then dropping again in 1998-99. In 2000-01 the number of orders stabilised at around 220.

Table 13 shows that a decreasing proportion of community service orders are being imposed by the Magistrate's Court. For 1993-95, over 90% of all orders were imposed by the Magistrate's Court, but by 1998 this figure had fallen to about three-quarters. Since then the percentage has remained at about 70%. The number of community service orders imposed by the Magistrate's Court was consistently around 200 per year for 1992-94. By 1999, this number had fallen to 124, but in 2000-01 it rose again to 159 and then to 163.

Table 13 also shows the growth in the number of community service orders made by the Youth Court. For 1992-96 the number never rose beyond 5 a year, but it grew sharply in 1997-99, reaching 21, before falling to 14 in 2000 and then rising considerably in 2001 to 34. This number represented over 15% of all the orders made that year.

⁴⁹ As with the fall in community service orders imposed by the Royal Court in 2001, the decline in probation orders almost certainly reflects the change in the jurisdiction of the Magistrate's Court in October 2000 {see above, pp. 45}

The number of community service orders made by the Royal Court fell significantly from 24 in 1992 to just 5 in 1995. It then rose to 25 in 1996, and this number remained steady for the next three years, before rising again to 49 in 2000. The number then declined in 2001 to 29. Every year since 1997 the Royal Court has been responsible for

Table 13 – Distribution of Community Service Orders, 1992-2001

	Total number of community service orders	Number of community service orders made by Youth Court	Number of community service orders made by Magistrate's Court	Number of community service orders made by Royal Court	Total
1992	227	5	198	24	227
1993	243	5	225	13	243
1994	212	4	194	10	208
1995	164	2	157	5	164
1996	215	3	187	25	215
1997	205	11	169	25	205
1998	182	19	138	25	182
1999	175	21	124	30	175
2000	222	14	159	49	222
2001	226	34	163	29	226

(community service orders include both community service orders and probation orders combined with community service)

*Data from Probation Service annual reports (note that both the Youth Court and the Magistrate's Court supplied information on the number of community service orders imposed, which was not in agreement with the information found in the Probation Service annual reports. The Youth Court records (from 1997-2001) recorded 10 community service orders in 1997, 16 in 1998, 20 in 1999, 15 in 2000, and 36 in 2001. The Magistrate's Court records (1992, 1996, 2001) recorded 194 community service orders in 1992, 171 in 1996, and 152 in 2001)

** A fuller version of this table may be found in Appendix, Table A8, which shows what proportion of the total number of community service orders were imposed by each of the three courts every year.

over 10% of all community service orders; in 2000 this proportion rose as high as 22%, but fell back again in 2001 to 13%.

Treatment Orders

A "Treatment Order" (ie: a Binding-Over Order with a Condition of Treatment, hereinafter referred to as a Treatment Order) for alcohol or drugs misuse generally involves referral to the Alcohol and Drug Service (the A & D Service) and is based upon notions of harm reduction. The treatment involves tackling the drug or alcohol dependency and the offending behaviour. The courts tend to allow the A & D Service to

determine how best to deal with an individual. In the long-term, treatment works better than prison: prison tends to be a stop gap whereas treatment encourages the development of social skills necessary to, for example, walk past a pub or resist a drug dealer.

Treatment Orders are becoming more widely used, primarily by the Magistrate's Court, but also by the Royal Court. In 2000, a total of 130 background reports from the Alcohol and Drug Service were ordered and 42 Treatment Orders were made (16 of which were breached). Between Jan-June 2001, 71 reports were ordered of which 39 resulted in Treatment Orders (12 were breached).

Les Chênes

In concluding this section, brief mention should be made of Les Chênes, a residential and day school which was established in 1977 and currently serves a dual purpose. It provides care and education for children who have social, emotional and behavioural problems that have resulted in their being excluded from mainstream schools. The route to Les Chênes for some of the children and young people is through the Youth Court. Les Chênes serves as the Island's secure (as well as non-secure) remand facility for young people of school age (established under the Children (Jersey) Law 1969). It also provides care, usually for longer periods of time, for young people as a condition of either a probation or binding over order.

While the school is under the direction of Jersey's Education Department and is staffed and run by educationalists, it plays an important role within the criminal justice process. The regime and direction adopted by the management of Les Chênes has fluctuated in terms of the emphasis afforded to these two purposes. Although the numbers of young people remanded to Les Chênes has ebbed and flowed during its history of two decades or so, the staff have attempted to stress its educational rationale and its mission as a developmental institution. In more recent years the duality of its intake has placed the regime under some strain. In February 2001, there were eight youngsters on remand (with three secure remand single rooms). In June that year a report was completed for the Education Department by a member of the English schools inspectorate⁵⁰. In August, it

⁵⁰ This report by Ms K Bull is due to be published at the end of 2002

was decided that Les Chênes would serve as a remand facility. Two months later the status quo was restored. When visited in July 2002 during the course of this Review, it appeared that the remand role for Les Chênes was once again in the ascendancy.

It is beyond the scope of the Review to make detailed recommendations (and in any event, Ms Bull is in the process of conducting a wide-ranging review of provision for children with special needs) but three general observations are in order.

First, there is considerable merit in Les Chênes retaining its educational mission and character. This is in line with viewing its residents as children and young people who, although in one sort of trouble or another, are persons of school age and who should be within an educational and developmental institution. In this sense, Les Chênes has throughout its twenty-five years been very much within the tradition of the Kilbrandon Report which led to the setting up of Children's Hearings in Scotland during the 1960s.⁵¹

Second, the Island should resist any suggestion of establishing a purpose built secure unit to serve the Youth Court for remand or sentencing purposes. The high cost (financial and human) of children's secure units in England and Wales provide considerable reason for pause before any policy launch in this direction⁵².

Finally, the proud history of decent and creative care forged at Les Chênes should not be discarded. While some procedural reforms and structural refurbishments are, without doubt, required every effort must be made to retain the overall ethos which depends in the main upon security being provided through the quality of staff and the activities and relationships they are able to promote with the young people in their care.

Custody

The Island's single penal institution, HMP La Moye, houses men, women, young offenders (aged 16 and over on remand and aged 15 and over when sentenced) and adult remand prisoners, and all offence categories from life sentence prisoners to civil debtors. The accommodation, which includes single, double and dormitory cells, does not provide integral sanitation. The young offenders institution (YOI), essentially a wing of the

⁵¹ *Children and Young Persons: Scotland*, 1964, Cmnd., 2306.

⁵² There are significant parallels here with the discussion below on the Island's rejection, to date, of a designated secure unit for mentally disordered offenders

prison, houses males aged 15-21 years. As an integral part of La Moye, this wing suffers the same difficulties as the adult facility. Space and resource restrictions are such as to limit education and recreation and thereby impact on sentence planning. Young females are currently held with adult females on a separate and cramped wing of the prison.

As shown in Table 14, the numbers of persons held on remand at La Moye has declined over recent years.⁵³

	Remand	Total population	Remand as % of total population
30/3/1999	49	127	38.6
28/3/2000	50	133	37.6
27/3/2001	40	132	30.3
26/3/2002	35	148	23.6

Source: abstracted from statistics presented to the Board of Visitors, as dated above

While over the last decade or so, some consideration has been given to the construction of a second prison, cost issues together with difficulties in identifying a suitable site have meant that this has not been generally viewed as a viable proposition. Furthermore, the findings of this Review suggest there are over-riding considerations of criminal justice policy for not going further down this expansionist route.

Until very recently, La Moye had a maximum capacity for 149 inmates. This total was increased to 163 at the close of 2001 when additional beds were placed in the already cramped cells to accommodate increased numbers. La Moye is awaiting the commencement of a building programme to refurbish the women's wing and the YOI as well as increasing the overall capacity to 189. While it is intended that this capital investment will result in fewer prisoners being held in the United Kingdom, the very real danger is that any such expansion of capacity will drive practice and encourage a greater resort to custody.

The issue of numbers of prisoners (population and through-put) held at HMP La Moye (as well as those prisoners held in UK prisons) reaches to the heart of the Review.

By representing the “deep-end”, the prison system defines and shapes the overall process of criminal justice. Consequently, it is often argued that it is prison populations, rather than the outer edges of the process, to which any reform strategy should be directed.

Before examining the recent sharp growth in Jersey’s prison population it should be noted that the Island operates a system of transferring some long-term prisoners to the United Kingdom. This scheme originally served to alleviate pressure from the local institution, which was ill-equipped to deal with inmates serving sentences of more than 18 months. Prisoners transferred from the Island can only be sent to the UK and the consent of prisoners is required for any such transfer. At the end of March 2002, Jersey had 56 prisoners held in UK prisons. Of these 56 inmates, 21 prisoners had requested return to the United Kingdom and, as such, are paid for by the UK government and 35 inmates were paid for by the Island, having been asked if they were willing to serve their sentences in prisons throughout England and Wales.⁵⁴ It is a matter for the Prison Governor how many prisoners are asked to consent to such a transfer. As shown in Table 15, the amount spent on boarding prisoners in the UK during 2001 was £833,000 (which represented 15.5% of the total actual prison spend). It might be noted that most prisoners from the UK prefer to remain at La Moye, particularly those who know the mainland prison system.

As displayed in Table 15, there has been a substantial increase in Jersey’s prison population since the mid-1990s. Between 1994 and 2001 there was a rise of 45% in the average daily prison population held at HMP La Moye. However, this level of growth does not take into account prisoners who are held in UK prisons. When this is done the increase between 1995-2001 was in fact 56%.

⁵³ 2002 data. Interestingly, there is no bail hostel provision in Jersey.

⁵⁴ HM Chief Inspector of Prisons has drawn attention to the absence of standard charging arrangements between one UK prison and another. (HM Inspectorate of Prisons, *HM Prison and Young Offender Institution La Moye, Jersey, Report of a Full Announced Inspection, 2-6 April 2001*, London: HMSO, 2001, 6)

Table 15**Jersey's average total daily population, 1994-2001, and UK boarding cost**

Year	At La Moye	In UK Prisons	Total population	Rate per 100,000 population	Total UK boarding cost (£)
1994	96.9	NA	NA	NA	100,000
1995	98.4	17.9	116.3	137	171, 630
1996	107.2	36.21	143.41		450,000
1997	115.0	34.85	149.85		546,600
1998	114.3	30.1	144.4		450,000
1999	126.1	23.45	150.05		446,366
2000	129.5	23.4	152.99		338,523
2001	140.6	41.04	181.65	208	833,000

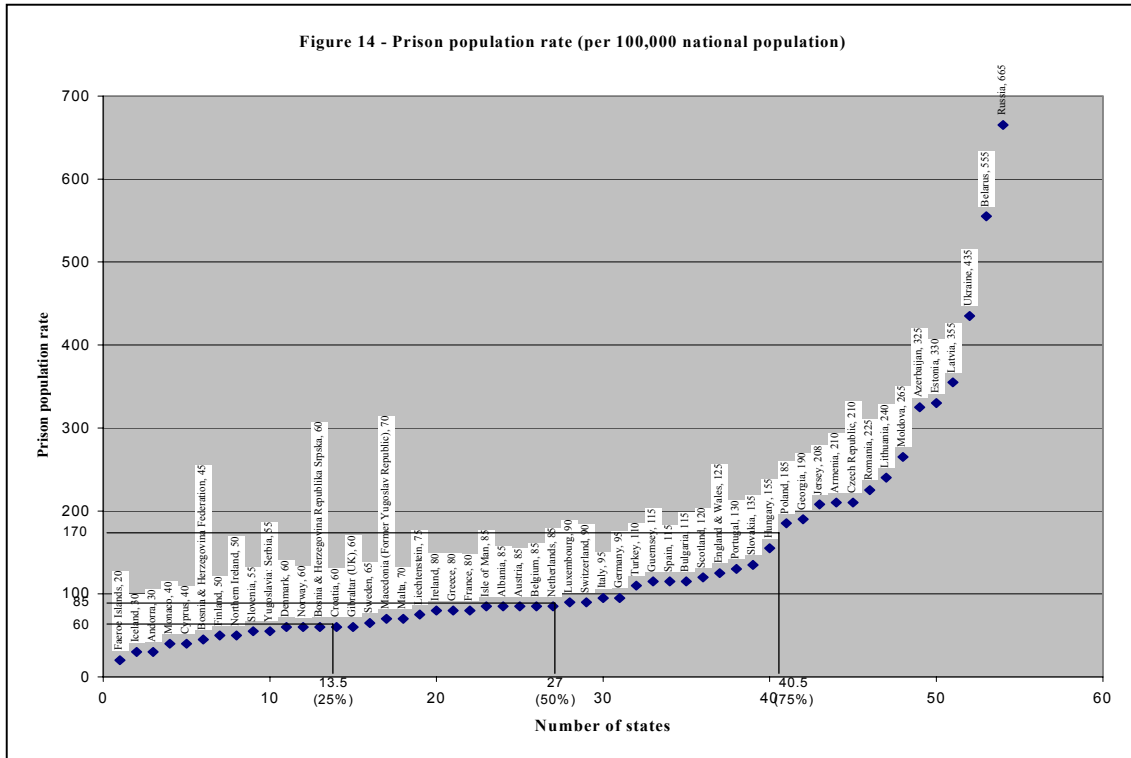
Source: data kindly provided by the Governor, HMP La Moye

In a recent global survey of prison populations, Jersey's prison population rate per 100,000 inhabitants was shown as being 150.⁵⁵ The mean prison population rate for Europe is 140 per 100,000 of national population, significantly lower than the corrected prison rate for Jersey (208 per 100,000).

Furthermore, the mean is artificially high given the exceptionally large prison populations in Ukraine, Belarus and Russia. The median prison population for Europe is accordingly a more meaningful yardstick for comparison. It is 85 (see figure 14), considerably lower than the prison rate for Jersey. In fact, Jersey is inside the upper quartile of prison populations; only 25% of European states have a prison population of

⁵⁵ Home Office, *World Prison Population List (third edition)*, Research Report 116, London: HMSO, 2001. 208 is the corrected rate for Jersey in 2001. It is based on an average daily prison population at La Moye of 140 added to 41 prisoners held in UK prisons at cost. Jersey's total population of 87,186 is based on the census. The rate for Jersey in the Home Office's World List was shown as being 150, but this rate was based on an estimated island population of 90,000. The Home Office did not take account of the prisoners boarded out to the UK. A further correction might take account of the 21 prisoners transferred at their own request to UK prisons (at no cost). The corrected total population is then 202 and the rate per 100,000 rises to 232

170 per 100,000 or greater, which places Jersey’s prison population at the top end of the European scale.



It should also be noted that Jersey’s rate is rather higher than rates in most “micro-states”, as shown in Table 16.

Table 16
Prison population rates of selected “micro-states”

Jersey	208	(corrected rate)
Guernsey	115	
Isle of Man	85	
Gibraltar	60	
Monaco	40	

Source: Home Office, *World Prison Population List (third edition)*, Research Report 116, London: HMSO, 2001, showing the corrected rate for Jersey.

No-one spoken to during the course of this Review suggested that an incarceration rate of the magnitude of 208 for Jersey is the consequence of policy intent. It is difficult

to avoid the conclusion that it has been achieved within a criminal justice policy vacuum through drift rather than design.⁵⁶

Against this trend, it is evident that for over a decade at least that the number of sentenced admissions to the prison has declined. Furthermore, it is clear that the balance has shifted since 1997, towards persons being sentenced to terms of at least two years.

Table 17 – Sentenced Admissions, length of sentences, La Moye, 1991 – 2001

	< 6 months	6 - 12 months	1 - 2 years	2 - 5 years	5 - 6 years	6+ years	Total
1991	497 90.53%	31 5.65%	14 2.55%	4 0.73%	2 0.36%	1 0.18%	549*
1992	356 84.36%	25 5.92%	20 4.74%	20 4.74%	0 0%	1 0.24%	422
1993	313 85.52%	20 5.46%	12 3.28%	16 4.37%	2 0.55%	3 0.82%	366**
1994	236 79.73%	23 7.77%	16 5.41%	12 4.05%	5 1.69%	4 1.35%	296
1995	142 65.74%	15 6.94%	15 6.94%	25 11.57%	8 3.70%	11 5.09%	216
1996	118 60.20%	25 12.76%	17 8.67%	19 9.69%	1 0.51%	16 8.16%	196
1997	166 70.64%	22 9.36%	22 9.36%	17 7.23%	2 0.85%	6 2.55%	235
1998	175 70.85%	18 7.29%	23 9.31%	16 6.48%	6 2.43%	9 3.64%	247
1999	110 64.71%	25 14.71%	15 8.82%	14 8.24%	3 1.76%	3 1.76%	170
2000	101 53.16%	21 11.05%	19 10.00%	29 15.26%	4 2.11%	16 8.42%	190
2001	137 54.15%	32 12.65%	38 15.02%	22 8.70%	4 1.58%	20 7.91%	253

*plus 2 borstal training

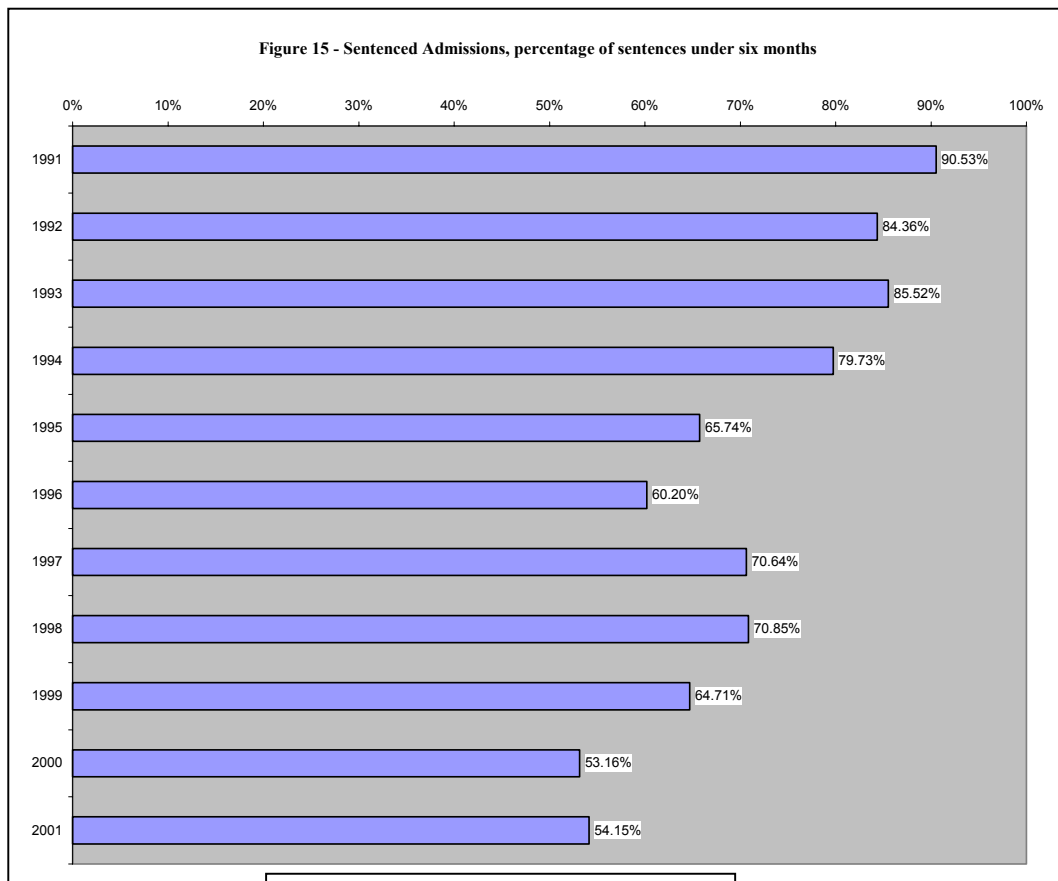
**plus 4 borstal training

Source: HMP La Moye annual reports

⁵⁶ Some observers contend that there are special features accounting for Jersey's high incarceration rate. Further research is required, for example, on patterns of residency of persons imprisoned by Jersey courts. The data presented in Table A3 does not support the thesis that the population at HMP La Moye reflects an "imported" crime problem. In this respect drugs offenders are only very slightly less likely to be Jersey born. Nor does existing research endorse the view that the explanation lies in seasonal tourist considerations. See Dr King's finding that most crime in Jersey was committed by persons with more than five years residency. Debbie King, *Summer Time Crime in Jersey with particular reference to visitors to the Island*. PhD dissertation, University of Southampton, 1988.

Table 17 shows that the proportion of sentenced admissions with sentences of six months or less has sharply declined since 1991, both in volume terms and as a proportion of total admissions; from 497 (91%) in 1991 to 101 (53%) in 2000 and 137 (54%) in 2001 (see figure 15).

There were 32 admissions with sentences of between 6 and 12 months in 2001, the greatest number in terms of volume since 1991. The proportion of sentenced admissions with sentences of between 6 and 12 months, meanwhile, has grown since the first half of the 1990s. From 1991-93 the proportion was consistently between 5-6%, and from 1994-95 it was consistently at around 7%. Levels rose in 1996 to 13%, and despite decreasing for the following two years, the proportion rose again in 1999 to 15%. It has since steadied, to 11% in 2000 and 13% in 2001.



The proportion of admissions with sentences of between 1 and 2 years has grown steadily since 1991, when the percentage was only 3%. By 2000 it reached 10%, and it rose sharply again to 15% in 2001.

After jumping sharply from 4 in 1991 to 20 in 1992, the number of sentenced admissions with sentences of between 2 and 5 years has fluctuated to a high of 29 (in 2000) and a low of 12 (in 1994). Since peaking at 12% in 1995, the proportion of sentenced admissions with a sentence of between 2 and 5 years has been relatively stable, fluctuating between 10% (in 1996) and 6% (in 1998), with the one exception of 2000, when the proportion rose sharply to 15%. These figures are significantly greater than during 1992-94, when the proportion was consistently at about 4%, and 1991, when it was less than 1%.

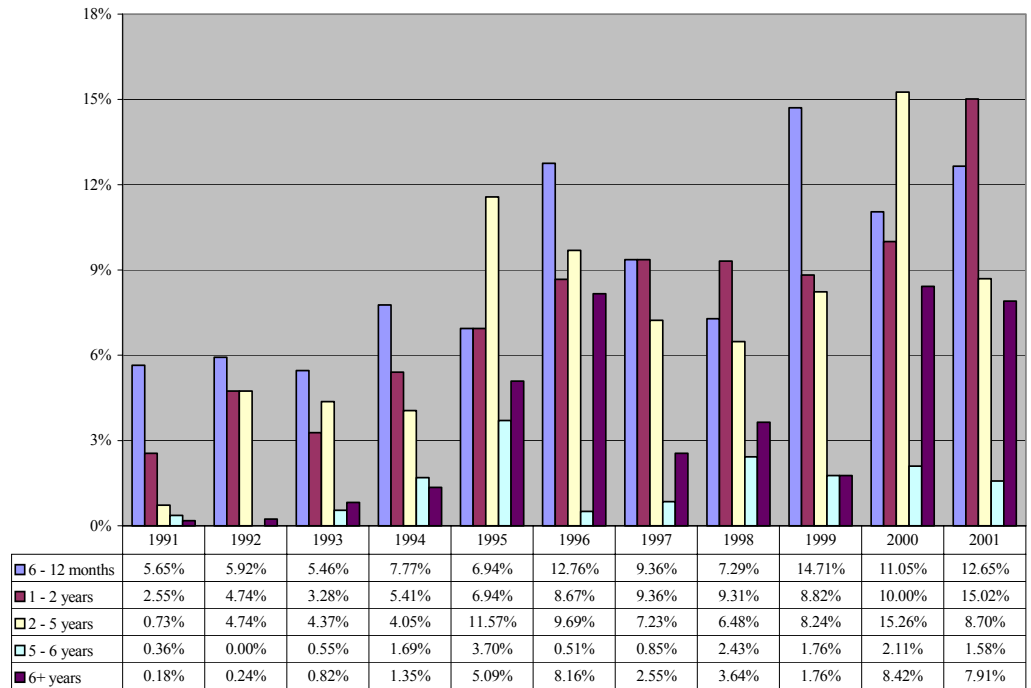
The number of admissions with sentences of between 5 and 6 years has not risen greatly, either in volume or proportionately. The 4 admissions in both 2000 and 2001 represented just 2.1% and 1.6% of total sentenced admissions respectively, a small increase from the 2 admissions in 1991, which made up 0.4% of total sentenced admissions.

Finally, there has also been a significant increase, both in volume and proportionately, of admissions with sentences of 6 years or over (including life). For 1991-93 the proportion of admissions with sentences of 6 years or more never reached 1%. By 1996 the proportion had risen to over 8%, and despite returning to lower levels for 1997-99, the figure rose again to 8% in 2000, and was still at that level in 2001.

The effects of these trends are illustrated in figures 16 and 17. Figure 16 shows the growth, proportionately, in sentenced admissions with sentences of 6 months or over, in particular, sentences of 6-12 months and 1-2 years. Figure 17 shows how the breakdown of sentenced admissions has changed since 1991.

There are virtually no published data on offence categories of the population at La Moye. The annual reports of the Prison Board contain no information at all on this topic. In 2001, HM Chief Inspector of Prisons reported that inmates for which the main offence (for sentenced and remanded persons) was drugs accounted for 53% of the population of

Figure 16 - Sentenced Admissions of 6 months or over by length of sentence



Source: annual reports of HMP La Moye

135 at time of the inspection. The next highest totals were violence at 16%, robbery at 6% and breaches of court orders at 5%.⁵⁷ A fuller profile of the population with reference to drugs offenders emerges from an examination of the 149 persons held at La Moye on 31 March 2002. As shown in Table 18, of this total number, 70 (47%) were either on remand or had been sentenced for drugs offences (39% of these were on remand, compared with 31% of the total population). In terms of nationality 26 of the ‘drugs offenders’ were recorded as being from Jersey, 20 from the UK, 2 from Ireland, 7 from Portugal and 4 from other countries. A detailed overview of prisoners at HMP La Moye and held in the UK can be found in Appendices A1 to A6 {pp. 115-121}

⁵⁷ Op cit., n. 50, Appendix 11; for non-drugs categories of sentenced prisoners at HMP La Moye on 31 March 2002, see Appendix Table A6

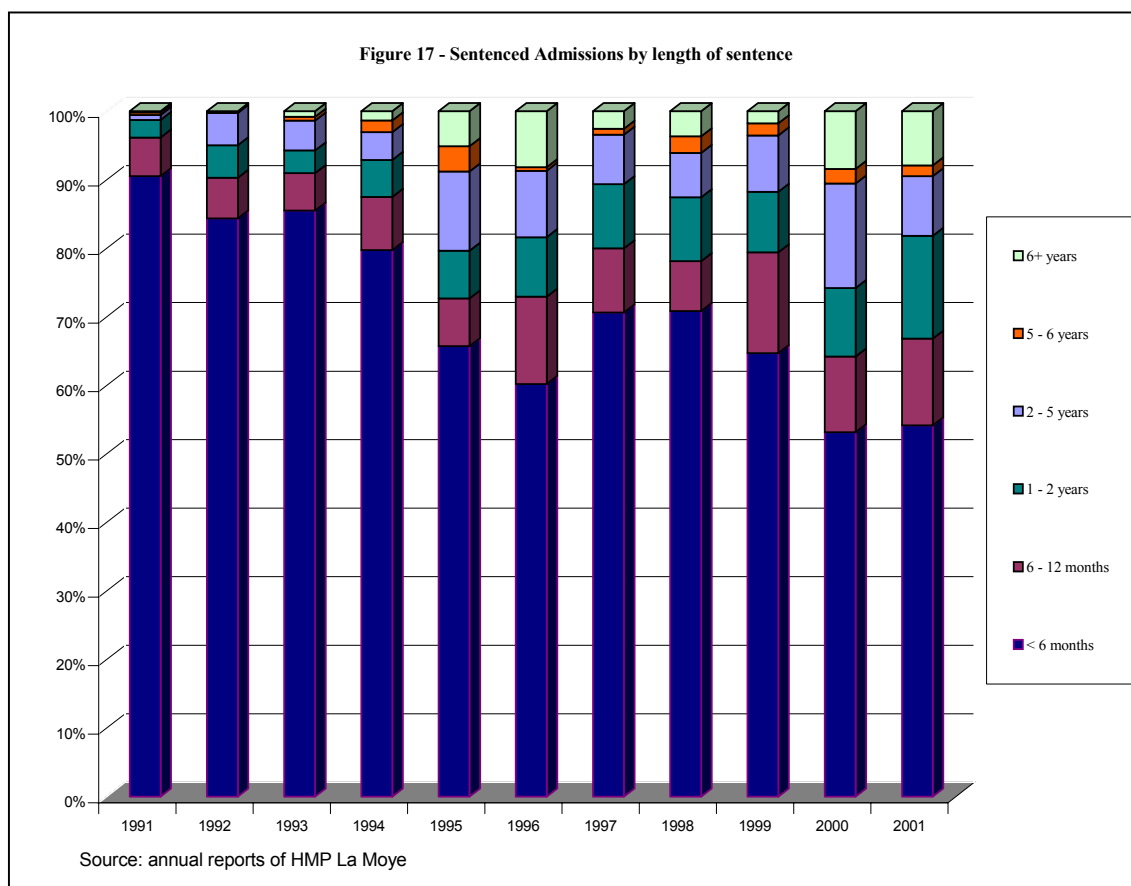


Table 18

Distribution of drugs offence categories by total prison population, HMP La Moye, 31 March 2002

Misuse	31
Importation	27
Possession	8
Possession with intent/supply	8

Source: abstracted from data kindly supplied by the Governor, HMP La Moye

Table 19

The distribution of sentence lengths of sentenced drug offenders at HMP La Moye and held in UK prisons, 31 March 2002

	La Moye	Held in UK prisons
Up to 6 months	2	nil
6-12 months	3	nil
12-18 months	3	nil
18 months-4 years	20	4
4-10 years	24	30
Over 10 years	3	5
Total	55	39

Source: abstracted from data kindly supplied by the Governor, HMP La Moye

As shown in Table 19, the 94 persons sentenced for drugs offences accounted for 57% of the total sentenced prison population.⁵⁸ This total was made up of 51% of the prisoners held at La Moye and 70% of the prisoners held in the UK. When the total of sentenced and remand prisoners is considered, some 53% were involved in drugs offences. Sentenced drug offenders are even more over-represented among prisoners sentenced to four or more years imprisonment, as is shown in Table A5 in the Appendix.

HMP La Moye has a Prison Board of Visitors which is comprised of seven Jurats. The Board considers grievances brought by prisoners as well as exercising a disciplinary function. The prison is served by an experienced governor and a permanent, dedicated core of staff that maintain good and regular contact with the inmates, ensuring sound communication within the institution and a shared commitment to the prison's goals and values. HM Chief Inspector of Prisons was especially impressed by 'the positive relationships throughout the establishment as evidenced by staff attitudes towards

prisoners. This valuable asset should be preserved'.⁵⁹ However, the prison's fabric is decrepit and the space and facilities available are tightly constrained. La Moye is ill-equipped to cope with long-term prisoners, with the increased demand for segregation by drug informants, sex offenders and other inmates living in fear or at risk, and with the ever-increasing number of individuals with psychiatric problems and 'special needs'. A significant proportion of inmates are drug and/or alcohol dependent and the resources to deal with the associated problems are inadequate. Space restrictions have limited the recreational and educational facilities available for inmates. There is little in the way of programmes geared to rehabilitation and so there is little scope for a serving prisoner to address his/her offending and identify and confront the notions that underpin it. Early encouragement is being taken from schemes being piloted that permit prisoner visits at a local community centre and over-night stays.

There is no system of parole in Jersey and its introduction has been resisted on the grounds that it would distort the sentencing process. However, remission is granted for good conduct where a prisoner is sentenced to imprisonment for a term exceeding five days (or, if under 21 years at commencement of sentence, be released on licence and subject to subsequent supervision). Remission constitutes a maximum of one third of the sentence, provided that it does not reduce the period of imprisonment to less than 5 days. Neither is there provision for post-custodial supervision. Draft legislation in this respect is being considered. Under this legislation, prisoners released at the two-thirds point of their sentence would then be subjected to supervision by the Probation and After-Care Service. The power would rest with the Home Affairs Committee to alter the point at which release under these arrangements might be made.

The Chief Probation Officer and the Prison Governor have had discussions on the feasibility of an early release scheme supported by electronic monitoring. They have been advised that its introduction is possible under existing powers to grant temporary release for the purposes of rehabilitation or employment. A proposal is due to be considered by the Home Affairs Committee during the latter part of 2002. This proposed scheme of

⁵⁸ This compares with drugs offenders accounting for 16% of the sentenced prison population in England and Wales as of 30 June 2000. *Prison Statistics 2000, 2001*. See Appendix Table A5.

⁵⁹ *Op cit.*, n.51, 15-16

electronic monitoring would in fact provide a form of “home imprisonment” (it has been estimated for up to about 30 prisoners) and, although it would reduce pressure on HMP La Moye, it would not affect the prison population as such. A further positive consequence would be releasing space at La Moye for prisoners boarded in the United Kingdom.

In concluding this section, a brief comment is required on the Island’s approach to deportation within the context of criminal justice. Table 20 displays deportations involving convicted persons who were held either in HMP La Moye or were persons sentenced in Jersey and held in UK prisons. It might be noted that over the first eight months of 2002 a further five deportation orders were signed by the Lieutenant Governor which indicates an increase on earlier years.

Table 20 – Deportations of convicted persons 1992 to 31.08.2002		
Year	Persons deported from Jersey	Jersey cases where D.O. signed in UK
1992	1	
1993	4	
1994	4	
1995	0	
1996	0	
1997	1	
1998	1	
1999	0	2
2000	1	
2001	0	1
2002	3	
TOTAL	15	3

Where deportation orders were signed in the UK this refers to persons sentenced in Jersey and held in UK prisons.

Source: Data kindly provided by the Chief Inspector of Immigration.

4 ASPECTS OF THE SOCIAL CONTEXT

In this penultimate chapter, three aspects of the Island's social context are briefly discussed. Each of these topics provides a reminder that criminal justice policy cannot be isolated from other areas of social policy. Ultimately, a coherent way forward for criminal justice must connect with domestic policies as a whole.

Substance abuse

The starting point has to be the study conducted by Imperial College, which reported on substance misuse on the Island in October 2000. Its key findings were:

- There are 800 established heroin users on the Island. 91% of these users share equipment, with many sharing with more than one person. This situation has huge implications for public health and is particularly worrying because of the numbers who travel to countries where hepatitis and HIV are prevalent. Only 400 heroin users are in touch with the services and the Alcohol and Drug Service attempts to identify the hidden population of drug users to attempt to encourage them to change their habits.
- The Jersey population consumes 12.9 litres of alcohol per head per week, compared with the UK, which consumes 7 litres per head. Alcohol misuse is a much greater problem than drug abuse. The issue is being addressed by the Alcohol Strategy which addresses drunk and disorderly behaviour, provision of transport, licensing, location, underage drinking. It could, if ratified, change the Island's approach to alcohol and impact significantly on the problem of alcohol misuse⁶⁰.

While in the United Kingdom most drug users are unemployed, in Jersey less than 10% are unemployed: the majority have permanent, full-time employment both in industry and in the professions. The 'problem' drug for the Island is heroin. In the United Kingdom, where heroin costs £40-£60 per gram, most heroin users smoke the

drug. In Jersey most heroin users inject because heroin is more expensive: it costs £300-£450 per gram on the Island. Most users on the Island fund their habit through their own wages. The average habit in Jersey is ½ gram per day. Users generally buy 1-2 grams at a lower price and sell some off at a profit. There is some drug-related crime but not a significant amount. Unlike the United Kingdom, shoplifting or burglary tend not to be a source of funds for the habit.

Heroin is readily available as a recreational drug in local nightclubs. Dealers have sought to re-brand the drug as a party drug. Instead of being ‘skag’ it is now known as ‘brown’, ‘henry’, ‘H’. The dealers sell it in smaller quantities (£50 bags), often as a drug to be used when coming down from Ecstasy.⁶¹ Smoking heroin every weekend over 4-6 weeks will lead to dependency. Dealers ply new users with the drug over that period. A habit that costs £80-£100 per day quickly develops, which has to be funded by the user.

Most heroin that comes into the Island does so in small quantities and is distributed quickly. Background reports on drugs couriers consistently reveal their unfortunate circumstances. Many of the couriers that are caught have resorted to trafficking as a means of settling debt or escaping threat. Many couriers are naïve, easily-led young people, often women, who are used to smuggle. Similar stories are regularly told about how and why they resorted to trafficking: they are given large quantities of heroin very cheaply in the United Kingdom so that they develop a dependency. The drug is then withheld from them. In desperation they throw themselves at the dealers who will give them just enough heroin to alleviate the pain of withdrawal. The dealers then ask them to do a ‘run’ to Jersey in return for them wiping the slate clean. Often the user does not even realise that a ‘slate’ is being kept. They agree to import the drugs under threat of harm to themselves and their families. It was reported that sometimes they are used as a decoy: they are only given a small quantity of drugs to smuggle, about 100 grams, and

⁶⁰ Imperial College of Medicine, *Responding to Drug and Alcohol Use in Jersey*, University of London, 2000

⁶¹ One ecstasy tablet in Jersey costs £10-£15. In the UK one tablet costs £3 on average, but can be as low as £1.

attention is diverted away from the main importer who is smuggling a much larger quantity of drugs.⁶² Rarely do ‘mules’ disclose the identity of the dealers. Hull and Liverpool are common sources. Jersey’s rigid sentencing tariff for such offences means that the custodial penalties imposed are substantial. Community Service ‘probation and treatment orders’ have, however, been imposed on residents and non-residents of the Island.⁶³

Cannabis tends to come from France. It is widely available and virtually impossible to control. Ecstasy comes from Holland via the United Kingdom. Brown heroin comes from Afghanistan, via the United Kingdom. White heroin comes from Thailand and Burma, again via the United Kingdom. There is some cocaine, which is the champagne of drugs on the Island. Little evidence of amphetamines has been detected on the Island. However GHB, a drug that became a problem in the United Kingdom about two years ago, has now emerged in Jersey.

The Alcohol and Drug Service promotes a harm reduction approach to drugs. It deals with anyone who needs alcohol or drug advice or assistance. The Service works closely with both the Magistrate’s and the Royal Court. The majority of the clients attend as part of a court order or under voluntary supervision, while others are referred to the Service by health-care professionals. The Service does not see anyone below 16 years of age. The majority of the Service’s clients are Jersey born with a few from the United Kingdom and Portugal. White-collar workers tend not to use the Service; because of anxieties about anonymity they tend to seek treatment services off the Island.

Prison health care staff assess all inmates for drug and alcohol dependency. The community treatment for heroin withdrawal is very different to that of the prison: the Alcohol and Drug Service uses methadone; the prison uses dihydrocodeine. The latter does not require the attendance of a doctor. Someone from the Alcohol and Drug Service works in the prison one day per week, focussing on inmates just before their release. Eighty per cent of the inmates with alcohol and drug dependencies engage with the Service on release. The Service also funds drug education in the prison, and inmates may

⁶² The Customs and Excise Department, however, assert they have no evidence of this practice.

request a transfer to the drug-free wing at La Moye, where they will be randomly tested for drugs.

There is no arrest referral scheme: i.e. there is no independent drugs counsellor who visits every arrestee to determine whether their offending is drug-related and to offer treatment. The result is that there is a glaring gap in the collection of drugs data. Police only collect data in respect of actual drug offences; they do not collect information about drug-related offences. This is potentially a good source of intelligence in respect of drug use. Moreover, people are generally more susceptible to change when arrested than at most other times: an arrest referral scheme would increase the opportunity to work with, and potentially rehabilitate, drug and alcohol abusers.

Mental health

Mental health issues arise at every stage of the criminal justice process. Up until February 1998, when the Forensic Psychiatric Nurse started work in Jersey, the Island had no forensic mental health expertise. There is now a reasonably comprehensive community forensic psychiatric team comprising one clinical nurse specialist, 2 staff nurses and 1 support worker. The team has built up relationships with and provides support to the prison, police, courts and probation. One member of the team attends the Magistrates' Court each morning to provide appropriate intervention. The police can contact a member of the team and request his/her attendance to assess a detainee. The service is now supported by members of staff from probation, police and the prison who are trained in the risk assessment of individuals who fall between the camps of normal and mentally unwell. Relations between the psychiatric services and the various criminal justice agencies nevertheless lack the formality of service level agreements to determine and regulate the appropriate level of care for agencies.

It has long been accepted that Jersey's legislative provisions are unsatisfactory in respect of mentally disordered offenders. Detailed analysis of the provisions and their deficiencies is outside the ambit of this report. However, the underlying difficulty is

⁶³ Jersey's Probation and After-Care Service works with colleagues in other jurisdictions to allow this. It holds the order and supervision is carried out on a voluntary basis. Failure to comply results in a warrant being issued in respect of the original offence, which is often pursued.

relatively easy to identify: the legislation fails to establish the psychiatric service as a means of diversion away from the criminal justice process.

A major problem is that the only sentencing option for mentally disordered offenders who have committed serious crimes is imprisonment: there is no power to order that a mentally ill offender be detained and treated in hospital. In respect of non-residents, the Island has the power to transfer offenders who suffer mental illness and who are a danger to themselves or others, to their country of residence. Ordinarily, such transfers are made if an individual has been on the Island for less than 6 months. However, a local person who commits a crime, suffers mental illness and represents a danger to themselves or others cannot be transferred to a specialist institution in the United Kingdom for treatment without their consent. Additionally, there is at present no power to remand to a psychiatric unit for the preparation of reports on mental health, whether pre- or post-conviction. Those working within the service are surprised at the lack of requests or orders for pre-conviction reports.

The lack of hospital holding powers in respect of people who change their mind about residing in hospital and the emergency, consensual and non-consensual admission criteria present further problems for mental health personnel. The Jersey legislation is also archaic in that it still permits the detention of people with addictions, although this provision is no longer used.

In an attempt to address these and other problems, a mental health bill has been drafted that reflects the United Kingdom's Mental Health Act 1983. Jersey's proposed bill has been shelved recently, however, in anticipation of the United Kingdom's new bill. It may therefore be an ideal time for the Island to consider its mental health provisions. While Jersey's mental health law needs to be able to tie in with UK legislation so as to facilitate transfers, it need not be identical: Jersey has the capacity to determine its own mental health policy and initiatives and to formulate the necessary legislative framework. Careful consideration needs to be given to the provisions of the United Kingdom's recent draft mental health bill which are not favoured amongst mental healthcare professionals across the United Kingdom or in Jersey. The bill changes the definition of mental disorder. Moreover, it changes the role of healthcare workers who work in the field of mental illness by requiring them to make proactive decisions as to

who should be locked up before they have committed a crime. The feeling is that this represents a further and greater step away from the concept of mental health workers and towards a concept of ‘social policemen’. The feeling amongst mental health workers is that the courts should make such pro-active decisions rather than the healthcare professionals. Otherwise the legislation would operate to undermine the work of the mental health specialists who need to engage with patients, develop relationships with clients and encourage change.

During the course of the Review it was suggested that Jersey should make a positive move away from UK law, towards a Mental Ill-Health Law. It was suggested that a move should be made towards legislation that is based upon a notion of capacity, i.e. law that focuses upon the ability of the individual, so that the legislation only operates in respect of individuals with mental illness who lack the capacity for insight. Legislation in these terms would concede the fact that, for example, people with psychopathy (and insight) cannot be treated successfully unless they want to be. Moreover, it would reflect the recent change in ideology: whereas the ‘mental health card’ used to be regularly and successfully played, allowing individuals to avoid responsibility for their actions, the general view now is that the majority are responsible for their abhorrent behaviour and need to be dealt with and treated appropriately. Patients are now, for example, being held responsible for assaulting staff.

Due to the current delay and uncertainty of being able to introduce a new Jersey Mental Health Law, amendments to the current law are with the Law Draftsman. These amendments will allow: the making of Hospital Orders; the transfer of mentally ill patients off the Island if they require specialist treatment; the bringing of people into care on a doctor’s recommendation; a reduction in the mental health tribunal appeal board from five people to three people.

There are currently three Jersey prisoners with mental health problems that are being held in UK institutions, at a cost to the Island of just under £½ million. These three individuals do not feature in the prison statistics. Where the transfer is specifically for specialist mental health treatment, it is then funded by the Health and Social Services Committee. Where the transfer is through the normal course of transfers to UK prisons, the funds are met by the Home Affairs Committee. It is not clear who would be

responsible for the funding if a Jersey prisoner housed in a UK prison was subsequently transferred into a specialist mental health unit. There is a reciprocal arrangement with the UK to cover 'off-shore' treatments.

There has long been a debate about the necessity of a secure unit on the Island. Many of those in favour of such a unit assume that an area of St. Saviour's Hospital that is shut off from the rest of the hospital would be suitable for the purpose. Such assumptions fail to appreciate the expertise required for secure units. Moreover, they fail to take account of the fact that such units often provide homes for patients for 2-5 years. It would also be very damaging to the image of mental health, and potentially to the well-being of patients, to house a secure unit next to, for example, an acute ward in which the patients are seriously ill but have not committed crimes. Those working within mental health are critical of the recommendation that the Island should have a secure unit. One of their main concerns is that it would be impossible to staff such a unit appropriately. Additionally, the Island cannot have a secure unit that is all things to all people: a single secure unit on an Island the size of Jersey cannot provide the full range of specialist services that might be necessary.

The psychiatric services in Jersey have carefully considered the best way to meet the needs of the Island in this respect. There are now plans for an intensive psychiatric care unit within the confines of St Saviour's Hospital. It will not be a full-time unit but it will provide the opportunity to shut off an area containing 3 beds for seriously ill, disturbed patients, in need of 24-hour care. The unit could command the same level of security, observation and staff as a secure unit but for a shorter period of time. The unit could, for example, provide appropriate, secure accommodation for a two month period while transfer is being expedited. The facility would be available for those individuals who are mentally ill and in the criminal justice process as well as for individuals with florid mental health problems.

To redress inadequacies in the mental health services on the Island, direct links are being established with Kent psychiatric services. The services available in Kent are considered to be comprehensive and impressive. Psychiatric services in Jersey hope to purchase beds in a secure unit in Kent. Kent would not have to keep those beds free if Jersey were not using them, but the arrangement would allow for guaranteed, speedy

transfers of the mentally ill from Jersey to specialist units in the UK. Some thought is being given to the establishment of a satellite secure unit in the prison grounds as a long-term prospect, with Kent services providing the training and staff necessary to run the unit as and when required. It would be a therapeutic unit, within the confines of the prison, which shared the prison's security and provided intensive therapy. Those who work within the mental health profession anticipate that these short, medium and long-term plans will afford the best and most comprehensive service possible for the mentally ill on the Island.

Mental health has a noteworthy agreement with the Housing Department that ensures the provision of accommodation for mentally ill patients leaving in-patient treatment: Health and Social Services secure special 6-month tenures on properties owned by Housing, for patients who have nowhere to live. The patient pays Health and Social Services for the property, if necessary out of their welfare payments. The patient takes over responsibility for the property once Housing is content that he/she should remain there. Prison and probation officers have approached psychiatric services concerning post-custodial problems with accommodation. The lack of a halfway house presents re-integration problems. A similar arrangement between Housing and the Prison and the Probation and After-Care Services would certainly assist these problems.

Crime prevention

Two-thirds of the people dealt with by the Probation and After-Care Service have problems writing their name and address. Thirty per cent are unemployed, a high percentage for an Island with very low unemployment. These factors are generally thought to impact on levels of crime in a society. For crime prevention initiatives to be successful, these issues have to be to the fore of criminal policy. Historically Jersey has been reactive rather than proactive in dealing with social problems such as crime. This has been largely due to a lack of co-ordination between the various public services. The problem has been compounded by unsophisticated and sometimes non-existent databases. The lack of reliable and co-ordinated data has impacted on the ability of the criminal justice process to respond to trends in crime or anticipate new trends and develop appropriate crime prevention strategies.

In the context of young persons especially, policy needs to implement early, positive, preventative measures that avoid categorising the individual into social deviance. The starting point should perhaps be co-ordinated and consistent initiatives for dealing with criminal and anti-social behaviour across the education system.

Unsatisfactory housing is regarded by a very high proportion of persons interviewed during the course of this Review as representing a huge social problem as well as being a big trigger factor for anti-social behaviour on the Island. Jersey's restrictive laws and policies in respect of purchasing and renting property are largely responsible for the problems that were identified. Every individual who wishes to rent or buy a property on the Island is categorised. Specific categories of housing are, to some extent, based upon an individual's contribution to the economy of the Island. The Housing Regulations determine whether an individual can buy or rent a property, or, alternatively, must reside in a lodging situation with no security of tenure. The Regulations also determine, to some extent, the type of property that may be bought or rented. So, while the housing laws do not prevent individuals from coming to the Island and obtaining employment, they do present accommodation problems once on the Island. In consequence of the restrictive laws, property prices and rents have been driven up while the quality of the housing stock available for those in the most restrictive categories is often poor. The existence of residential qualifications and the vast differences in the standard of housing have the unfortunate effect of dividing the Jersey population into the 'haves and have nots'.

During the course of this Review unsatisfactory housing was often cited as a major cause of crime, the notion being that inadequate, overcrowded and squalid accommodation, such as there is on the Island, forces adults and children onto the streets or into the pubs. It is thought that there is a high incidence of children with social, emotional and behavioural problems from the social housing sectors and from families who are not residentially qualified. These problems are at the least not assisted, and at the worst compounded, by poor living conditions.

Another phenomenon for which the Island's housing policy is partly responsible relates to the lack of community spirit exhibited amongst neighbourhoods across the Island. For those in the most restrictive housing categories and for those with the lowest

incomes, poor quality lodging houses tend to be the only option. These are generally older establishments to which the inhabitants do not relate. The result is that the most disadvantaged are grouped together, in ‘transient’ communities, where there is no democratic sense of belonging. There are very few residential associations to unite them and no activists to drive community resource development: community projects simply do not develop. In the interests of crime prevention, such issues need to be carefully considered and addressed.

To date, it has been difficult for the Housing Committee to develop long-term plans because of the customary transient political background. Indeed, the last 10 years have operated on a very short-term basis. The most recent political committee has introduced the gradual reduction in the period over which an individual may qualify to purchase or to rent a property. Little by little, this will alleviate some of the problems. Nonetheless, an equitable housing policy needs to be developed with political support and stability. With the prospect of radical change in the political forum, the States of Jersey has recognised this need and is at present considering how best to revise the Island’s policy. The States of Jersey has identified a number of objectives, including: sufficient secure and affordable homes, assistance for those in need, improved and properly maintained social housing, improved quality of life for residents. In identifying those objectives, the States acknowledges the importance of supporting a principle of home ownership. The States also accepts that more needs to be done to manage those coming into the Island and thereby to control housing demand.

Perhaps most importantly, the States’ review on housing recognises the need to consider the human rights implications of current law and policy and the need for legal reform in the interest of clarity and equity.⁶⁴

⁶⁴ Housing Committee, *Strategic Policy Report 2002-2006*, 2002

5 RECOMMENDATIONS

In this final part of the report, the Review seeks to chart an overall direction for policy rather than to set forth a host of very detailed recommendations addressing all aspects of criminal justice. In providing a compass rather than a route map, the ten recommendations emerging from the Review should be considered within a time frame encompassing the period leading up to 2010.

The primary recommendations are set out below in brief and subsequently follow in full.

- 1. It is recommended that steps be taken to establish a body with oversight responsibility for criminal justice policy. Such a body might be called the Criminal Justice Policy Oversight Council*
- 2. It is recommended that a reliable, robust and consistent set of crime and criminal justice statistics be in place on an annual basis by the year 2005*
- 3. It is recommended that there be a pro-active Police Authority, with resources adequate to its task. Only in this way will the Island be able to satisfy itself that the overall level of policing meets the demanding standards appropriate to this crucial arena of criminal justice*
- 4. It is recommended that a public prosecution service be created under a Director responsible to the Attorney General; that the role of the centenier in the Magistrate's Court should cease; and that the decision as to whether or not to charge an individual with an offence should reside with the public prosecutor and not with the centenier*
- 5. It is recommended that the rationale of the Parish Hall Enquiry be clarified and the institution protected and re-vitalised. In this respect the centenier, of course, remains a central figure and it follows that his or her role in appropriately diverting cases away from the criminal justice process is one that should be consolidated*

6. *It is recommended that there should be specially designated Parish Hall Enquiries with respect to persons under the age of eighteen, and that the role of Youth Panel members within the existing Youth Court structure be enhanced*
7. *It is recommended that the Probation and After-Care Service be strengthened; it is clear that the Service will necessarily play a pivotal role in any concerted, de-escalatory strategy to reduce the Island's very high prison population*
8. *It is recommended that Jersey's incarceration rate (including any prisoners held in the UK) should be reduced and held at a level at around 85 per 100,000 inhabitants. This would locate Jersey's rate broadly in line with the median rate of European jurisdictions. For Jersey, this rate translates into a total of 70-75 prisoners of all categories. The most appropriate way forward would appear to be for the Attorney General to invite the full Royal Court, or the Court of Appeal, to reconsider sentence lengths in the light of developments during the seven years since the guideline judgment in Campbell, Mackenzie and Molloy and related judgments*
9. *It is recommended that the harm reduction approach to substance misuse be developed and expanded in accordance with the 1999-2004 strategy. So as to ensure a consistent approach to Jersey's drug scene, the ethos of harm reduction needs to be understood and embraced at every stage of the criminal justice process. In accordance with developments elsewhere, consideration should be given to reclassifying ecstasy (from Class A to Class B) and cannabis (from Class B to Class C). The introduction of an arrest referral scheme would provide an opportunity to promote the harm reduction approach to drug users*
10. *It is concluded that, if there is to be any decrease in the level of crime and the threat that it poses on the Island, the focus needs to be on primary and secondary prevention linked closely, in the context of drugs, with recommendation 9 and the harm reduction strategy*

1 Criminal Justice Policy Oversight Council

Steps should be taken to establish a body with oversight responsibility for criminal justice policy. Such a body might be called the Criminal Justice Policy Oversight Council. The Council's task would be to keep under review and co-ordinate all legislative and other initiatives relating to criminal justice. At the present time much legislation is put forward on an ad hoc basis with little apparent consideration to initiatives emanating from other quarters. The Council would provide a co-ordinating role but its remit would not end there. It would give shape and direction in terms of keeping a light touch on the policy tiller across the range of policy-making activities. The establishment of an Oversight Council would encourage a joined-up approach that fully respects the independence appropriate to the essential separation of powers.⁶⁵

In the wake of the Review Panel on the Machinery of Government, the lead role for criminal justice policy might be entrusted to the Home Affairs Department. However, given the central position of the Attorney General with respect to criminal justice in Jersey, it seems appropriate for the Oversight Council to be jointly staffed by the Home Affairs and Law Officers' Departments.

Without wishing to be unduly prescriptive about the membership of the Oversight Council, it is envisaged that it will include both the Attorney General and the President of the Home Affairs Committee. The Council should also be comprised of one or more senior representatives from the courts as well as department heads from the across the criminal justice process.

⁶⁵ It is not envisaged that the Oversight Council would have a centrist and directing role, such as appears to be the case with the 'National Criminal Justice Board' and the associated structural arrangements proposed for England and Wales (see *Justice For All*, CM 5563, 2002, 9.4-9.13). What is being urged here is a co-ordination and shared awareness of the issues but not a streamlined and top-down direction of criminal justice

2 An annual published set of crime and criminal justice statistics

In considering the capacity of the Island to develop coherent criminal justice policy one of the most obvious and immediate impediments is the absence of reliable and consistent data across the process as a whole. This gap is immediately apparent at virtually every stage of the process and has presented this Review with very considerable difficulties. The preliminary and somewhat tentative progress made by the Review team, together with the willing co-operation of practitioners across the Island, at least provides a baseline and some encouragement for the task ahead.

There are two main problems characterising the current situation:

- The poor level of data collection across agencies. Viewing the overall process of Criminal Justice, very little resource has been invested in this task and the level of sophistication in terms of electronic storage and retrieval systems is generally quite primitive. This is most notably the case for the honorary police service, in all their activities, including decision-making at Parish Hall Enquiries. It also characterises HMP La Moye where much of the data is manually stored. The situation is little better in respect of the Royal Court and Magistrate's Courts or the activities undertaken on behalf of the Attorney General. The States Police and the Probation and After-Care Service stand out as the agencies that have, over recent years, made considerable efforts to improve the quality of data and upgrade their information systems.
- There is virtually no compatibility of data from one stage of the process to another. The States of Jersey Police data, excellent as it is in terms of *offences* is able to say very little about *offenders*. This is a major shortcoming of the COPS information system which, while being a rich data source, is unable to bridge the transition from offences to individual offenders.

It is extraordinary that a small and prosperous Island has lagged so far behind most jurisdictions with respect to information systems across the policy terrain. For criminal justice policy purposes it is imperative that the situation be speedily remedied. The initiative needs to be closely aligned to the 'Criminal Justice Strategy' which got

underway in the early months of 2002.⁶⁶ The Home Office's annual volume of *Criminal Statistics for England and Wales* provides a useful model. ***It is recommended that a reliable, robust and consistent set of crime and criminal justice statistics be in place on an annual basis by the year 2005.***

⁶⁶ On 2 February 2002 senior representatives of agencies from across the criminal justice process showed broad support for case management system and information systems supported by one shared body of data. A steering group under the chairmanship of the Attorney General was set up. See JLIB, *Criminal Justice Strategy, Terms of Reference*, 2002

3 An Island-wide approach to policing

Discussion as to the relationship between the States of Jersey Police and the honorary police service has raised vexed and controversial issues in recent years. As summarised earlier in the report, the experience of reviews of policing on the Island has revealed the high degree of sensitivity associated with this relationship. The issues raised are particularly significant because they extend to the constitutional relationship between the parish and government at the level of The States.

The honorary police service represents a considerable manpower resource with a long tradition of public service. However, the relationship between the twelve Parish constabularies that make up the honorary police service and the States of Jersey Police Service remains uncertain and problematic. The new Chief Officer of the States of Jersey Police has attempted to set up co-ordinated meetings with officers of the honorary service but with only limited success. Indeed, not a great deal of progress appears to have been made since the *Report of the Working Party on Policing of the Island* (1997) and the implementation of its recommendation that a Police Authority be established. Five years later the Police Authority has achieved very little success. This is because, to all extents and purposes, the Authority exists in name only. It still lacks a statutory basis, no chair has been appointed and it has no staff. It has been looked after in its current, rather precarious, form by the Home Affairs Department.

It is a matter of considerable urgency that the Authority be revitalised with the appointment of an independent chair and an agenda which addresses the task defined by the Working Party, that of securing 'the effective and efficient policing throughout the Island' (ibid., 3.12). There are several developments afoot that will impact upon policing on the Island. These underline the potentially important role that the Police Authority will have to play over the next few years. They include the pending adoption of the Police Procedures and Criminal Evidence (Jersey) Law under which a statutory foundation will be created for all aspects of policing across the Island. In this respect, the honorary police service will find itself on the same statutory footing as the States of Jersey Police. There will also be obligations arising for all police officers under the Human Rights (Jersey) Law which is anticipated in the very near future. The Police

Authority will not only have the responsibility to consider effectiveness and efficiency as against these new statutory frameworks but it will also need to keep a keen eye on issues of health and safety. In all of this, the Police Authority will no doubt draw on the expertise of HM Inspectorate of Constabulary for regular inspections of all policing activities across the Island. Developed in this way, the Police Authority should have the capacity to impose appropriate standards of professional conduct on an Island-wide basis.

It is a recommendation of this Review that there be *a pro-active Police Authority, with resources adequate to its task. Only in this way will the Island be able to satisfy itself that the overall level of policing meets the demanding standards appropriate to this crucial arena of criminal justice.* It is against these tests that the Police Authority will need to make recommendations as to the future shape of the honorary police service and the relationship between the honorary police service and the States of Jersey Police. In this latter respect, the Authority will also need to examine a host of more detailed issues that embrace accountability, responsibility and liability.⁶⁷ Beyond all doubt, the status quo is not sustainable.

⁶⁷ These issues will no doubt be re-visited once the new government structures, including the Home Affairs ministry, are in place.

4 The establishment of a public prosecution service

Over recent years, Jersey has taken significant steps towards the establishment of a public prosecution service. *It is a recommendation of this Review that this process be completed and that a public prosecution service be created under a Director responsible to the Attorney General.*

With the appointment of Crown Advocates, who are responsible to the Attorney General, such a service has in effect existed in the Royal Court for some time and this recommendation fits well with this development. In the Magistrate's Court, progress has been more hesitant: legal advisers have only been appointed since 1998. Nowadays, in the context of the Magistrate's Court, at the request of centeniers, legal advisers prosecute guilty pleas, trials and objections to bail of a complex nature, and committals while centeniers deal with the rest of the Court's caseload. As regards charging a suspect, centeniers retain responsibility for the initial decision to charge. It is the conclusion of this Review that the role of the centenier with respect to both the above tasks is outdated. These tasks would be more appropriately discharged by a public prosecution service responsible to the Attorney General. Specifically, it is recommended that:

- ***the role of the centenier in the Magistrate's Court should cease.*** This Review agrees with the conclusion reached by a minority of members of the Working Party on Practices and Procedures in the Magistrate's Court (1998) that the role of the centenier in the Magistrate's Court should cease. Instead, the task of presenting cases should be done on behalf of the Attorney General by a legal adviser, to be known as a public prosecutor.
- **the decision as to whether or not to charge an individual with an offence should reside with the public prosecutor and not with the centenier.** It is not proposed by the Review that this duty be discharged by the States of Jersey Police and thereby match the rather unusual position that came to be in England

and Wales under the Prosecution of Offences Act 1985.⁶⁸ Instead it is accepted by the Review that the appropriate locus for these powers is with the office of the public prosecutor, independent of the police, as is the position in other European jurisdictions.⁶⁹ Legislation to this effect will also serve as an appropriate balance to the powers and responsibilities bestowed on the police under the Police Procedures and Criminal Evidence (Jersey) Law soon to be debated by the States.

It is acknowledged that the establishment of a Directorate of Public Prosecutions carries quite substantial resource implications. It is anticipated that centeniers will be replaced with public prosecutors in the two lower courts when new resources become available. The resource implications of placing the discretion to charge with the Public Prosecutor will need to be estimated in the course of drafting the law for the creation of a public prosecution service.

⁶⁸ By means of this legislation the police retained charging powers instead of these being assumed by the newly created Crown Prosecution Service.

⁶⁹ In England and Wales this proposed position has now been accepted by the Government. See *Justice For All*, white paper presented to Parliament, July 2002, CM5563, 3.31-3.33.

5 An enhanced role for the Parish Hall Enquiry

The Parish Hall Enquiry is one of the most remarkable institutions to have evolved on the Island. It has no close parallel elsewhere. Long pre-dating the formal criminal justice process, the Parish Hall Enquiry developed as a core ingredient of the honorary police service. The Parish Hall Enquiry, in modern parlance, seeks the localised resolution of criminal events outside the formal processes.

Nonetheless demonstrated by data assembled for this Review, the Parish Hall Enquiry has in recent years been displaying serious indications that it is withering on the vine. This state of affairs urgently informs the recommendations reached by this Review. *It is concluded that the rationale of the Parish Hall Enquiry must be clarified and the institution protected and re-vitalised. In this respect the centenier, of course, remains a central figure and it follows that his or her role in appropriately diverting cases away from the criminal justice process is one that should be consolidated.*

The scheme envisaged by this Review is that the diversionary role of the Parish Hall Enquiry be re-asserted.⁷⁰ In particular, consideration should be given as to how the powers to defer cases might be used more extensively to allow the emergence and development of a variety of new possibilities. These possibilities include the expansion of the restorative justice project which commenced in March 2002 and which is designed to complement the work of Parish Hall Enquiries.⁷¹ Another model worthy of close examination is the Freagarrach project in central Scotland which emerged from a coherent inter-agency strategy on young people at risk. The project served as a diversion away from the Children's Hearing. It involved young people in three substantial periods of attendance each week. Attendance was voluntary but most young people chose to closely engage with project staff. Freagarrach was successful in directly addressing problematic behaviour in young people by means of a strategy of decriminalisation and

⁷⁰ Detailed consideration will need to be addressed to linkages between Recommendations 4 and 5. For example, referrals to the Parish Hall Enquiry by centeniers might be retained for a schedule of offences set forth by the Attorney General.

⁷¹ Some encouragement can be taken from the recent experience of restorative justice in New Zealand where the number of young people appearing in courts during the 1990s fell by more than two fifths. During this period fewer youngsters were also placed in residential or custodial institutions. Allison Morris,

diversion. School exclusions were avoided and intensive services provided to the most persistent young offenders.⁷²

Furthermore, and consonant with Recommendation 6, there should be a specific Parish Hall Enquiry for young people, using Youth Panel members (appointed at the Parish level). *Under the new arrangements, all persons aged 10-18 (in instances where charges might be brought) would be referred to the Parish Hall Enquiry.* This recommendation implies a reversal of recent steps to by-pass the Parish Hall Enquiry by hastily bringing certain categories of young people before the Youth Court.

Consideration should be given to introducing an Island-wide fixed penalty scheme, in particular with respect of road traffic offences. Such a scheme would divest Parish Hall Enquiries of the more trivial matters and would allow centeniers to focus on reasserting the diversionary role and thereby the social advantages of the Enquiry both in respect of adults and youths.

'Critiquing the Critics, A brief response to critics of restorative justice' *British Journal of Criminology*, 2000, 42, 596-615, 605.

⁷² See, David Loble, David Smith and Christina Stern, *Freagarrach: An Evaluation of a Project for Persistent Young Offenders*, Edinburgh, the Scottish Executive Central Research Unit, 2001.

6 Dealing with young persons

Attention must be given to the decision-making structures concerning young people in trouble with the criminal law. The evidence considered during the course of this Review leads to the conclusion that the existing arrangements are far from satisfactory.

At the heart of the required re-examination is the relationship between the Parish Hall Enquiry and the Youth Court. The Review has discovered that one of the consequences of initiatives that speed up proceedings in the Youth Court has been the decision that certain categories of young people should by-pass the Parish Hall Enquiry.

The policy choices set forth below recognise Jersey's unique strengths in dealing with young persons in terms of the Parish Hall Enquiry and the involvement of Youth Panel members. The Youth Panel plays a distinct, but rather undeveloped, role within the Youth Court.

- As set forth in Recommendation 5, ***there should be specially designated Parish Hall Enquiries with respect to persons under the age of eighteen.***
- ***The role of Youth Panel members within the existing youth court structure should be enhanced.*** In broad terms, the new arrangement might mirror more closely the position of Jurats within the Royal Court.
- A more radical step is to replace the Youth Court with a newly created tribunal perhaps known as a 'Young Persons' Panel'. This would build on the traditional strengths and experience of the Youth Panel. Within guidelines prescribed by the Attorney General, the discretion would reside, as is the case with respect to Children's Hearings in Scotland, with the public prosecutor to commit very serious cases directly to the Royal Court.

7 A strengthened Probation and After-Care Service

Since 1998, the Jersey Probation and After-Care Service has expanded by the equivalent of seven full-time staff persons. This investment of additional resource reflects the high regard attached to the work of the Service across the criminal justice process. The evidence considered during the course of this Review very much reinforces this high degree of confidence. Furthermore, *it is clear that the Service will necessarily play a pivotal role in any concerted de-escalatory strategy to reduce the Island's very high prison population.* To undertake this task additional resources will be required.⁷³ While the custodial aspects of this strategy are addressed under the next recommendation, the broad implications for the Probation and After-Care Service include:

- enhancement of the Probation Service in the Parish Hall Enquiry, especially in terms of referrals to appropriate supports and services;
- development of the Service's role as a broker for services in its relationship with both the Parish and the courts;
- promotion of the flexibility of the probation order and thereby maximisation of its potential;
- insistence that the community service order be used only as a direct alternative to custody;
- guidance to the courts regarding the statutory limitations on the use of youth detention;
- insistence that proportionality is considered in imposing community penalties, particularly in the context of harm reduction, so as to ensure that defendants who should be dealt with by way of a fine are not given a community penalty because a 'problem' is identified, and not because the offence merits it.

⁷³ It should be noted that in *The States of Jersey Budget 2002*,(p.37), with reference to the Probation and After-Care Service it is stated that '(I)ncreasing financial constraints are likely to impact on the quality and effectiveness of the services provided.'

8 Substantial reduction in the prison population

By any measure, Jersey has an usually high prison population. The average daily population at HMP La Moye during 2001 was 140. When this total is combined with the 41 prisoners held in UK establishments (at cost to the Island) the total population becomes 181. This translates into a rate of 208 per 100,000 inhabitants. It is also striking how sharply the prison population has risen since the early 1990s. As shown in Table 10, taking numbers at HMP La Moye, between 1991-2001 the average daily population rose from 75 in 1991 to 141 in 2001, an increase of 88%. If prisoners held in the UK (at cost) are taken into account, the total population increased between 1995-2001 from 116 to 181, a rise of 57%. However, the numbers of sentenced prisoners received at the prison substantially declined between 1991-2001. The available data also show a decline in the remand population since 1999.

It is evident that the growth in prison population has been almost entirely driven by very substantial increases in lengths of prison sentences.

It is this Review's conclusion that Jersey's incarceration rate (including any prisoners held in the UK) should be reduced and held at a level at around 85 per 100,000 inhabitants. This would locate Jersey's rate broadly in line with the median rate of European jurisdictions.⁷⁴ For Jersey this rate translates into a total of 70-75 prisoners of all categories.

The reduction would mostly be achieved through a re-assessment of sentencing policy.

Two key issues arise:

- Reviewing the custodial threshold. In other words the 'in-out' decision made by the courts with regards to custody might be re-assessed in line with recommendation 7 that greater resort be made to community penalties as an alternative to imprisonment. Attention might also be directed to a number of offence categories including those of

⁷⁴ This recommendation matches an approach recently taken with regards to prison numbers in England and Wales. See Clare Sparks and Sarah Spencer, *Them and Us? The public, offenders and the criminal justice system*, London, Institute for Public Policy Research, 2002, 55.

possession (including with intent) of unlawful drugs. These two categories alone (as shown in Table A2) accounted for 24 persons (12 of whom were serving sentences of four years or more) held in HMP La Moye on 31 March 2002.

- Reviewing the length of prison sentences. In this regard, sentences for drugs importation and supply will largely be to the fore. These categories of offence (as seen in Table A2) accounted for 35 persons (of whom 23 were serving sentences of four years or more) held at HMP La Moye on 31 March 2002.

*The most appropriate way forward would appear to be for the Attorney General to invite the full Royal Court, or the Court of Appeal, to reconsider sentence lengths in the light of developments during the seven years since the guideline judgment in Campbell, Mackenzie and Molloy and related judgments*⁷⁵. This would allow a full consideration of the views of interested and expert parties in the light of the Strategies on Crime and Community Safety and on Substance Misuse as well as the conclusions reached by this Review. Any such initiative would be greatly assisted by the collation and analysis of comprehensive, coherent data, particularly in respect of the prison population.

It is the conclusion of this Review that the issue of overall sentence lengths should be addressed by the judiciary rather than by the executive branch of government. As is well known, average length of stay may be influenced by executive decisions around early release. The conventional mechanism in many jurisdictions is a parole process. This usually has a discretionary element, but may sometimes, as is the case in England and Wales, be applied automatically in respect of certain sentence lengths. The concept of parole has never received wide support in Jersey and it is not proposed in this Review that a form of parole be introduced. Consideration should, however, continue to be given to temporary early release mechanisms which might serve to relieve pressure on HMP La

⁷⁵ It should be noted that in *Rimmer, Lusk and Bade* {19.7.2001} and *Bonnar and Noon* {26.10.2001} the Court of Appeal reinforced the approach it had taken in *Campbell* to persons convicted of trafficking in Class A drugs

Moye and reduce the number of prisoners held at cost in prisons in the United Kingdom.

It is envisaged that under this recommendation it would only be necessary to board a handful of prisoners in the United Kingdom. This could potentially release savings well in excess of £500,000 per annum.⁷⁶ Furthermore, with a considerably reduced population, HMP La Moye could be restructured so as to allow more decent and designated facilities for its specific categories.

⁷⁶ As noted above, data supplied for this Review show that boarding costs for prisoners held in UK prisons rose by over 800% between 1994-2001

9 The development of a harm reduction approach to substance abuse

Drugs and alcohol undoubtedly play a significant part in Jersey's crime scene and all through its criminal justice process. The Jersey authorities have already ratified a harm reduction approach to substance misuse. This approach acknowledges that the problem of substance misuse will never be eradicated, irrespective of the initiatives that are implemented by, for example, the courts or the police. It recognises that the best way to deal with substance misuse is to reduce the overall burden of harm. *The harm reduction approach needs to be developed and expanded in accordance with the 1999-2004 strategy*⁷⁷. *So as to ensure a consistent approach to Jersey's drug scene, the ethos of harm reduction needs to be understood and embraced at every stage of the criminal justice process.*

It is recommended that the following steps be taken:

- *In accordance with developments elsewhere, consideration should be given to reclassifying ecstasy (from Class A to Class B) and cannabis (from Class B to Class C)*⁷⁸
- *The introduction of an arrest referral scheme would provide an opportunity to promote the harm reduction approach to drug users.* Such a scheme might also encourage the strategy's notion of working together against drugs. The scheme, coupled with a wider and more consistent use of cautioning, could provide greater opportunities to divert drug users into treatment programmes and away from the formal criminal justice process. This would avoid the exclusionary, stigmatising effect of the criminal justice process in cases where there is a chance of a more constructive outcome. Where the scheme does not operate to divert individuals away from the criminal justice process, it could be used as an opportunity for immediate drugs counselling and as a means to refer them to appropriate agencies, before or after conviction and/or sentence. The relationship between the criminal

⁷⁷ *Presidents' Policy Group Report on the Crime and Community Safety and Substance Misuse Strategies, 1999 – 2004*, 2001.

justice agencies and the Alcohol and Drug Service is crucial in this respect. Additionally, the scheme might elicit information that would assist in assessing the scope and trends in substance misuse and the degree to which unlawful substances contribute to offending behaviour on the Island. It could thereby provide Jersey with a useful source of information that might assist policy development. Indeed, there should be rehabilitative opportunities that promote the notions of harm reduction at every stage of the criminal justice process. While the relationship between the health care services and the criminal justice agencies has improved, work still needs to be done to ensure the widespread availability of drugs programmes, particularly in the prison.

The demand for drugs in Jersey remains significant. While factors have been identified that are thought to contribute to and indeed enhance the Island's drug scene, the question 'why is there such a demand?' remains largely unanswered. Whatever the answer, the problem of demand needs to be tackled; substantial efforts need to be made to reduce the actual and potential demand for drugs. Educational and health resources need to be directed at all sections of the community, to reduce the demand for drugs and thereby promote the long-term objectives of harm reduction.⁷⁹

There is a significant number of people serving very lengthy sentences for drugs. Indeed, of the 81 persons serving sentences of four years or more, either at La Moye or in UK prisons, 68 (84%) were sentenced for drugs offences. As Table A1 reveals, on 31 March 2002, 33 persons were serving sentences of four years or more for drugs offences in HMP La Moye. A further 35 persons, serving sentences of four years or more were held in UK prisons. As discussed under Recommendation 8, lengthy prison sentences are largely responsible for Jersey's increasing prison population. While the Court of Appeal in *Campbell, Mackenzie and Molloy* declined to use the word, the objective of the sentencing policy is evidently that of general deterrence. However, those working in the field of criminal justice observe that the majority of individuals who are caught importing

⁷⁸ The appropriate body to carry out this task would appear to be the Misuse of Drugs Advisory Council which reports to the Health and Social Services Committee. The Council was established under the Misuse of Drugs (Jersey) Law 1978.

⁷⁹ Many of these issues were to the fore at the International Harm Reduction Conference which took place in Jersey in April 2000.

or supplying drugs in Jersey know that they will receive a long prison sentence, yet they have not been deterred. Consideration is urged as to what long drug sentences actually achieve, apart from overstretching the prison and the public purse. A conclusion of the Review is that a reconsideration is required of the sentencing tariff for the supply and importation of drugs. Such a move should not be equated with a softening of approach to supply and importation. It signifies an appreciation that these individuals are more likely to be deterred by an increased risk of being caught than by a heftier prison sentence in the event of being caught. In this vein, the drive to make drug importation a more risky and thereby less attractive activity needs to continue, the ultimate objective being to reduce the amount of drugs coming into the Island and the overall burden of harm that illegal drugs cause. The drive to stifle the distribution of drugs on the Island should also continue, to make drugs on the Island less accessible and again reduce the overall burden of harm.

This Review presents the Island with a timely opportunity to review its approaches to unlawful drugs. Harm reduction has been officially endorsed since 1999. It is now opportune to consider those features which have made Jersey a target for importers alongside a re-assessment of the implications for criminal justice policy.

10 A pro-active and co-ordinated strategy to reduce and prevent crime

Crime prevention initiatives can be divided into three categories: primary (broad social policy), secondary (preventive work with persons most likely to offend) and tertiary (work with convicted offenders).

This Review concludes that *if there is to be any decrease in the level of crime and the threat that it poses on the Island the focus needs to be on primary and secondary prevention linked closely, in the context of drugs, with recommendation 9 and the harm reduction strategy.* Recommendation 2 should assist in formulating effective crime prevention initiatives in respect of all offences.

The overlap between crime prevention and a range of social policy issues including education, housing, health and welfare is inevitable. This overlap has already been highlighted by the Island's Crime and Community Safety and Substance Misuse Strategies. There is no doubt that medium to long-term⁸⁰ reduction of crime resides within this area and is ultimately defined and shaped within a policy of *social inclusion*. The perennial theme of social inclusion is championed in a variety of strategic contexts, of which crime prevention is one. One challenge that arises in the context of criminal justice intervention is avoiding, or certainly minimising, any compromise of this overarching goal of social inclusion.

This Report has identified a number of instances where the Island's policies and practices encourage notions of social exclusion. The housing policy, which is now under review, is a prime example. The issues that Jersey's housing policy raise and some of the areas that need to be addressed in this respect are identified in the body of the Review. Of great concern to the Review is the long-term effect of the recent change in practice in respect of youths: the practice of singling out individuals as 'problem youths' to be dealt with in a particular way promotes a feeling of social exclusion. Social isolation at the most formative time of an individual's life has a stigmatising effect that is damaging both in the short and the long-term. It encourages resentment and can compound disrespect.

⁸⁰ *Justice for All* (CM 5563, p. 29), in discussing *long-term crime prevention*, talks about integrating into the work of non-criminal justice departments, with measures on child poverty, employment, educational standards and neighbourhood renewal.

In the interests of crime prevention, consideration is urged as to the most constructive way to deal with offending youths, including those who are identified as persistent young offenders. Action is required to build on the thinking advocated by the two Strategies, addressing vulnerable groups of young people as well as specific adult categories.

In the context of youths it is also of concern that school exclusions and suspensions are on the increase. Not only do exclusions from school give greater opportunity for anti-social and offending behaviour, they also work against notions of social inclusion. Schools are an ideal forum in which to identify youths most at risk of offending. Early intervention initiatives and secondary crime prevention schemes need to be considered in this context. Consideration should be given to police involvement (honorary and/or States) in such schemes.

On a practical level, consideration should be given to policing and crime prevention initiatives in the context of new housing developments. To date there is said to have been a lack of consideration as to the requirement for, and the cost of, policing such developments. In this regard consideration should also be given to establishing support networks for minority groups on the Island (it is understood that the Portuguese community, with the assistance of the Jersey authorities, have on the whole developed very good support networks), so as to encourage integration and social acceptance. The Aids Care Education Trust (ACET), has worked hard to fully integrate the Portuguese community. It has identified a significant gap in the facilities available for the Portuguese; the community is disadvantaged in the context of the criminal justice process (as well as in other contexts) by inadequate translation services. There is no quality assurance on the Island in respect of translators. Research has revealed that the quality of translations is variable. Problems pervade every aspect of crime and the criminal justice process.⁸¹ For example, the harm reduction policy relating to substance abuse has presented real difficulties for the Portuguese population. If harm reduction is to impact on crime across the Island it must be fully understood and implemented by every group on the Island.

⁸¹ However, it is noteworthy that some progress to address these provisions has been achieved by the Probation and After-Care Service which employs a Portuguese speaking probation assistant who is a Nuffield qualified interpreter.

For Jersey, as within any liberal democracy, the way forward for criminal justice policy must be guided by values of legality, justice and respect for human dignity. The constant challenge is to devise structures which underpin these values, and to ensure that they are embedded within a professional ethos which is pervasive across the process of criminal justice. It is hoped that this Review will make a contribution to this endeavour.

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APPENDICES

Appendix 1

TABLE A1

All prisoners in La Moye											
Age Of Prisoners		Previous Drug Conviction			Length of Sentence (m = months, yr = years)						
		Yes	No	Unknown	< 6 m	6 - 11 m	12 - 17 m	18 m - 4 yr	4 - 10 yr	10+ yr	Remand
Under 18 years	3	1	0	2	2						1
18 - 21 years	23	12	10	1		3	2	7	4		7
22 - 25 years	31	13	13	5	1	1	1	13	2	1	12
26 - 30 years	31	12	16	3	2			10	11		8
31 - 40 years	39	15	19	5	2	2	2	10	9	1	13
41 - 50 years	12	4	7	1	1			4	5		2
51 - 60 years	6	1	5	0			1		1	2	2
61 - 70 years	4	1	2	1				2	1		1
Totals	149	59	72	18	8	6	6	46	33	4	46
Prisoners in La Moye for drug offences											
Age of Drug Offenders		Previous Drug Convictions			Length of Sentence (m = months, yr = years)						
		Yes	No	Unknown	< 6 m	6 - 11 m	12 - 17 m	18 m - 4 yr	4 - 10 yr	10+ yr	Remand
Under 18 years	1	1			1						
18 - 21 years	11	8	3			1	1	4	4		1
22 - 25 years	12	7	5					6	2		4
26 - 30 years	16	9	5	2				1	10		5
31 - 40 years	19	11	8					4	8	1	6
41 - 50 years	7	4	3					2	4		1
51 - 60 years	3	1	2						1	2	
61 - 70 years	1	1									1
Totals	70	42	26	2	1	1	1	17	29	3	18

TABLE A2

		Possession	PWI	Supply	Importation	Utensils	N/A	Total
Drug Type	Cannabis	2	2		7			11
	Ecstasy		5	1	5			11
	Amphetamine				1			1
	Heroin	3	7	2	10			22
	Cocaine				7			7
	N/A	1	4	1	1	1	10	18
Total		6	18	4	31	1	10	70
Sentence Length	< 6 m							0
	6 - 11 m		1					1
	12 - 17 m		1				1	2
	18 m - 4 yr		6	3	2		5	16
	4 yr - 10 yr	4	7	1	15	1	2	30
	10+ yr		1		2			3
	Remand	2	2		12		2	18
Total		6	18	4	31	1	10	70

TABLE A3

Profile of prisoners held at HMP La Moye, 31 March 2002					
	Jersey	UK	Portugal/ Madeira	Other	Total
Place of birth of all prisoners	55	62	15	17	149
Place of birth of drugs offenders	25	33	6	6	70
Total prison population on 31.03.02 = 149					

TABLE A4

Prisoners held in UK prisons, 31 March 2002					
Of the 56 prisoners held in UK prisons			Of the 39 drugs offenders held in UK		
Sentences of 2-4years	12		4		
4-10 years	38		30		
10+ years	6		5		
 Jersey prisoners serving sentence in the UK 					
Sex of prison population (March)			Number of drug offenders (March)		
Male	46		31		
Female	10		8		
Total	56		39		
 Place of birth of Jersey prisoners in UK 					
	Jersey	UK	Port/Madeira	Other	Total
P.o.b.: all prisoners	13	42	0	1	56
P.o.b.: drugs offenders	4	n/a	n/a	n/a	39
 Source tables A1-A4: data kindly supplied by the Governor, HMP La Moye 					

TABLE A5

Sentence lengths, total sentenced populations for drugs offences

<i>England and Wales</i>				
	<6months	6m-<4yrs	4-9yrs	10yrs and over
All	6474	22032	17634	7040
Drugs	195	2976	4508	795
Per cent	3	13.5	25.5	9.4

<i>Jersey (La Moye only)</i>				
All	8	58	33	4
Drugs	1	19	29	3
Per cent	12.5	32.7	87.9	75

<i>Jersey (La Moye plus all prisoners in UK)</i>				
All	8	70	71	10
Drugs	1	23	59	8
Per cent	12.5	32.8	83.1	80

Source: data from Jersey kindly supplied by the Governor, HMP La Moye; data for England and Wales from *Prison Statistics, England and Wales 2000 Cmnd., 2001, 21-23*

TABLE A6

Principal offence committed by prisoners in La Moye (non-drugs)			
Main offence	No of Males	No of Females	No of Y.O.'s
Murder	1		
Manslaughter			
Violence against the person	18	1	5
Sexual offences	5		
Breaking & entering	3		2
Robbery	2		1
Larceny & handling	9		1
Driving offences	2		
Forgery/fraud	10	1	
Arson & malicious damage			1
Breach of orders/licences	5		2
Possession of offensive weapon	1		
Other	8		1
Total	64	2	13

Source: data kindly supplied by the Governor, HMP La Moye, 31 March 2002

TABLE A7

Distribution of Probation Orders, 1992-2001					
	Total number of Probation Orders made	Number of Probation Orders made by Youth Court	Number of Probation Orders made by Magistrate's Court	Number of Probation Orders made by Royal Court	Total
1992	140	32 22.86%	87 62.14%	21 15.00%	140
1993	132	17 12.98%	100 76.34%	14 10.69%	131
1994	203	40 19.70%	148 72.91%	15 7.39%	203
1995	168	36 21.43%	128 76.19%	4 2.38%	168
1996	220	29 13.18%	163 74.09%	28 12.73%	220
1997	215	38 17.67%	159 73.95%	18 8.37%	215
1998	202	43 21.50%	130 65.00%	27 13.50%	200
1999	174	32 18.60%	117 68.02%	23 13.37%	172
2000	250	44 17.60%	161 64.40%	45 18.00%	250
2001	237	85 36.02%	136 57.63%	15 6.36%	236

Source:
 * Data from Probation Service annual reports (note that both the Youth Court and Magistrate's Court supplied information on the number of probation orders imposed, which was not in agreement with the information found in the Probation Service annual reports. The Youth Court records (from 1997-2001) recorded 26 probation orders in 1997, 35 in 1998, 23 in 1999, 37 in 2000, and 67 in 2001. The Magistrate's Court records (1992, 1996, 2001) recorded 66 probation orders in 1992, 146 in 1996, and 108 in 2001)

TABLE A8

Distribution of Community Service Orders, 1992-2001

	Total number of Community Service Orders	Number of Community Service Orders made by Youth Court	Number of Community Service Orders made by Magistrate's Court	Number of Community Service Orders made by Royal Court	Total
1992	227	5 2.20%	198 87.22%	24 10.57%	227
1993	243	5 2.06%	225 92.59%	13 5.35%	243
1994	212	4 1.92%	194 93.27%	10 4.81%	208
1995	164	2 1.22%	157 95.73%	5 3.05%	164
1996	215	3 1.40%	187 86.98%	25 11.63%	215
1997	205	11 5.37%	169 82.44%	25 12.20%	205
1998	182	19 10.44%	138 75.82%	25 13.74%	182
1999	175	21 12.00%	124 70.86%	30 17.14%	175
2000	222	14 6.31%	159 71.62%	49 22.07%	222
2001	226	34 15.04%	163 72.12%	29 12.83%	226

(community service orders include both community service orders and probation orders combined with community service)

Source:

* Data from Probation Service annual reports (note that both the Youth Court and the Magistrate's Court supplied information on the number of community service orders imposed, which was not in agreement with the information found in the Probation Service annual reports. The Youth Court records (from 1997-2001) recorded 10 community service orders in 1997, 16 in 1998, 20 in 1999, 15 in 2000, and 36 in 2001. The Magistrate's Court records (1992, 1996, 2001) recorded 194 community service orders in 1992, 171 in 1996, and 152 in 2001)

Appendix 2

Persons Interviewed for the Review

Air Chief Marshal Sir John Cheshire KBE CB - His Excellency, The Lieutenant Governor
Sir Philip Bailhache - Bailiff
Mr Michael Birt - Deputy Bailiff
Constable Frank Amy - Chairman, Comité des Connétables
Deputy Roy Le Hérisier
Mr William Bailhache QC - HM Attorney General
Ms Stéphanie Nicolle QC - HM Solicitor General
Mr Ian Le Marquand - Magistrate
Mr Ian Christmas - Assistant Magistrate
Crown Advocate Cyril Whelan
Mr Carlos Santos Costa - Portuguese Consul
Mr John Mills - Chief Executive Officer, Policy and Resources Department
Mr Ian Black - States Treasurer
Mr Graham Power - Chief Officer, States of Jersey Police
Mr Mike Kirby - Prison Governor
Mr Steve Cole - Chief Executive Officer, Customs & Immigration
Mr Eric Le Ruez - Chief Executive Officer, Housing Department
Mr Steven Austin-Vautier - Director Home Affairs
Mr Brian Heath - Chief Probation Officer
Mr Michael Gafoor - Director, Alcohol and Drug Service
Mr John Noel – Chief Inspector of Immigration
Mr David Le Heuzé - Magistrate's Court Greffier
Mr Steve Le Marquand - Deputy Agent (Operations), Customs and Excise
Dr John Sharkey - Consultant Psychiatrist
Mr Ian Dyer - Manager, Adult Mental Health Services
Dr Ian Skinner - Strategic Planning, States of Jersey Police
Dr Paul Mahrer - States of Jersey Police
Ms Kate Jeggo - Jersey Legal Information Board
Centenier Ted Gallichan - President, Centeniers' Association
Centenier David Letto - Parish of St.Helier
Centenier Nick Andrews - Parish of St.Clement
Mr Laurence O'Donnell - Legal Adviser to the Police
Advocate Robin Morris - Legal Adviser
Ms Bridget Shaw - Legal Adviser
Ms Susie Sharp - Assistant Legal Adviser
Advocate Rose Colley - Acting Bâtonnier
Advocate Rebecca Juste - Bailhache Labesse
Advocate Rui Tremoceiro - Ogier & Le Masurier
Mrs Helen Miles - Probation and After-Care Service
Mr Ian Rogan - Executive Officer, Crime and Community Safety Strategy
Ms Jo Davey - Policy and Resources Department

Mr Kevin Mansell - Head Teacher, Les Chênes Residential School
Ms Kathie Bull - Special Educational and Behavioural Difficulties Review
Mrs Jan Gatt - Co-Ordinator, Victim Support
Mrs Rosemary Ruddy - Executive Director ACET
Mr Peter Tabb - Crime Prevention Panel

The following were consulted collectively:

Jurats of the Royal Court

Jurat P De Vuelle (Lieutenant Bailiff)
Jurat (Mrs) M Le Ruez MBE (Lieutenant Bailiff)
Jurat M Rumfitt
Jurat E Potter ISO
Jurat A Quérée
Jurat (Mrs) S Le Brocq
Jurat J Tibbo
Jurat J Le Breton
Jurat G Allo

Youth Panel

Mrs C Audrain
Mrs N Santos Costa
Mr R De Figureiredo
Mr D Germain
Mrs P Nisbet
Mrs A Scott

Senior Officer Group

(Crime and Community Safety Strategy and Substance Misuse Strategy)

Mr Steven Austin-Vautier - Home Affairs
Mr Michael Gafoor - Health and Social Services
Ms Marnie Baudains - Children's Service
Mr Philip Dennett - Children's Service
Mr Michael Cutland - Probation and After-Care Service
Mr Derek De La Haye - Sport, Leisure and Recreation
Mr Steve Harvey - Health Promotion Unit
Chief Inspector Kevin McKerrell - States of Jersey Police
Dr Ian Skinner - States of Jersey Police
Mr David Nurse - Customs and Excise
Mr Steve Read - Housing Department
Mr David Mullin - Prison
Mr Ian Rogan - Crime and Community Safety Strategy
Mr David Greenwood - Education Department
Mrs Mavis Snowden - Education Department