

STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

15th July, 2020

Proposition No. P. 2020/54

SURSIS MOTIVÉ

Proposed by: Deputy E A McSwiggan

Seconded by: Deputy J S Merrett

COMMITTEE for HOME AFFAIRS

JUSTICE REVIEW REPORT

To sursis the Propositions until the work set out in this Sursis Motivé has been completed, and to direct that:

1. The Committee *for* Home Affairs shall prepare evidence-based proposals for, and return to the States no later than December 2022 with, a **Justice Framework** which includes (but need not be limited to) recommendations in respect of:
 - Minimising the harm done to our community by crime,
 - Prioritising measures to address financial crime, border security and cybercrime,
 - Preventing the criminalisation of vulnerable people,
 - Promoting diversion from the criminal justice system, and from formal criminal justice measures, wherever appropriate alternatives exist,
 - Rehabilitating offenders and restoring the harm done by their actions,
 - Reviewing sentencing law and outcomes, with a commitment to reform of the law governing appeals, in particular against criminal convictions,
 - Reviewing the operation and oversight of the criminal justice system, and
 - Establishing a “whole Island” approach to justice and the prevention of crime,

in accordance with the findings of the “Guernsey Justice Review: Final Report” report appended to the policy letter and summarised in the supporting report to this Sursis Motivé;

2. The Committee *for* Health & Social Care shall complete and present to the States, at the earliest possible opportunity, the **Combined Substance Use Strategy**; and
3. The Committee *for* Health & Social Care and the Committee *for* Home Affairs, informed by the results of the Combined Substance Use Strategy and no later than six months after it has been considered by the States, shall report back to the States with **options for alternative**

and non-punitive approaches to the possession and use of small quantities of illegal drugs (including, but not limited, to cannabis), which take into account:

- i. the need to promote the health, wellbeing and safety of people who use drugs, and of the wider community;
- ii. the strategic principles of the Combined Substance Use Strategy and any evidence collected in its development, including the commissioned Independent Report on the Review of the interaction of health and justice system in relation to the possession of drugs for personal use;
- iii. the potential for moving from a regime governed by the criminal law towards a partly or wholly regulatory approach to all aspects of personal drug use; and
- iv. the results of consultation with the community and key stakeholders in respect of such alternative options.

EXPLANATORY NOTE

This Sursis Motivé aims to identify the important issues which need to be addressed in respect of Justice Policy in Guernsey (including, but not limited to, the question of alternative, non-punitive approaches to drug use) but allows the Committee *for* Home Affairs to pull together an evidence base in support of each one, and return to the States with clear recommendations as to the way forward.

Propositions 2 and 3 incorporate the direction set out in Amendments 1 and 2 (led by Deputy Le Tocq and Deputy Soulsby respectively), recognising that non-punitive approaches to drug use require joint consideration by the Committees *for* Health & Social Care and *for* Home Affairs. It also directs that a regulatory approach, as envisaged in Amendment 4 (led by Deputy Leadbeater) should be considered as one of the future options for management and control of drug use.

Proposition 1 sets out the areas which should be explored in a future Justice Framework, drawing on the research presented to the States in this policy letter by the Committee *for* Home Affairs. The sixth bullet point, which includes “a particular commitment to modernising the law governing appeals against criminal convictions”, thereby draws in the aim of Amendment 3 (led by Deputy Green).

Supporting Report

Part 1 of the Sursis Motiv  describes a number of policy areas which should be addressed by the Committee for Home Affairs in their Justice Framework. This table summarises some of the relevant findings of the Committee’s “Guernsey Justice Review: Final Report” and gives an indication of the kind of measures that might be explored within each area.

Minimise the harm done to our community by crime

P73 (prevention and early intervention): “Prevention and early intervention were ranked as the most important things the Bailiwick should be trying to achieve when dealing with crime committed by children and adults.”

P76: “Conclusion: Prevention should become a more prominent element of the future justice framework, encompassing the activities of both justice agencies and other States agencies.”

P32 (respecting and supporting victims and witnesses): “The well-established Bailiwick of Guernsey Victim Support and Witness Service provides the majority of services to victims and witnesses, in addition to those provided under the domestic abuse strategy described above. [However...] We heard that services for victims and witnesses could be seen as a more integral part of the court system. Service providers and service users gave us examples of the treatment of victims of domestic abuse at court which were perceived to be poor.”

P96: “The CfHA has recognised that there is a group of people who feel that the judicial system did not listen to them or treat them fairly. This includes complainants, victims and perpetrators. The level of attrition related to victims not wishing to proceed once they have reported an offence which we identified in Chapter 1 warrants particular attention.”

P34 (people who have experienced domestic abuse): “demand on these [domestic abuse] services is rising. Some of them are stretched and do not have sufficient funding to cover their full running costs. While practical support is provided by existing services, there is limited provision for therapeutic emotional and psychological interventions to help victims overcome the impact of these offences. More broadly, the absence of a sexual abuse referral centre (SARC) and crisis helpline for victims of sexual violence was identified as a critical gap by several different stakeholders.”

P36: “there is further scope for improving the policing and prosecution of domestic abuse in the Bailiwick.”

P85: “there was also a view amongst some stakeholders that under the current sentencing regime domestic abuse and some financial crimes are treated more leniently than other types of offence.”

P69 (media reporting): “Aspects of privacy were also raised in relation to media reporting of crimes and criminal justice processes, as these can impact not only on the alleged or convicted perpetrators but also on victims and the families of all parties concerned, including children.”

P64: “The size of the community means that there is significant exposure when offences are committed and when cases go to court. This can undermine inclusion, particularly when publicity is given in the media to crimes, including publicising the names and addresses of suspects.”

P19 (crime prevention education): “Law Enforcement have historically been involved in several

initiatives to provide crime prevention education and advice, including in schools, alongside the Office of the Children’s Convenor, the Youth Justice Service (YJS) and social work groups that engage with young people. They remain committed to supporting these where possible, but they are no longer doing so regularly due to a need to reprioritise resources away from neighbourhood policing and frontline border enforcement.”

Prioritise measures to address financial crime, border security and cyber crime

P68: “Proportionality also means being mindful of the balance between responses to crime and other justice issues; responses should relate to the level of threat to safety and security and the wider impact this has on the community. Financial crime, border security and cyber crime all pose bigger threats than public nuisance and disorder in terms of the broader societal costs.”

P85: “there was also a view amongst some stakeholders that under the current sentencing regime domestic abuse and some financial crimes are treated more leniently than other types of offence. The lack of transparency about the outcomes of the economic crime strategy might contribute to the latter.”

Prevent the criminalisation of vulnerable people

P84: “Criminal justice sanctions can be a blunt instrument which may not support desistance from offending and indeed may compound existing issues both for the victim and the perpetrator, particularly where the foundations of criminal behaviour are complex, which may result in further harm.”

P74 (children and young people): “When given options for how to spend a hypothetical £10 million on justice issues, respondents thought that “preventing young people most at risk from getting involved with crime” would be the most effective use of the money.”

P122 (children and young people): “Recommendation 25: The future youth crime strategy should include a focus on increased access to affordable physical and other constructive activities for children and young people.”

P82: (children; young adults): “Conclusion: Research evidence illustrates that responses to youth crime should be developmentally appropriate as recognised by the United Nations Convention on the Rights of the Child. Responses to adult crime should also recognise that most young people will stop offending by their mid-20s, in a process known as “desistance”. Formal involvement with the criminal justice system is known to have the effect of slowing the development of maturity and positive identity, prolonging a young person’s contact with the system and increasing costs to the state in the long term.”

P88: “Recommendation 7: We propose that an independent analysis is commissioned of sentencing practices and factors taken into account in decision-making, including offending history and aggravating and mitigating factors for adults, young adults (aged 18–25) and children (aged under 18).”

P122 (care leavers): “Recommendation 26: Restorative justice or another form of reconciliation process should be the priority approach for repairing social harm experienced by people who were sent off island to be looked after as children, some of whom may now be adults.”

P75: “in the probation cohort 28% did not complete the end of 6th form or college, 33% had been expelled or suspended at least once and 41% had been arrested or charged as a child (under 16).”

No information is available about mental health or their childhood experiences outside of the criminal justice system, for example, involvement in the care system.”

P42 (people with mental health conditions): “There is a high proportion of people with mental health conditions and disorders that are involved in the criminal justice system.”

P43: “lack of early intervention and diversion processes being in place for those with immediate mental ill health needs who come into contact with the criminal justice system. The current model involves the police placing people under arrest and the arrestees potentially being sectioned under mental health law, although the rates of post-arrest medical detention are recognised as being disproportionately low.”

P45 (disabled people): “Our review of the strategy identified no mention of action to address the potential prevalence of people with learning disabilities, autism or other disabilities within the justice system; evidence suggests that people with these conditions are typically over-represented in justice systems in other jurisdictions, particularly in prison. A more recent autism framework, published in 2016, recognises that there might be people with unidentified autism involved in the criminal justice system, and that there may be resulting gaps in service provision for both children and adults”

Promote diversion from the criminal justice system, and from formal criminal justice measures, wherever appropriate alternatives exist

P69: “Principle 1: The future justice framework should ensure that the justice system is no longer the default response to crime and family breakdown. The emphasis should be on responses that are proactive and preventative in the long term, rather than reactive and punitive in the short term.”

P77: “Diversion refers to activity to either direct people away from the justice system or to divert them from formal criminal justice measures. This currently includes the use of out-of-court disposals, which can be given at the discretion of Law Enforcement, and decisions taken by prosecutors about whether prosecutions are in the public interest. As noted in Chapter 1, there is currently no clear picture of what diversion measures are available in the Bailiwick, or the extent to which they are used.”

P87: “potential to review whether there is scope for greater diversion from the system, a wider range of sentencing options ...”

P87: “whether the right balance is currently struck in legislation between civil and criminal justice system responses to justice matters.”

Rehabilitate offenders and restore the harm done by their actions

P37 (restorative justice): “While restorative approaches are used to some extent – for example, by the police in out-of-court disposals and by the Children’s Convenor – we heard from criminal justice agencies that they are not embedded in practices across all the agencies envisaged in the strategy and that training is not routinely available. There was a strong consensus among justice system stakeholders that there continues to be greater scope for restorative justice approaches to be used in the Bailiwick, both within and outside the justice system.”

P91: “The potential of restorative approaches to support the Vision across a range of policy areas was raised in all workshops and was mentioned by several respondents to the survey. In relation

to the criminal justice system, such approaches could be used more widely as an alternative to more formal measures, which could be viewed as retributive.”

P34 (review of criminal records): “There has been no wider review of the criminal records regime, although concerns were raised with us about the impact of criminal records on the future prospects of children and young adults.”

P43 (transitional support for people leaving prison): “the quality and appropriateness of the accommodation, and a lack of clarity about the stability of living arrangements for people involved in or at risk of involvement in the justice system, were raised as ongoing issues by representatives of justice agencies, community organisations and service users.”

P43 (employment): “The longer-term aim of raising awareness of rehabilitation of offenders legislation among employers continues to be seen as necessary.”

Review sentencing law and outcomes, with a particular commitment to modernising the law governing appeals against criminal sentences

P35 (short sentences): “Probation-led programmes have been developed for perpetrators of domestic abuse subject to community sentences and medium and long-term prison sentences. The programme also receives referrals from FPAS and Children’s Services. There is no dedicated programme for perpetrators serving short custodial sentences. In these cases, the probation service undertakes an assessment and provides individual intervention and there is an option to attend Probation-run programmes voluntarily post-release.”

P76: “The key message from international criminological literature is that the perceived likelihood of getting caught provides the greatest deterrent effect rather than the severity of the consequence, in terms of the nature of the sanction or length of sentence.”

P83 (overview of sentencing law): “There is limited clarity about this in the legislation – for example, there is no overarching “justice law” or “sentencing law”. Sentencing law is embedded in legislation relating both to the operation of the courts, which outline the parameters of sentencing tariffs, and to the approach to sentencing that should be applied to different types of offence.”

P88: “Recommendation 8: An independent review of sentencing legislation and sentencing outcomes should be a priority for the next phase of the Justice Review. The Review should examine the purposes of sentencing, existing sentencing regimes, and potential additions or subtractions to the options available to the courts, and make recommendations to the States about potential legislative change. This need not entail creating a more prescriptive sentencing framework with the potential to curtail judicial discretion.”

Modernising the law governing appeals against criminal sentences – please see Amendment 3 (P.2020/54) which sets out the case for reforming the existing law in respect of appeals against criminal conviction, and the form which such a review might take.

Review the operation and oversight of the criminal justice system

P69 (transparency): “participants felt that the rights of all parties in relation to justice system processes should be more transparent, partly reflecting the absence of a broader human rights framework in the Bailiwick.”

P87 (role of the Jurats): “some reservations about how reflective jurats were of the wider community and encountered some proponents of a jury system, neither of which we have had the opportunity to explore during the course of our review, although we understand that there have been recent efforts to increase diversity.”

P87 (courts): “consider the balance between the use of the Magistrates Court and the Royal Court.”

P108 (oversight of complaints): “There is a centralised complaints procedure for the States. In addition, processes are in place for the police, prisons and probation, although there is a varying degree of transparency about how these operate. To our knowledge, there is no monitoring of the operation of the justice agency complaints systems by the Committee for Home Affairs.”

Establish a “whole Island” approach to justice and the prevention of crime

P115: “Those we consulted identified a set of strategic commitments ... [including:] an overarching cross-government, community-wide strategy encompassing justice and social justice issues”

P128: “the Committee’s strategic approach to implementing the justice strategy [should involve] brokering both additional resources and the best use of available resources across government, to seek to build a whole-system approach to reducing demands on the justice system and enhancing community safety”

P69: “Principle 2: The future justice framework should be underpinned by a genuinely collective long-term approach to deal with the complex factors that contribute to crime and family breakdown in the Bailiwick. The States should work in partnership with an agreed purpose, with clarity about shared outcomes and respective responsibilities towards achieving them.”

P135: “Recommendation 39: An integrated community justice team should be established, based on the Integrated Offender Management team and providing comprehensive services for complex needs models, with partnership between public health, social care, housing, Law Enforcement and Probation. A business case should be made to the Policy & Resources Committee for the necessary additional funding to be provided for each agency to contribute personnel and deliver support services.”