

STATES OF JERSEY



Jersey

DRAFT SEXUAL OFFENCES (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 13th January 2026
by the Minister for Justice and Home Affairs
Earliest date for debate: 24th February 2026**

STATES GREFFE



Jersey

DRAFT SEXUAL OFFENCES (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Justice and Home Affairs has made the following statement –

In the view of the Minister for Justice and Home Affairs, the provisions of the Draft Sexual Offences (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.R. Le Hegarat of St. Helier North**
Minister for Justice and Home Affairs

Dated: 9th January 2026

REPORT

Background

The primary aims of the Draft Sexual Offences (Jersey) Amendment Law 202- are to improve the ability of the criminal justice system to effectively respond to different forms of intimate image abuse and strengthen existing offences relating to the sexual grooming of a child. In particular, the Draft Sexual Offences (Jersey) Amendment Law 202-:

- Widens the existing Article 15 Sexual Grooming of a Child offence;
- Creates seven new offences to ensure the effective criminalisation of a range of forms of intimate image abuse;
- Strengthens the existing Article 36 Voyeurism offence; and
- Strengthens provisions relating to indecent photographs of children under Article 2A of the [Protection of Children \(Jersey\) Law 1994](#).

In November 2023, the Violence Against Women and Girls (VAWG) Taskforce published a report entitled “*It’s a Hidden Problem*” *The Issue of Violence Against Women and Girls in Jersey*. The report detailed the findings of the research the Taskforce had undertaken relating to women’s experiences of violence and abuse on the island, alongside 77 recommendations for action to address this issue.

The Chief Minister and the Minister for Justice and Home Affairs have both committed to strengthening the legal framework to better protect Islanders from forms of intimate image abuse as part of Government’s wider commitment to implement all of the VAWG Taskforce report recommendations directed at the Government of Jersey.

The relevant recommendation is:

Recommendation 11: The Government of Jersey should review and strengthen the current legal framework to better protect islanders from online and technology-facilitated abuse. In particular, we recommend that the following should be considered:

- *The criminalisation of cyber flashing and the use of deep fakes.*
- *The problem and evidential burden of motivation thresholds that require proof of intention to cause distress or gain sexual gratification. (voyeurism)*
- *The criminalisation of different forms of tech-facilitated abuse, including cyberstalking.*

The Minister for Justice and Home Affairs issued the following response to recommendation 11:

I will criminalise cyber flashing and the use of deep fakes through amendments to the Sexual Offences (Jersey) Law 2018. I will also amend this piece of legislation so that the offence of voyeurism is reliant on the absence of consent, without the need to prove specific motives. I will also ensure that cyberstalking is criminalised under the new stalking offence (see next steps for recommendation 28).

The Draft Sexual Offences (Jersey) Amendment Law 202- actions the elements of the Minister’s response that relate to cyberflashing, the use of deepfakes and resolving the issues with the existing voyeurism offence. The law also introduces a range of other offences relating to intimate image abuse. Behaviours related to cyberstalking have been more appropriately captured by the provisions outlined in the Draft Harassment and Stalking (Jersey) Law 202-.

Both the Chief Minister and the Minister for Justice and Home Affairs have expressed a desire to enact legislation to improve the ability of the criminal justice system to effectively respond to different forms of intimate image abuse by the end of this term of Government (June 2026).

The Draft Sexual Offences (Jersey) Amendment Law 202- forms part of a wider package of legislation related to implementing the recommendations of the VAWG Taskforce and strengthening the ability of the criminal justice system in Jersey to address crimes associated with violence against women and girls, namely:

- The Draft Crime (Strangulation) (Jersey) Law 202-;
- The Draft Harassment and Stalking (Jersey) Law 202-;
- The Draft Domestic Abuse (Jersey) Amendment Law 202-; and
- The Draft Crime (Public Order) (Jersey) Amendment Law 202-

Impact of intimate image abuse

Intimate image abuse refers to the non-consensual possession, recording and sharing of nude or sexual images (“intimate images”). Threats to share an intimate image are also a form of intimate image abuse. Intimate image abuse can be perpetrated without the consent of the person depicted in the image or, in other cases, the consent of the person receiving the image. One well-known example of intimate image abuse is often referred to as “revenge porn”, typically this involves the sharing of nude or sexually graphic images without the consent of the person pictured after the breakdown of a romantic relationship. Another form of intimate image abuse involves the sending of unsolicited sexual images to another person, often through social media or dating apps. This practice is known as “cyber-flashing”.

Intimate image abuse is becoming increasingly common and taking on new forms in the context of rapid digitalisation. In particular, the advent of AI has led to forms of intimate image abuse that involve “deepfake” technology. “Deepfake” images can be understood as images that have been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually said or done. In the context of intimate image abuse, this technology has allowed for the malicious creation of sexually explicit deepfake images which seem authentic and depict an individual in an intimate state or engaging in sexual activity. Perpetrators of this form of abuse often go on to create further harm by sharing these images on social media platforms or adult entertainment websites without the subject’s consent to their creation or publication.

Intimate image abuse often forms part of a larger strategy abuse. It is commonly observed alongside other forms of bullying and harassment. In the context of domestic abuse, intimate image abuse is sometimes used as part of a wider strategy of coercion and control. Research undertaken in 2021 by Refuge, the UK’s leading domestic abuse organisation, found that 1 in 14 adults in the UK have experienced threats to share their intimate images or videos. The research demonstrated that threats to share intimate images are often issued by current or former partners that are also engaging in other forms of domestic abuse. Some of the women who engaged in the research reported feeling forced into telling their perpetrator where they were, continuing a relationship with the perpetrator or allowing the perpetrator contact with their children in order to avoid the threat from being carried out.

Outside of a domestic abuse context, intimate image abuse is a very real and serious threat to the wellbeing of young people. UK [Research](#) from 2021 found that 32 percent of girls aged 12-18 surveyed had received an unsolicited nude picture of men or boys. In Jersey, over half (55%) of the respondents to the VAWG Taskforce general public survey had experienced displays of pornographic or sexually offensive material which made them uncomfortable. This included instances where a person had viewed pornography near them. Moreover, 15% of respondents to the same survey reported experiencing someone taking and/or sharing a sexual photo or video of them without their permission. The issue of intimate image abuse was also highlighted in the

VAWG Taskforce's research with young people, where young people referenced cases where "*Nudes [had been] spread around school*".

Intimate image abuse can be just as harmful as forms of offline violence. Research demonstrates that this form of abuse can have an enormous impact on the long-term mental health and emotional wellbeing of a victim. In a survey conducted by Refuge in 2021, more than 1 in 10 victims of intimate image abuse reported that they felt suicidal as a result of receiving threats that an intimate image would be shared.

In response to the growing issue of intimate image abuse, many jurisdictions have reformed their legislation to bring in new offences that more effectively capture this harmful behaviour. It is imperative that Jersey follows suit and introduces legislation that can appropriately respond to perpetrators of intimate image abuse and offer protection to victims. Such legislative change would also provide a foundation for further educative and preventative action in this space.

The issue with existing legislation

The findings of the VAWG Taskforce research highlighted that Islanders do not feel that enough is being done to effectively respond to intimate image abuse, and other forms of abuse carried out online. The results of the Taskforce's general public survey were particularly demonstrative of this perception:

- 8 out of 10 respondents did not agree that the Government of Jersey takes online forms of VAWG seriously.
- 9 out of 10 respondents did not agree that the Courts in Jersey take online forms of VAWG seriously.

Despite these perceptions that forms of online VAWG are not being taken seriously, respondents were very clear that it should be. In particular, 9 out of 10 respondents agreed that cyberflashing should be a crime. Some women who participated in the Taskforce research also described feeling very uncertain about what legal protections exist to protect them from forms of online and technology-facilitated abuse.

It is becoming increasingly difficult for legislation and policy to keep pace with technological development. In the area of intimate image abuse, this has resulted in significant gaps in the legislative tools available to hold perpetrators to account and provide protections for victims. In recent years, other jurisdictions have taken action to rectify this by introducing a range of intimate image abuse offences. Jurisdictions including England and Wales, Canada, and a number of Australian states have taken the approach of inserting these new intimate image abuse offences into their sexual offences legislation. As a result, Jersey can now be considered unusual in that we do not have any specific offences relating to intimate image abuse.

In the absence of a piece of legislation designed to address intimate image abuse, the Article 51 offence of 'Improper Use of a Telecommunications System' under the [Telecommunications \(Jersey\) Law 2002](#) has been used as a catchall for forms of intimate image abuse, amongst other things. There are a number of reasons why this arrangement is unsatisfactory. In particular, this offence does not sit within the [Sexual Offences \(Jersey\) Law 2018](#), meaning there is no automatic anonymity for victims of this offence. A lack of anonymity is known to disincentivise victims from reporting incidents to the police. It also means that perpetrators of intimate image abuse that are convicted of this offence are not recognised as sex offenders under the [Sex Offenders \(Jersey\) Law 2010](#), and are therefore not subject to the same notification requirements or court orders as other perpetrators of sexual harm.

There are also issues with the way in which the Article 36 offence of Voyeurism under the Sexual Offences (Jersey) Law 2018 is constructed. Under this offence, both the non-consensual recording of a sexual act and the non-consensual recording underneath a person's clothing are criminalised.

However, in order for the elements of the offence to be satisfied, it must be proven that the non-consensual recording was committed for the purpose of obtaining sexual gratification. This means that, in cases where the non-consensual recording was carried out for different purposes, such as with the aim of causing reputational harm, the act may not satisfy the elements of the Article 36 offence of Voyeurism. This requirement to prove that a perpetrator acted with a specific intention is an example of a “motivation threshold”. There is a growing consensus that motivation thresholds can make prosecuting certain acts very difficult due to the evidential difficulties created by the requirement to prove a person’s intent. As a result, there has been a movement in England and Wales and several of the Australian states to amend these offences to remove the need to prove specific motives.

Process of legislative development

As part of their work to develop their report, the VAWG Taskforce commissioned the Law Officers’ Department to conduct a high-level mapping of the existing legal framework in Jersey as it relates to a range of VAWG behaviours, alongside a comparison to equivalent legislation in England, Wales, Scotland and Northern Ireland. The findings from this legislative mapping exercise were used to inform the content of the VAWG Taskforce recommendations that relate to legislative development, including the recommendation to strengthen legislation related to forms online and technology-facilitated abuse. As alluded to above, England and Wales have taken measures to the strengthen their legislation in this area in recent years. In relation to the issue of intimate image abuse, a number of new offences were introduced via the Online Safety Act 2023. England and Wales have also outlined a commitment to introduce further offences via amendments to the Criminal Justice Bill 2024. This approach of introducing new intimate image abuse offences into sexual offences legislation is very much in line with the approach used in other Commonwealth jurisdictions. In recent years, offences relating to non-consensual recording and distribution of intimate images have been inserted into:

- Part V of the *Criminal Code of Canada relating to Sexual Offences, Public Morals and Disorderly Conduct*;
- Division 10 of the *Sexual offences against adults and children of the Crimes Act 1900 (New South Wales)*; and
- Chapter 22 of the *Offences Against Morality of the Criminal Code 1899* in Queensland, wherein the majority of Queensland’s sexual offences are captured.

As a result, the development of the Draft Sexual Offences (Jersey) Amendment Law 202- has sought to continue this approach by inserting a range of new intimate image abuse offences into the Sexual Offences (Jersey) Law 2018. As the legislative landscape in England and Wales is the most comparable to arrangements in Jersey, this law has been largely informed by the measures outlined in the Online Safety Act 2023. Notably, the design of this draft Law has benefited from the ability to observe the practical application of offences introduced by the Online Safety Act 2023 after it came into force in January 2024. This has allowed for the design of the draft Law to draw on the successes of the Online Safety Act 2023, whilst also identifying areas where the Act had missed opportunities to strengthen protections for victims. As such, there are places where the law is very much aligned with the provisions outlined in the Online Safety Act 2023, such as in the case for the offence of threatening to share an intimate recording, but there are also places where the law has gone further, such as with the introduction of a new offence of making a deepfake intimate recording without consent.

During this process of legislative development, officers worked closely with the key stakeholders across the criminal justice system that would be involved in the operationalisation of this

legislation, should it be accepted by the Assembly. In particular, the following stakeholders were actively consulted:

- States of Jersey Police
- The Criminal Division of the Law Officers' Department
- Judicial Greffe
- The Judiciary

During this process, these stakeholders identified additional issues with the Sexual Offences (Jersey) Law 2018, in relation to the construction of the Article 15 (sexual grooming of a child) offence, and with how indecent photographs of children are defined under Article 2A of the Protection of Children (Jersey) Law 1994. The resolution of these issues was considered to be very much in line with the wider aim of the Draft Sexual Offences (Jersey) Law Amendment 202- to improve the ability of the criminal justice system to effectively respond to perpetrators of sexual harm. The necessary resolutions have therefore been included alongside the planned legislative provisions relating to intimate image abuse.

Officers also provided the VAWG Taskforce with regular updates on the direction of legislative development throughout this process, in order to ensure that the proposed legislation suitably accomplished the functions that Taskforce members had in mind when the recommendations were made.

Purpose and function of legislative provisions

The Draft Sexual Offences (Jersey) Law Amendment 202- performs the following functions of:

1. Widening the existing Article 15 Sexual grooming of a child offence;
2. Creating seven new offences to ensure the effective criminalisation of a range of forms of intimate image abuse;
3. Strengthening the existing Article 36 Voyeurism offence; and
4. Strengthening provisions relating to indecent photographs of children under Article 2A of the Protection of Children (Jersey) Law 1994.

The purpose and function of each of these legislative provisions is discussed in detail below.

1. Widening the existing Article 15 Sexual Grooming of a Child offence

Article 3 of the draft Law is concerned with widening the existing Article 15 Sexual Grooming of a Child offence. The purpose of this amendment is to allow for earlier intervention with a perpetrator in the process of carrying out this offence and to support the prevention of further harm.

As the Article 15 offence currently stands, a person commits an offence if they, having already met or communicated with a person aged 15 or younger, intentionally meet that person or travel with the intention of meeting that person, for the purpose of carrying out a relevant offence. This has created difficulties for law enforcement in instances where a perpetrator has made arrangements to meet a person aged 15 or younger and intends to carry out a relevant offence, but has not yet carried these arrangements out. This is because, in such cases, the perpetrator has not actually satisfied the elements of the offence. It also creates issues in cases where the person aged 15 or younger has travelled to meet the perpetrator, as the current construction of the offence only accounts for the reverse situation wherein the perpetrator was the one that travelled to carry out the meeting.

The amendments in the draft Law resolve these issues by widening the Article 15 offence so that scenarios where a perpetrator arranges to meet a person, but has not yet carried out those arrangements, and cases where the young person travels to meet the perpetrator, are both sufficiently captured.

2. Creating seven new offences to ensure the effective criminalisation of a range of forms of intimate image abuse

Article 4 of the draft Law inserts seven new offences into the Sexual Offences (Jersey) Law 2018 under a new section entitled “Part 8A (offences involving technology)”. The purpose of creating these new offences is to introduce a more robust legislative framework that appropriately criminalises forms of intimate image abuse. In particular, Part 8A introduces new offences relating to:

- The possession of an intimate recording without consent;
- The making of an intimate recording without consent;
- The making of a deepfake intimate recording without consent;
- The sharing of an intimate recording or deepfake recording without consent;
- The issuing of threats to share an intimate recording or deepfake recording;
- The sending of unsolicited pornographic images; and
- The causing of a person to create or share an intimate recording.

The insertion of these new offences into the Sexual Offences (Jersey) Law 2018 means that victims will be granted the same rights to automatic anonymity that they would be in cases that involve other sexual offences. It also ensures that convicted perpetrators of intimate image abuse are appropriately subject to the same measures as other perpetrators of sexual harms under the Sex Offenders (Jersey) Law 2010.

Under the new Part 8A (offences involving technology) section, Article 33A introduces a series of new definitions relating to what constitutes an “intimate recording”, a “private act” and a “deepfake intimate recording”. These new definitions are then used throughout the new intimate image abuse offences. The purpose of providing a definition of “deepfake intimate recording” in particular, is to ensure that cases of intimate image abuse that makes use of deepfake technology are appropriately captured within these new offences.

Article 33B criminalises the non-consensual possession of an intimate image by introducing a new offence of possessing either an intimate recording or deepfake intimate recording without consent. Under this new offence, a person commits an offence if they knowingly possess an intimate recording of another person and they do not reasonably believe that the other person consents to their possession of the recording. Importantly, this offence captures both authentic intimate recordings and deepfake intimate recordings. A defence has been included for this offence in cases where a person, as soon as is practicable after becoming aware that the recording is in their possession, takes all reasonable steps to delete or otherwise dispose of the recording.

Article 33C criminalises the non-consensual making of an intimate image by introducing a new offence of making an intimate recording without consent. Under this new offence, a person commits an offence if they intentionally or recklessly make an intimate recording of another person, the person in the recording had a reasonable expectation of privacy in the circumstances wherein the recording was made, and the person who made the recording does not reasonably believe that the person in the recording consents to the recording being made. There are two key reasons for the inclusion within the offence of cases where the recording was made intentionally and cases where the recording was made recklessly. Firstly, it avoids creating evidential

difficulties in cases where it is difficult to prove a person's intent to make the recording. Secondly, it ensures that cases where a person was genuinely reckless as to the making of the recording – for instance by placing a recording device in a private bathroom – are properly captured. Provisions have been included to ensure that this new offence does not inadvertently criminalise health professionals in cases where they make an intimate recording of a patient for a genuine medical purpose, such as seeking a second opinion from another health professional. Provisions have also been included to avoid the inadvertent criminalisation of members of law enforcement or members of the public whose behaviour was undertaken for a genuine law enforcement purpose.

Article 33D criminalises the non-consensual creation of deepfake intimate images by introducing a new offence of making a deepfake intimate recording without consent. Under this new offence, a person commits an offence if they make a deepfake intimate recording of another person and they do not reasonably believe that the person depicted in the recording consents to the deepfake intimate recording being made.

Article 33E criminalises the non-consensual distribution of intimate images by creating a new offence of sharing an intimate recording or deepfake intimate recording without consent. Under this new offence, a person commits an offence if they intentionally or recklessly share an intimate recording of another person (or a deepfake intimate recording of another person), and the person does not reasonably believe that the person depicted in the intimate recording consents to the recording being shared. Importantly, it is clarified that in cases where a person does not physically send the intimate image to another person but causes another person (including the subject of the recording) to see or hear the recording, this is captured under the offence. As in Article 33C, provisions have been included to avoid the inadvertent criminalisation of health professionals taking action for a genuine medical purpose and of acts undertaken for a genuine law enforcement purpose. A defence for this offence has also been included to cover off a number of scenarios where the person's behaviour could be interpreted as reasonable, amongst other things this includes cases where the intimate recording had already been shared publicly with the consent of the subject of the recording.

Article 33F criminalises the issuing of threats to share an intimate image by creating a new offence of sharing an intimate recording or deepfake intimate recording. Under this new offence, a person commits an offence if they threaten to share an intimate recording or deepfake intimate recording without consent, and the recipient of the threat is reasonably likely to believe that the threat will be carried out. It is clarified that it is irrelevant whether the threat is made to the subject of the recording or to another person. Importantly, this offence is designed to capture threats that relate to both authentic recordings and those created by deepfake technology.

Article 33G introduces provisions which aim to strengthen the rights of individuals depicted in an intimate image. These provisions have also been included to avoid the inadvertent criminalisation of a person who possessed an intimate image, but made reasonable efforts to remove the image from their possession once they became aware that the person depicted in the image did not consent to their possession of the image. This is done by creating new requirements relating to the deletion and removal of intimate images. In particular, it is outlined that a person who makes or shares an intimate recording (or deepfake intimate recording) and is made aware that the subject of the recording does not consent to their possession or publication of the image, then that person must, as soon as is practicable, take all reasonable steps to delete the recording and remove it from any platform on which it has been published. If a person fails to comply with these requirements, then they commit an offence.

Article 33H criminalises “cyber-flashing” by creating a new offence of sending an unsolicited pornographic image. Under this new offence, a person commits an offence if they, intentionally or recklessly, cause another person to see an image that shows either pornographic content or images of a person's genitals, and they do not reasonably believe that the other person consented

to seeing the image. Again, this offence is designed to capture cases that involve both authentic recordings and those created by deepfake technology.

Article 33I criminalises instances where someone forces or pressures another person to create or share an intimate image by creating a new offence of causing a person to create or share an intimate recording. Under this new offence, a person commits an offence if they cause another person to make or share an intimate recording, and they do not reasonably believe that that other person consents to the making or sharing of the recording. This offence in particular, alongside the offence outlined in Article 33F (threats to share an intimate recording), is designed to capture cases where intimate image abuse is used within a wider strategy of coercive and controlling behaviour.

As discussed above, there are a number of issues relating to the inclusion of motivation thresholds in intimate image abuse offences. As such, these new offences have all been designed without the inclusion of such thresholds. However, the absence of such thresholds does raise the issue of whether the malicious intent that is often behind these acts has been sufficiently captured by the new offences. As such, a variety of aggravating factors have been identified to ensure that the malicious and harmful nature of these offences is suitably captured. These aggravating factors have been set out for the consideration of the Courts during sentencing, including:

- Cases where the offence was committed with intent to cause a person alarm, distress or humiliation;
- Cases where the offence was committed with the intent to obtain sexual gratification;
- Cases where the offence caused or contributed to serious harm; or
- In cases where the Article 33H (unsolicited pornographic images) offence was committed, the person who saw the image was aged 15 or younger.

Provisions included in Part Six of the law are included to ensure that individuals who perpetrate intimate image abuse offences are subject to the same measures as other perpetrators of sexual harm under the Sex Offenders (Jersey) Law 2010.

3. Strengthening the existing Article 36 Voyeurism offence

Article 5 of the draft Law is concerned with removing the motivation thresholds from the existing Article 36 Voyeurism offence. The purpose of this is to strengthen the offence by ensuring that it does not suffer from the deficiencies related to the inclusion of motivation thresholds, and therefore, to facilitate the effective prosecution of the offence. As discussed above, the inclusion of motivation thresholds within an offence creates issues because of the difficulties related to proving a person's specific motivation to act. The narrowing of an offence to acts that are motivated by specific intentions also means that perpetrators of harm may be able to avoid prosecution, despite the damage their actions have caused.

The specific impact of the amendments outlined in Article 5 are as follows. Firstly, the definition of "private act" that is included under the existing Article 36 Voyeurism offence has been removed as this is now defined elsewhere in the draft Law (Article 33A(3)). Secondly, the offences relating to the making of an intimate recording or the operation of equipment in order to make an intimate recording have been removed from this offence because they are now captured under the new 33C offence of making an intimate recording without consent. Thirdly, the requirement that a person must have committed the voyeurism offence for the purpose of obtaining sexual gratification has been removed. Under the amended offence, any person who intentionally or recklessly observes another person doing a private act, and does not reasonably believe that that other person consents to being observed, commits an offence.

4. Strengthening provisions relating to indecent photographs of children under Article 2A of the Protection of Children (Jersey) Law 1994

Part 7 of the draft Law is concerned with updating provisions relating to the definition of indecent photographs of children under the Protection of Children (Jersey) Law 1994. The purpose of this amendment is to align the provisions relating to indecent photographs of children in Jersey law with the equivalent provisions in the UK. Under the existing Protection of Children (Jersey) Law 1994, despite elsewhere defining a 'child' as 'a person under the age of 18 years', Article 2A sets out that in proceedings relating to an indecent photograph of a child, that a person is to be taken as having been a child if it appears from the evidence that they were under the age of 16 years at the material time. This differs from legislation in the UK, which captures all photographs of children under the age of 18 within its definition of indecent photographs of children. This difference in definition creates issues for the Digital Forensics Unit within the States of Jersey Police Force, as they are unable to rely on the age recognition software that is used by their counterparts in the UK to identify indecent images of children. Instead, these professionals must manually review the relevant material in order to deduce whether it meets the Jersey definition of indecent images of children. This issue is understandably taking a significant toll on the wellbeing of the staff working within the Digital Forensics Unit.

As such, Part 7 of the law updates Article 2A so that, in proceedings relating to an indecent photograph of a child, a person is to be taken as having been a child if it appears from the evidence that they were under the age of 18 years at the material time. This brings Jersey legislation into alignment with the equivalent legislation in the UK and therefore allows the Digital Forensics Unit to make use of the same age recognition software that is currently used by their colleagues in the UK. This will support the wellbeing of the staff and also allow for greater efficiencies within a team that is already working under significant pressure.

Timescale

The Draft Sexual Offences (Jersey) Law Amendment 202- will come into force by Commencement Order once the necessary operational preparations are complete.

Financial and staffing implications

The current capacity of the criminal justice system

The proposed introduction of this new law, which forms one component of a wider package of five pieces of legislation related to addressing crimes associated with violence against women and girls, comes at a time when the criminal justice system is already under significant pressure. Following the publication of the VAWG Taskforce report, and the subsequent inclusion of the implementation of the VAWG Taskforce's recommendations as a CSP priority, there has been a significant uptick in the reporting of VAWG-related crimes in Jersey. According to data collected by the States of Jersey Police, the number of VAWG-related reported crimes has increased by 27% in the last three years. This reporting increase is thought to be largely attributable to the high-profile nature of VAWG resulting in an increase in general awareness and public confidence.

This increase in reporting has already placed criminal justice agencies and victim support services under significant strain.

- Victim support services have expressed a need for new dedicated clinical leadership so that their service is appropriately resourced to cope with demand. This new post will be crucial to ensuring that the Sexual Assault Referral Centre in Jersey is able to operate safely and in line with national standards.
- La Moye Prison is currently experiencing intense population pressures, noted as an extreme risk on the States of Jersey Prison Service risk register. At time of reporting, the prison is at 92% overall occupancy. The Vulnerable Prisoner Unit, which accommodates

most prisoners convicted of sexual offences, reached full capacity in February 2025 and a temporary expansion was put in place to increase capacity from 59 to 63. Despite increased capacity, the Unit has maintained an average occupancy rate of 95% from 1 February 2025, with just one bed available at the time of reporting.

It is important to recognise that demands on the system will only continue to rise as new legislation is brought forward.

Detailed analysis has been undertaken by the States of Jersey Police, other criminal justice partners and Treasury and Exchequer to assess the cost of increased demand further to the implementation of these laws.

This analysis, which is based on assumptions, indicates a high level range of 199-369 new crimes per year (by second year of implementation) resulting in a total revenue cost of £3 million - £7 million.

(NB this is revised from 275-300 new crimes per year included in Financial Assessment on lodging the Laws, following further analytical work).

The estimated revenue impact, for low, medium and high impact scenarios, is included below:

	2027	2028	2029	2030
Low Range	1,701	3,039	3,193	3,327
Central	2,598	5,209	5,545	5,937
Higher Range	3,495	7,255	7,855	8,426

The level of resourcing ultimately required will depend on the incidence and severity of offending that is reported, though it is expected to fall within the range identified. Ministers have agreed that funding should be linked to actual demand once the legislation is in force, with resources phased in as necessary to maintain effective service delivery across the criminal justice system.

A demand-led funding model is being developed, which will be recommended for incorporation into Budget 2027–30. This is likely to involve some funding being held in the Central Reserve and released as required to match resources to workload.

Additional costs of the Draft Sexual Offences (Jersey) Amendment Law 202-

The States of Jersey Police and States of Jersey Prison Service have made an initial analysis of maximum potential costs.

The following assumptions have been made –

1. Police recorded intimate image abuse offences increase by 10% per year.
2. 4% of those recorded offences will progress to a conviction with a custodial sentence.
3. Custodies will begin 2 years post-introduction of legislation.
4. The custodial sentence given is 2 years and prisoners will serve 1.3 years of their sentence, or 67%.
5. Total cost per prisoner place will increase in line with predicted inflation.

Following the introduction of new intimate image abuse offences into the Sexual Offences Act 2003 in the UK, police recorded approximately 13,000 additional intimate image abuse offences in the year-ending March 2025. If Jersey follows a similar trend, then approximately 132

new image based sexual offences could be recorded on an annual basis following the introduction of the new law. This increase would create significant new pressures for the States of Jersey Police Digital Forensics Unit. These new demands on the States of Jersey Police Force may require the allocation of additional resources in the future.

However, the main cost implication comes from the requirement to hold offenders in prison. Initial analysis undertaken to predict the impact on the States of Jersey Prison Service indicates that, with the assumptions above, by four years after introduction the Draft Sexual Offences (Jersey) Amendment Law 202- the new non-consensual intimate image abuse offences could generate 2 new custodies per year and the new cyberflashing offence could generate 4 new custodies per year, both with an average incarceration period of 1.3 years. This would total an ongoing running cost of approximately £677k per year.

Data protection implications

An initial Data Protection Impact Assessment was undertaken. This was reviewed by the Information and Data Security Team. It concluded that the amendments do not have a high impact on the rights and freedoms of the individuals affected and a full DPIA not required.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

Human Rights

The notes on the human rights aspects of the Draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not, be taken as legal advice.

Re-issue Note

This proposition has been re-issued to add an additional financial assessment on page 12.

APPENDIX TO REPORT**Human Rights Notes on the Draft Sexual Offences (Jersey) Amendment Law 202-**

These notes have been prepared in respect of the Draft Sexual Offences (Jersey) Amendment Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would, if adopted, make several amendments to the Sexual Offences (Jersey) Law 2018 (the “2018 Law”), inter alia, inserting a new Part 8A to the 2018 Law. New Part 8A, in new Article 33A – 33J, would create several new criminal offences and associated provisions in the 2018 Law. The new criminal offences that would be created by the draft Law amending the 2018 Law are analysed in the paragraphs below. In this note these new criminal offences are referred to collectively as “the new offences”.

New Article 33A would set out definitions of terms having general application in new Part 8A, such as “intimate recording”, “private act” and “deepfake intimate recording”.

New Article 33B would create the offence of possessing an intimate recording or a deepfake intimate recording without consent. A person would commit an offence if (a) the person knowingly possesses an intimate recording or deepfake intimate recording of another person; and (b) the person does not reasonably believe that the other person consents to the possession (New Article 33B(1)). New Article 33B(2) would provide a defence to the offence, if the person, as soon as practicable after becoming aware that the recording is in their possession, took all reasonable steps to delete or otherwise dispose of the recording. The penalty for the offence is imprisonment for a term of 2 years and a fine.

New Article 33C would create the offence of making an intimate recording without consent. A person would commit an offence if (a) the person intentionally or recklessly makes an intimate recording of another person; (b) when the intimate recording is made, the other person is in a place that, in the circumstances, would reasonably be expected to provide privacy; and (c) the person does not reasonably believe that the other person consents to the intimate recording being made (New Article 33C(1)). A person would also commit an offence if the person operates equipment with the intent of using that equipment to commit an offence under Article 33C(1) (new Article 33C(2)). New Article 33C(3) would provide exceptions to the offence in the case of health professionals who make an intimate recording of a patient for a genuine medical purpose or a person making an intimate recording for a genuine law enforcement purpose. The penalty for the offence is imprisonment for a term of 2 years and a fine.

New Article 33D would create the offence of making a deepfake intimate recording without consent. A person would commit an offence if (a) the person makes a deepfake intimate recording of another person; and (b) the person does not reasonably believe that the other person consents to the deepfake intimate recording being made (New Article 33D(1)). The penalty for the offence is imprisonment for a term of 6 months and a fine.

New Article 33E would create the offence of sharing an intimate recording or a deepfake intimate recording without consent. A person commits the offence if (a) the person makes a deepfake

intimate recording of another person; and (b) the person does not reasonably believe that the other person consents to the deepfake intimate recording being made (new Article 33E(1)).

A person has a defence to the offence (new Article 33E(3)) if the person reasonably believed, based on the circumstances that the person reasonably believed to have existed at the time the intimate recording was made, that (i) the subject of the intimate recording did not have a reasonable expectation that the intimate recording would not be made; and (ii) the subject of the intimate recording was doing the private act voluntarily; (b) the intimate recording or deepfake intimate recording had already been shared publicly with the consent of the subject of the recording; (c) the person reasonably believed that the intimate recording or deepfake intimate recording had already been shared publicly with the consent of the subject of the recording; or (d) a reasonable person would consider the person's conduct acceptable, having regard to (i) the nature and content of the intimate recording or deepfake intimate recording; (ii) the circumstances in which the recording was made and shared; (iii) the characteristics of the subject of the recording (including their age, intellectual capacity and vulnerability); (iv) the extent to which the subject's privacy was violated; and (v) the relationship between the person and the subject. The penalty for the offence is imprisonment for a term of 2 years and a fine. New Article 33E(2) would provide exceptions to the offence in the case of health professionals who make an intimate recording of a patient for a genuine medical purpose or a person making an intimate recording for a genuine law enforcement purpose.

New Article 33F would create the offence of threatening to share an intimate recording or deepfake intimate recording. A person commits the offence if (a) the person intentionally or recklessly shares (i) an intimate recording of another person; or (ii) a deepfake intimate recording of another person; (b) the person does not reasonably believe that the other person consents to the recording being shared (New Article 33F(1)). The penalty for the offence is imprisonment for a term of 2 years and a fine.

New Article 33G would introduce a requirement for a person ("A") to delete and remove intimate recordings or deepfake intimate recordings of another person ("B") which A has made or shared online if A is made aware that B does not, or no longer, consents to A processing the recording (New Article 33G(1)). A would be required, as soon as practicable after being made aware that B does not consent, take all reasonable steps to delete the recording and to remove the recording from any platform on which it had been published (New Article 33G(2)). The penalty for not complying with the requirement is imprisonment for a term of 12 months and a fine.

New Article 33H would create the offence of unsolicited pornographic images. A person would commit the offence if (a) the person intentionally or recklessly causes another person to see an image that shows, or appears to show (i) pornographic content; or (ii) images of a person's genitals; (b) the person does not reasonably believe that the other person consents to seeing the image (New Article 33H(1)). The penalty for the offence is imprisonment for a term of 2 years and a fine.

New Article 33I would create the criminal offence of causing a person to create or share an intimate recording. A person commits the offence if (a) the person causes another person to make or share an intimate recording; and (b) the person does not reasonably believe that the other person consents to making or sharing the recording (New Article 33I(1)). The penalty for the offence is imprisonment for a term of 2 years and a fine.

New Article 33J would set out aggravating factors in relation to the criminal offences in new Part 8A. A court would be required to treat the presence of certain factors as aggravating factors, namely (a) the person committed the offence with the intent to cause a person alarm, distress or humiliation; (b) the person committed the offence with the intent to obtain sexual gratification; (c) the offence caused or contributed to serious harm; or (d) for an offence under new Article 33H (unsolicited pornographic images), the person who saw the image was aged 15 or younger.

Article 6 of the draft Law would amend the Sex Offenders (Jersey) Law 2010 (the “2010 Law”) so that a person who is convicted of an offence under the new Part 8A (to be included in the 2018 Law by the draft Law) would be subject to the notification requirements contained in the 2010 Law (see Part 2 of the 2010 Law).

Article 5 ECHR – right to liberty and security

The new offences could result in an individual’s arrest and/or imprisonment and therefore deprivation of their liberty. Article 5 ECHR provides that no one shall be deprived of his liberty save in one of a number of specified cases and in accordance with a procedure prescribed by law. Article 5(1)(a) ECHR provides for the deprivation of a person’s liberty resulting from their lawful detention after conviction by a competent court. Article 5(1)(c) ECHR provides for the deprivation of a person’s liberty resulting from their lawful arrest and detention for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence. The arrest and detention of a person accused or convicted of the new offences is compatible with Article 5(1)(a) and (c) ECHR, and would be in accordance with a procedure prescribed by law, i.e. in accordance with the draft Law and the criminal law of Jersey.

Whilst it is for the State, not the Court, to decide what the appropriate sentence in law for any given offence is, the maximum penalty must not be arbitrary. The proposed penalties for the new offences are proportionate to the nature and severity of the offending, and any deprivation of liberty resulting from a sentence of imprisonment will not be arbitrary. Further, the Court will be able to take account of all the relevant circumstances of the offence and the offender in the usual way when handing down a sentence, which provides an important safeguard for Article 5 ECHR purposes. Moreover, the procedural safeguards required by Article 5(2) to (4) ECHR will be assured through the ordinary procedures of the criminal justice system in Jersey law.

For these reasons it is considered that the new offences and associated criminal justice measures are compatible with Article 5 ECHR.

Article 6 ECHR – the right to a fair trial

The new offences, the defence provisions in new Article 33B(2) and 33E(3) (the “defence provisions”), and the exemptions to the offences in new Article 33C(3) and 33E(2) (the “exemption provisions”) engage Article 6(2) ECHR relating to criminal proceedings. The interpretative provision in the 2018 Law relating to consent (Article 2 of the 2018 Law), which would apply to the interpretation of the new offences on amendment to the 2018 Law, will also engage Article 6(2) ECHR.

The defence provisions would impose a reverse burden on the accused to prove, for instance, that the accused took reasonable steps to avoid committing the criminal conduct, or had a reasonable belief in circumstances existing which would avoid the criminal conduct being made out, or that a reasonable person would consider the accused’s conduct to be acceptable. Article 6 ECHR does not prohibit rules which transfer the burden of proof to the accused to establish a defence, provided that the overall burden of proof remains with the prosecution.

The reverse burden in the defence provisions is compatible with Article 6(2) ECHR. In each case the defendant is likely to have knowledge of the relevant circumstances required to prove the defence (e.g. the steps the defendant took to delete or dispose of a recording, or the relevant matters which the defendant believed at the time the conduct took place), or they would be matters the defendant could reasonably be expected to be able to prove (e.g. that a recording had been shared publicly with the consent of the subject). A defendant wishing to avail themselves of the defence provisions should therefore be able to provide the information necessary. In view of the likelihood of the defendant having all of the relevant information, bearing in mind the importance of prosecuting offences of this nature, and the limitation on the penalties that could be imposed

under the applicable offence provisions, the defence provisions are considered to apply an appropriate legal burden on the defendant.

In the exemption provisions, the defendant carries the evidential burden attaching to the genuine medical purpose and law enforcement purpose specified in those provisions. If the defendant discharges that evidential burden, the legal burden of disproving it will be on the prosecution, which is a burden compatible with Article 6 ECHR¹.

The new offences, on amendment to the 2018 Law, would be subject to the interpretative provision in the 2018 Law relating to consent (Article 2). Though evidential and conclusive presumptions engage Article 6 ECHR and the issue of presumption of innocence, which comes within the ambit of Article 6 ECHR, the presumption of innocence is not absolute². An interference with the presumption of innocence must be reasonably proportionate to the legitimate aim sought to be achieved³. The application of the evidential and conclusive presumptions in Article 2 to the new offences is compatible with Article 6(2) ECHR, for reasons including: i) the evidential presumption in respect of the new offences will only be engaged in specified circumstances where it is clear to the defendant that the complainant would not have been able to give valid consent; b) the defendant will still be able to adduce rebuttal evidence to rebut the presumption; c) where a presumption is established it is not inevitable that an offence is made out because the prosecution will still, in certain instances (e.g. new Article 33C(1)), need to prove that the defendant had the necessary *mens rea* when they committed the offence before they can be convicted. It is considered, therefore, that the application of the interpretative provisions to the new offences is reasonable and strikes the right balance between the rights of the complainant and the defendant, and is a proportionate means of achieving a legitimate aim.

Finally, a person convicted of the new offences would be able to appeal the conviction to the Royal Court or Court of Appeal, as applicable, an independent and impartial tribunal for Article 6 ECHR purposes, in the usual way.

Article 7 ECHR – no punishment without law

Article 7 ECHR is engaged in so far as it requires the offences and corresponding penalties to be clearly defined in law. The elements of each of the new offences and their penalties are clearly set out in a way that a member of the public can understand. It is considered that the public will have a good understanding of what it means to carry out the various conduct which is covered by the new offences. Concepts such as ‘possessing’, ‘making’ or ‘threatening’ are clearly understood in the criminal law, and in cases where an offence requires a nuanced understanding of certain conduct – such as ‘sharing’ in the case of the offence at new Article 33E – the draft Law provides interpretative provision to assist in understanding the offence (see new Article 1(4)). Moreover, concepts which are new to the criminal law, i.e. “intimate recording” and “deepfake intimate recording” are defined by the draft Law (new Article 33A). It is reasonable also to consider that a person would understand when conduct is committed intentionally and the term “reckless”, in the context of its use in the offences, though not defined, is a readily understood concept in the criminal law in Jersey and is used in many other statutory criminal offences. It is relevant too that the new offences are not expressed to have retrospective effect. For these reasons the new offences are considered to be compatible with Article 7 ECHR.

Article 8 ECHR – right to private life

Article 33C(3) and 33E(2) would provide an exemption to the offences in those provisions where the relevant act is done for health professional or genuine law enforcement purposes. These

¹ *DPP v Wright* [2009] EWHC 105

² *Falk v the Netherlands 2* (66273/01)

³ *Janosevic v Sweden* (34619/97)

provisions would engage Article 8 ECHR given their relation to the privacy of the person who is the victim of the offence (i.e. the person shown in the image or recording). The right to one's image and photographs comes within the scope of Article 8 ECHR, and the non-consensual taking or recording of an intimate image will engage these protections.

To the extent that the exemptions in Article 33C(3) and Article 33E(2) could be considered to infringe Article 8 ECHR, it is considered that the infringement is justified within Article 8(2) ECHR in that the exemptions serve to achieve a proportionate approach to what should, and should not, be criminalised. The exemptions strike the right balance between carving out scenarios where criminalisation of behaviour would not be appropriate or legitimate, and ensuring that harmful behaviour is captured by the offences.

The draft Law would amend the 2010 Law to apply the notification requirements in Part 2 of the 2010 Law to a person who is convicted of an offence in new Part 8A. Any interference with an offender's Article 8 ECHR rights is justified within the meaning of Article 8(2) ECHR. The offences in new Part 8A relate to intimate recordings or images and are sexual in their nature. There is therefore a clear and rational connection between the offences themselves and the objectives of the notification requirements in the 2010 Law so that the imposition of notification requirements in these circumstances is a proportionate means of achieving a legitimate aim.

Article 1 of Protocol 1 ECHR – the right to property

New Article 33G(2) would require a person (“A”), who makes or shares an intimate recording or a deepfake intimate recording of another person (“B”), and is made aware that B does not consent, or no longer consents, to A possessing the recording or to the publication of the recording, to take all reasonable steps to delete the recording and to remove the recording from any platform on which it had been published.

The effect of Article 33G(2) would be to compel A to take steps that would deprive him or her of the image or recording in question. Article 33G(2) may, therefore, engage A1P1, the ‘possession’ in this case being the image or recording in A's possession. An interference with A1P1 is lawful if it is in accordance with the law and is necessary and proportionate with regard to the public interest.

The interference with A1P1 is in accordance with the law, i.e. the draft Law, and the protection of the rights of others (i.e. the Article 8 ECHR right of B) and the prevention of crime (i.e. the continued possession of unlawful intimate images or recordings) is in the public interest. The measure in Article 33G(2) is necessary because the continued possession of the images or recording could cause additional harm to victims, arising from knowledge that the offender retains the possession of the image or recording that they unlawfully created or shared. The interference is proportionate because it is limited to the deletion and removal from platforms of the image or recording in question, and requires only that reasonable steps are taken to remove or delete the material. For these reasons, to the extent that the measure engages A1P1, the interference is considered to be a proportionate means of achieving the legitimate aim of the protection of the rights of others, and is therefore considered to be lawful.

EXPLANATORY NOTE

This Law, if adopted, would amend the Sexual Offences (Jersey) Law 2018 (the “Sexual Offences Law”) to include additional offences that involve the use of technology.

Article 1 states that this Law amends the Sexual Offences Law.

Article 2 amends Article 1 of the Sexual Offences Law to add definitions of “image” and “share” and to point towards new definitions of “deepfake intimate recording”, “intimate recording” and “private act” (all of which are defined in new Article 33A, inserted by Article 4 of this Law).

Article 3 amends Article 15 of the Sexual Offences Law to expand the scope of the offence currently set out in Article 15(1)(a)(i) and (ii) of the Law (which relates to the sexual grooming of a child). An adult (defined in the Law as a person aged 18 or over) now also commits an offence if, having met or communicated with a child aged 15 or under at least once, and for the express purpose of committing a relevant offence listed in Article 15(3) of the Law –

- (a) the adult arranges to meet the child in any part of the world (new Article 15(1)(a)(iii)); or
- (b) the child travels with the intention of meeting the adult in any part of the world (new Article 15(1)(a)(iv)).

Article 4 inserts new Part 8A, consisting of new Articles 33A to 33J, into the Sexual Offences Law.

Article 33A defines “intimate recording”, “private act” and “deepfake intimate recording”.

Article 33B creates an offence of knowingly possessing an intimate recording or deepfake intimate recording of another person without reasonable belief that the other person consents to the possession. The penalty is 2 years’ imprisonment and an unlimited fine.

Article 33C creates offences of making an intimate recording of another person without reasonable belief that the other person consents to the recording being made, in circumstances that would reasonably be expected to provide privacy. Article 33C also creates an offence of operating equipment with the intent of making an intimate recording if making the recording would be an offence. The penalty for both offences is 2 years’ imprisonment and an unlimited fine. A health professional who makes an intimate recording for a genuine medical purpose does not commit an offence, nor does a person who makes an intimate recording for a genuine law enforcement purpose.

Article 33D creates an offence of making a deepfake intimate recording of another person without reasonable belief that the other person consents to the recording being made. The penalty is 6 months’ imprisonment and an unlimited fine.

Article 33E creates an offence of sharing an intimate recording or deepfake intimate recording of another person without reasonable belief that the other person consents to the recording being shared. The penalty is 2 years’ imprisonment and an unlimited fine. A health professional who shares an intimate recording for a genuine medical purpose does not commit an offence, nor does a person who shares an intimate recording or deepfake intimate recording for a genuine law enforcement purpose.

Article 33F creates an offence of threatening to share an intimate recording or deepfake intimate recording. The penalty is 2 years’ imprisonment and an unlimited fine.

Article 33G requires a person (“A”) who makes or shares an intimate recording of deepfake intimate image of another person (“B”) to take all reasonable steps to delete the recording and to remove it from any platform on which it has been published if they become aware that B does not consent, or no longer consents, to A possessing the recording or to the

publication of the recording. A person who does not comply with the requirement commits an offence, with a penalty of 12 months' imprisonment and an unlimited fine.

Article 33H creates an offence of causing another person to see pornographic content or images of a person's genitals without reasonable belief that the other person consents to seeing the image. The penalty is 2 years' imprisonment and an unlimited fine.

Article 33I creates an offence of causing another person to make or share an intimate recording without reasonable belief that the other person consents to making or sharing the recording. The penalty is 2 years' imprisonment and an unlimited fine.

Article 33J sets out circumstances that a court must treat as aggravating factors when determining the sentence to be imposed on a person convicted of an offence under Part 8A.

Article 5 amends Article 36 of the Sexual Offences Law, which contains the offence of voyeurism. Some parts of the offence are deleted, as they are now covered by the Part 8A offences. For the remaining parts of the offence, the requirement that a person commits the offence for the purpose of obtaining sexual gratification is removed.

Article 6 amends the Sex Offenders (Jersey) Law 2010 to ensure that Law applies to the offences under Part 8A of the Sexual Offences Law.

Article 7 amends Article 2A of the Protection of Children (Jersey) Law 1994. That Article provides that a person is taken to have been a child at the time an indecent photograph was made if the person was under the age of 16 years. The amendment increases the age to 18 years.

Article 8 gives the title of this Law and provides that it will come into force on a day to be specified by Order by the Minister for Justice and Home Affairs.



Jersey

DRAFT SEXUAL OFFENCES (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT SEXUAL OFFENCES (JERSEY) AMENDMENT LAW 202-

A **LAW** to amend the [Sexual Offences \(Jersey\) Law 2018](#) to include additional offences committed using technology, to amend the offence of sexual grooming of a child and to make other amendments related to sexual offences.

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

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

1 [Sexual Offences \(Jersey\) Law 2018](#) amended

This Law amends the [Sexual Offences \(Jersey\) Law 2018](#).

2 **Article 1 (interpretation) amended**

- (1) In Article 1(1), after the definition “consent” there is inserted –
 - “deepfake intimate recording” is defined in Article 33A(4);
- (2) In Article 1(1), after the definition “gain” there is inserted –
 - “image” includes –
 - (a) a moving or still image (including a still image captured by any means from a moving image); and
 - (b) data (stored by any means) that is capable of conversion into an image;
 - “intimate recording” is defined in Article 33A(1) and (2);
- (3) In Article 1(1), after the definition “penetration” there is inserted –
 - “private act” is defined in Article 33A(3);
- (4) In Article 1(1), after the definition “sexual” there is inserted –
 - “share”, in relation to an intimate recording or a deepfake intimate recording, means to cause another person (including the subject of the recording) to see or hear the recording;

3 Article 15 (sexual grooming of a child) amended

- (1) For Article 15(1)(a) there is substituted –
- (a) having met or communicated with another person on at least 1 earlier occasion –
 - (i) the adult intentionally meets the other person;
 - (ii) the adult travels with the intention of meeting the other person in any part of the world;
 - (iii) the adult arranges to meet the other person in any part of the world; or
 - (iv) the other person travels with the intention of meeting the adult in any part of the world;
- (2) For Article 15(3) and (4) there is substituted –
- (3) In paragraph (1)(b), “relevant offence” means –
- (a) an offence under this Law;
 - (b) a customary law offence of indecent assault or indecent exposure;
 - (c) an offence under Article 61 (fraudulent evasion of duty, prohibitions and restrictions) of the [Customs and Excise \(Jersey\) Law 1999](#) that relates to goods prohibited to be imported under Article 2 (prohibition on importing and exporting goods) of the [Customs and Excise \(Import and Export Control\) \(Jersey\) Order 2006](#) that are indecent photographs of people who are, or appear to be, aged under 16 years;
 - (d) an offence under any of Articles 74 to 76 (sexual offences: prohibited acts, relationship of care, coercion) of the [Mental Health \(Jersey\) Law 2016](#);
 - (e) an offence under Article 2 (indecent photographs or pseudo-photographs of children) of the [Protection of Children \(Jersey\) Law 1994](#);
 - (f) an offence under Article 11(14) (child protection orders) of the [Sex Offenders \(Jersey\) Law 2010](#); and
 - (g) an offence of aiding, abetting, counselling or procuring an offence falling within any of sub-paragraphs (a) to (f), or of conspiring or attempting to commit, or of inciting another to commit, any of those offences –
 - (i) under customary law; or
 - (ii) under Article 1 of the [Criminal Offences \(Jersey\) Law 2009](#) (offence to aid, abet, counsel, procure, conspire, attempt or incite the commission of a statutory offence).
- (4) The States may by Regulations amend the definition “relevant offence”.

4 Part 8A (offences involving technology) inserted

After Article 33 there is inserted –

PART 8A**OFFENCES INVOLVING TECHNOLOGY****33A Meaning of intimate recording, deepfake intimate recording, and private act**

- (1) An “intimate recording” is –
 - (a) an image that –
 - (i) shows a person doing a private act;
 - (ii) shows the person’s genitals, buttocks or breasts, either naked or covered only with underwear; or
 - (iii) shows a person’s genitals, buttocks or breasts underneath or through clothing in circumstances in which the genitals, buttocks or breasts would not otherwise be visible; or
 - (b) an audio recording that captures a person doing a sexual act that is not of a kind ordinarily done in public.
- (2) The following are irrelevant in determining if something is an intimate recording –
 - (a) the medium or device used to make the recording;
 - (b) whether the recording exists in physical or electronic form;
 - (c) whether the recording is transmitted in real time or is retained.
- (3) A person is doing a “private act” if –
 - (a) the person’s genitals, buttocks or breasts are exposed or covered only with underwear;
 - (b) the person is showering, using the toilet or engaged in another personal bodily activity that involves dressing or undressing; or
 - (c) the person is doing a sexual act that is not of a kind ordinarily done in public.
- (4) A “deepfake intimate recording” is an image or sound that –
 - (a) is created, manipulated or otherwise altered using technology; and
 - (b) would appear to a reasonable person to be an intimate recording of a person.

33B Possessing intimate recording or deepfake intimate recording without consent

- (1) A person commits an offence if –
 - (a) the person knowingly possesses an intimate recording or deepfake intimate recording of another person; and
 - (b) the person does not reasonably believe that the other person consents to the possession.
- (2) A person has a defence if the person, as soon as practicable after becoming aware that the recording is in their possession, takes all reasonable steps to delete or otherwise dispose of the recording.

- (3) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33C Making intimate recording without consent

- (1) A person commits an offence if –
 - (a) the person intentionally or recklessly makes an intimate recording of another person;
 - (b) when the intimate recording is made, the other person is in a place that, in the circumstances, would reasonably be expected to provide privacy; and
 - (c) the person does not reasonably believe that the other person consents to the intimate recording being made.
- (2) A person commits an offence if the person operates equipment with the intent of using that equipment to commit an offence under paragraph (1).
- (3) A person does not commit an offence under this Article if –
 - (a) the person is a health professional who makes an intimate recording of a patient for a genuine medical purpose (for example, to seek a second opinion from another health professional); or
 - (b) the person makes an intimate recording for a genuine law enforcement purpose (including for the purposes of legal proceedings).
- (4) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33D Making deepfake intimate recording without consent

- (1) A person commits an offence if –
 - (a) the person makes a deepfake intimate recording of another person; and
 - (b) the person does not reasonably believe that the other person consents to the deepfake intimate recording being made.
- (2) A person who commits an offence under this Article is liable to imprisonment for a term of 6 months and to a fine.

33E Sharing intimate recording or deepfake intimate recording without consent

- (1) A person commits an offence if –
 - (a) the person intentionally or recklessly shares –
 - (i) an intimate recording of another person; or
 - (ii) a deepfake intimate recording of another person; and
 - (b) the person does not reasonably believe that the other person consents to the recording being shared.
- (2) A person does not commit an offence if –
 - (a) the person is a health professional who shares an intimate recording of a patient for a genuine medical purpose (for example, to seek a second opinion from another health professional); or

- (b) the person shares an intimate recording or a deepfake intimate recording for a genuine law enforcement purpose (including for the purposes of legal proceedings).
- (3) A person has a defence if –
 - (a) the person reasonably believed, based on the circumstances that the person reasonably believed to have existed at the time the intimate recording was made, that –
 - (i) the subject of the intimate recording did not have a reasonable expectation that the intimate recording would not be made; and
 - (ii) the subject of the intimate recording was doing the private act voluntarily;
 - (b) the intimate recording or deepfake intimate recording had already been shared publicly with the consent of the subject of the recording;
 - (c) the person reasonably believed that the intimate recording or deepfake intimate recording had already been shared publicly with the consent of the subject of the recording; or
 - (d) a reasonable person would consider the person’s conduct acceptable, having regard to –
 - (i) the nature and content of the intimate recording or deepfake intimate recording;
 - (ii) the circumstances in which the recording was made and shared;
 - (iii) the characteristics of the subject of the recording (including their age, intellectual capacity and vulnerability);
 - (iv) the extent to which the subject’s privacy was violated; and
 - (v) the relationship between the person and the subject.
- (4) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33F Threatening to share an intimate recording or deepfake intimate recording

- (1) A person commits an offence if –
 - (a) the person threatens to take an action that would be an offence under Article 33E (sharing intimate recording or deepfake intimate recording without consent); and
 - (b) the recipient of the threat is reasonably likely to believe that the threat will be carried out.
- (2) For the purpose of paragraph (1), it is irrelevant whether the threat is made to a person who is the subject of the recording or to another person.
- (3) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33G Deletion and removal of intimate recording or deepfake intimate recording

- (1) This Article applies if –

- (a) a person (“A”) makes or shares an intimate recording or a deepfake intimate recording of another person (“B”); and
 - (b) A is made aware that B does not consent, or no longer consents, to A possessing the recording or to the publication of the recording.
- (2) A must, as soon as practicable after being made aware that B does not consent, take all reasonable steps to delete the recording and to remove the recording from any platform on which it has been published.
- (3) A person who fails to comply with paragraph (2) commits an offence and is liable to imprisonment for a term of 12 months and to a fine.

33H Unsolicited pornographic images

- (1) A person commits an offence if –
 - (a) the person intentionally or recklessly causes another person to see an image that shows, or appears to show –
 - (i) pornographic content; or
 - (ii) a person’s genitals; and
 - (b) the person does not reasonably believe that the other person consents to seeing the image.
- (2) For the purposes of paragraph (1), the identity of the person that the image shows, or appears to show, is irrelevant.
- (3) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33I Causing person to create or share intimate recording

- (1) A person commits an offence if –
 - (a) the person causes another person to make or share an intimate recording; and
 - (b) the person does not reasonably believe that the other person consents to making or sharing the recording.
- (2) A person who commits an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

33J Aggravating factors

- (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence under this Part, a court must treat the presence of the following as aggravating factors –
 - (a) the person committed the offence with the intent to cause a person alarm, distress or humiliation;
 - (b) the person committed the offence with the intent to obtain sexual gratification;
 - (c) the offence caused or contributed to serious harm; or
 - (d) for an offence under Article 33H (unsolicited pornographic images), the person who saw the image was aged 15 or younger.

- (2) If an aggravating factor is present, the court must state in open court that the offence was aggravated.
- (3) This Article does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, the person.

5 Article 36 (voyeurism) amended

- (1) Article 36(1), (3) and (4) are deleted.
- (2) In Article 36(2)(a), for “for the purpose of obtaining sexual gratification,” there is substituted “intentionally or recklessly”.
- (3) In Article 36(5), for “any of paragraphs (2) to (4)” there is substituted “paragraph (2)”.

6 [Sex Offenders \(Jersey\) Law 2010](#) amended

After Article 2(1)(a)(vi) of the [Sex Offenders \(Jersey\) Law 2010](#) there is inserted –

- (via) Part 8A (offences involving technology);

7 [Protection of Children \(Jersey\) Law 1994](#) amended

In Article 2A of the [Protection of Children \(Jersey\) Law 1994](#), for “he or she was then under the age of 16 years” there is substituted “the person was, at the relevant time, under the age of 18 years”.

8 Citation and commencement

This Law may be cited as the Sexual Offences (Jersey) Amendment Law 202- and comes into force on a day to be specified by the Minister for Justice and Home Affairs by Order.