P.2025/33

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE *FOR* HOME AFFAIRS

FURTHER LEGAL REFORM IN RESPECT OF DOMESTIC ABUSE AND SEXUAL OFFENCES

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled 'Further Legal Reform in Respect of Domestic Abuse and Sexual Offences' dated 3rd March 2025, they are of the opinion:-

1. To agree to introduce the offence of stalking, as set out in section 3 of this report and section 1 of the Appendix.

2. To agree to introduce stalking protection orders, as set out in section 4 of this report and section 2 to of the Appendix.

3. To agree to introduce the offence of strangulation or suffocation, as set out in section 5 of this report and section 3 of the Appendix.

4. To agree to enact a provision stipulating that consent is not a defence to specified offences against the person where significant harm is inflicted for sexual gratification, as set out in section 6 of this report and section 4 of the Appendix.

5. To agree to introduce the offence of female genital mutilation, as set out in section 7 of this report and section 5 of the Appendix.

6. To agree to expand the circumstances in which evidence of recent complaint is admissible in a criminal trial, as set out in section 8 of this report and section 6 of the Appendix.

7. To agree to empower the courts to prohibit remanded defendants from contacting witnesses and alleged victims, as set out in section 9 of this report and section 7 of the Appendix.

8. To agree to empower the courts to receive pre-recorded cross-examination and re-examination in criminal trials, as set out in section 10 of this report and section 8 of the Appendix.

9. To agree to empower criminal and civil (including family) courts to prohibit a party from personally cross-examining a witness, where the court considers it in the interests of justice to impose such a prohibition, as set out in section 11 of this report and section 9 of the Appendix.

10. To agree to introduce statutory reviews of domestic abuse related deaths, as set out in section 12 of this report and section 10 of the Appendix.

11. To agree to abolish the customary law defence of reasonable chastisement, as set out in section 13 of this report and section 11 of the Appendix.

12. To agree to enact an enabling provision for the future introduction of a register of domestic abuse offenders, as set out in section 14 of this report and sections 12 of the Appendix.

13. To agree to introduce an offence of spiking, as set out in section 15 of this report and section 13 of the Appendix.

14. To agree to introduce an offence of sexual harassment in a public place, as set out in sections 16 of this report and section 14 of the Appendix.

15. To agree to empower the police to enter and search properties to arrest persons for breaches of post-charge bail, as set out in section 17 of this report.

16. To direct the preparation of such legislation as may be necessary to give effect to the above decisions throughout the Bailiwick of Guernsey.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE *FOR* HOME AFFAIRS

FURTHER LEGAL REFORM IN RESPECT OF DOMESTIC ABUSE AND SEXUAL OFFENCES

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

3rd March 2025

Dear Sir

1. Executive Summary

1.1 This Policy Letter proposes the creation of new legislation and the amendment of existing legislation in order to offer greater protection to victims of domestic abuse and sexual offending and to provide an effective response to perpetrators of such offences.

1.2 The first Policy Letter was approved by the States on 27th September 2023[1] resulting in the drafting of the Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024 ("DARPL"). This was approved by the States on 24th October 2024 and is due to be implemented in March/April 2025. The DARPL covered the most essential areas of legislation that were lacking in the Bailiwick in relation to domestic abuse.

1.3 This second Policy Letter covers all other concerns that have been flagged by a domestic abuse legislation steering group comprised of statutory and voluntary agencies who work with people experiencing or perpetrating domestic abuse. The policy proposals also have regard to legislative developments in England and Wales ("E&W"), Scotland, the Isle of Man ("IoM") and Jersey.

1.4 Introducing these areas of reform will ensure that the Bailiwick has comprehensive fit for purpose, statutory protections against domestic abusers and sexual offenders. The Committee *for* Home Affairs (''the Committee'') recognises that research, policy and practice in relation to domestic abuse have moved on significantly in the last 20 years and legislation has changed in other

[1] Billet d'État XIV of 2023, Article I

jurisdictions to reflect this. Following consultation with the key agencies, this Policy Letter proposes a second set of reforms in order to create new offences, as well as introducing further measures that will afford better protection for victims.

1.5 This Policy Letter proposes the introduction of measures which will assist in tackling sexual offending and domestic violence and abuse, making a positive contribution to ensuring the Bailiwick is a safe place to live. More specifically, these changes to the Bailiwick's criminal justice framework would entail the introduction of:

i. An offence of stalking.
ii. Stalking Protection Orders (SPOs).
iii. An offence of strangulation or suffocation.
iv. A statutory limitation on raising consent as a defence to certain offences where significant harm is inflicted for sexual gratification.
v. An offence of female genital mutilation.
vi. An expansion of the ability to use recent complaint evidence in criminal trials.
vii. A court power to prohibit contact between remanded defendants and alleged victims.
viii. A court power to receive pre-recorded cross-examination and re-examination in criminal trials.
ix. A court power to prohibit cross-examination in person in certain circumstances.
x. Statutory domestic abuse related death reviews.
xi. A provision abolishing the customary law defence of reasonable chastisement (which relates to children).
xii. A register for domestic abuse offenders.
xiii. A general offence of "spiking".
xiv. An offence of sexual harassment in a public place.
xv. A police power to enter and search premises to arrest persons for breaches of post-charge bail.

1.6 A further and more detailed explanation of each of the proposed legislative changes and the justification for their introduction can be found in the Appendix, together with information as to how the changes will be implemented.

2. Strategic Overview

2.1 Tackling domestic abuse and sexual violence is aligned with the principles and outcomes of the Justice Framework[2] in particular:

[2] Billet d'État IX of 2022, Article X

i. Justice responses are proactive and preventative;
ii. A collective long-term approach to deal with the complex factors that contribute to crime and family breakdown in the Bailiwick;
iii. Balance the respective responsibilities of individuals, the community and the States in response to threats to safety, security and social order;
iv. A justice system is fair, proportionate and accessible to all, and should have at its heart a joined-up approach to improving equality and inclusivity;
v. Policy should focus on supporting people rather than processes and addressing the underlying causes of crime and social disorder;
vi. A whole-community approach to supporting complainants, victims, offenders, and all those impacted by the justice system;
vii. Serious criminal activity will be targeted.

2.2 The States' approach to tackling domestic abuse and violence is set out in its Domestic Abuse and Sexual Violence Strategy for Guernsey and Alderney 2022-2025[3] endorsed by the Assembly in September 2022.

2.3 The objectives of creating a new law and reforming others are:

i. Greater protection and earlier intervention in relation to victims;
ii. A more consistent approach to domestic abuse and sexual violence and greater confidence in the justice system from the victims of such offending;
iii. To change offender behaviour through deterrence and by preventing the escalation of domestic abuse and sexual violence and by reducing offending and reoffending;
iv. Greater awareness and understanding of domestic abuse across voluntary and statutory agencies and in public attitudes;
v. Improved redress through the justice system;
vi. Improved performance in the response to domestic abuse and sexual violence.

2.4 The detailed rationale for creating new legislation around domestic abuse and sexual violence was set out in the Committee's first Policy Letter (paragraphs 2-3.10[4]).

2.5 The second tranche of work agreed by the Committee was initially discussed by the Domestic Abuse Legislation Steering Group which included representatives from the Police, the Guernsey Probation Service, St James' Chambers, Safer LBG, and the Guernsey Victim Support & Witness Service. Following this, a consultation with wider stakeholders was carried out in September 2024, the feedback from this exercise has informed this Policy Letter.

[3] Billet d'État XII of 2022, Article XXI
[4] Billet d'État XIV of 2023, Article I

3. Stalking Legislation

3.1 There is no specific offence of stalking in the Bailiwick. It is proposed that two new offences of stalking are introduced, reflecting offences set out in legislation in E&W. This would include a greater maximum penalty for this serious form of harassment than would currently be possible under existing harassment legislation in the Bailiwick.

3.2 The risk of stalking posed by the perpetrator may be in respect of physical or psychological harm to the other person and/or physical damage to their property. Risk may arise from acts which the respondent knows (or ought reasonably to know) are unwelcome to the other person, even if in other circumstances, or individually, the acts may appear in themselves to be harmless. For example, sending someone unwanted gifts or flowers in conjunction with other behaviour may constitute stalking behaviour.

3.3 In E&W in 2012, the Protection of Freedoms Act 2012 amended the 1997 Act and created two new offences of stalking:

- Stalking (Section 2A) which is pursuing a course of conduct which amounts to harassment, and which also amounts to stalking.

- Stalking (Section 4A) involving fear of violence or serious alarm or distress.

3.4 It is important to note that although stalking can be charged as harassment locally, the two acts are not distinguished in law. This means that many professionals do not recognise the greater seriousness of stalking. In the Bailiwick, the maximum sentence for harassment is four years for the basic offence, increasing to five years for a more serious harassment offence whereby a person is put in fear of violence. In E&W, from April 2017, the maximum prison sentence for the more serious (Section 4A) offence of stalking was doubled to ten years.

3.5 It is desirable that the more serious nature of stalking is recognised in law locally through the creation of stalking legislation, and that the penalties for this are higher than offences of harassment. It is proposed that five years' imprisonment should be the maximum sentence for the basic offence of stalking, and ten years' imprisonment should be the maximum sentence for the more serious offence involving fear of violence or serious alarm or distress.

4. Stalking Protection Orders

4.1 Stalking protection orders ("SPO") were introduced in January 2020 in E&W. Currently, SPOs cannot be imposed by our local courts. The closest equivalent would be a restraining order under sections 4 or 5 of the Protection from Harassment (Bailiwick of Guernsey) Law, 2005.

4.2 The Committee is proposing the introduction of SPOs in line with the established process in E&W to complement the new offence of stalking. The use of SPOs is recognised as an important part of adult and/or child safeguarding and public protection procedures. In E&W an SPO can be applied for by a chief officer of police, but as part of the drafting process locally there would be consultation with Bailiwick Law Enforcement and the Law Officers to consider whether the police or, for example, a prosecutor should apply for such an order locally.

4.3 The purpose of an SPO is not to punish the recipient, rather it is used to protect victims by addressing the recipient's behaviours before they become entrenched or more severe. They enable early police intervention pre-conviction and protect victims from more serious harm.

4.5 The criteria for applying for an order are:

a) The respondent has carried out acts associated with stalking;

b) The respondent poses a risk of stalking to a person; and

c) The proposed order is necessary to protect another person from that risk (whether or not that person was the victim at point a) above).

4.6 Both the applicant and the defendant should have a right of appeal against the decision of the court in relation to the granting, variation, renewal or discharge of an SPO put in place in the Bailiwick.

4.7 Breaches of the terms of an SPO (or an interim SPO) in the Bailiwick without reasonable excuse would be an offence that carries a maximum sentence of five years' imprisonment.

4.8 Whilst there are certain features of SPOs (such as notification requirements) that clearly distinguish them from the (wider and existing) power to impose an injunction for apprehended harassment under section 5 of the Protection from Harassment (Bailiwick of Guernsey) Law, 2005, it is acknowledged that there is overlap between the aims and effects of such orders. One of the key reasons why the Committee proposes introducing SPOs, however, is due to the very

different method of acquiring such orders. A person wishing to have the protection of a harassment injunction must make a private application to the Royal Court. This means that there are challenges to overcome to obtain such protection, such as the intimidating prospect of having to make a claim against your harasser in the Royal Court and the high cost of legal services. By contrast, empowering the Chief Officer of Police (or HM Procureur) to make an application for an SPO before the Magistrate's Court would mean these challenges are not applicable in respect of SPOs.

5. An offence of strangulation or suffocation.

5.1 In E&W, the Domestic Abuse Act 2021 created a new offence of "strangulation or suffocation". This offence, which can arise in both domestic and non-domestic contexts, was created to reflect the serious consequences and experience suffered by the victim from such behaviour. Other jurisdictions have recognised this as a serious crime and so have likewise created a standalone offence.

5.2 It is reported that strangulation is a common factor reported by survivors of domestic abuse. It is also known to be a measure that is often used by an abuser to instil fear, power, and control over their victim.

5.3 There is compelling evidence that these acts are occurring far more commonly than they used to, both nationally and locally, especially amongst young people. Several agencies involved in the initial consultation felt that this was an important area of law to introduce.

5.4 The Committee is proposing that an offence "strangulation or suffocation" is introduced locally. The offence would occur when a person intentionally strangles another person or carries out any other act that affects the other person's ability to breathe, and which constitutes a "battery" (an English legal term meaning a physical assault).

5.5 Data collected by the specialist domestic abuse charity, Safer, in 2023, showed that out of the 177 adult victims they were supporting, 83 reported physical abuse, and of those, 27 reported acts of strangulation. This represented 32% of all cases where physical abuse was taking place, and 15% of the adult victims who engaged with the service. Safer believes that as incidents of strangulation are generally under-reported, there are likely to be much higher numbers occurring in the Bailiwick.

5.6 Although many such incidents are reported to the Police, they are difficult to prosecute, and often there is reluctance by the victim to give evidence in court. While an offence of strangulation or suffocation would present the same

evidential challenges, introducing specific legislation to criminalise this act has been viewed as priority by the Committee. This would raise public awareness of the dangers of this act and the gravity of the criminal behaviour.

6. Consent to Serious Harm for Sexual Gratification (commonly known as the 'rough sex defence')

6.1 Certain legislative provisions were introduced in E&W in response to high-profile cases where women were seriously injured or killed and the defence asserted at trial that the death or serious harm occurred as part of a consensual sado-masochistic act. This is what the media have termed the "rough sex gone wrong" defence.

6.2 The Committee proposes to enact a statutory provision making it abundantly clear to the public that consent is not a defence to specified crimes where serious harm is inflicted for the purpose of sexual gratification. Those specified crimes are inflicting grievous bodily harm, wounding and inflicting actual bodily harm.

7. Female Genital Mutilation (FGM)

7.1 FGM is a procedure where the female genital organs are injured or changed and there is no medical reason for this. It is frequently a very traumatic and violent act for the victim and can cause harm in many ways. The practice can cause severe pain and there may be immediate and/or long-term health consequences, including mental health problems, difficulties in childbirth, causing danger to the child and mother; and/or death.

7.2 There is currently no specific crime in the Bailiwick for FGM, although it could potentially be prosecuted as wounding or grievous bodily harm (GBH) if committed in the Bailiwick.

7.3 It is proposed that legislation to criminalise all forms of FGM are put in place. FGM is illegal in the UK and in most countries worldwide. Jersey has included the act of FGM as an offence under the Sexual Offences (Jersey) Law 2018.

7.4 The population in the Bailiwick has become increasingly diverse and it would be dangerous to assume that the issue will never arise in this jurisdiction. In 2022-23, the Midwifery Service saw several pregnant women who had themselves undergone FGM as children. In this regard, it is very important to understand that the FGM Act 2003 does not solely capture FGM that happens on British soil. It has an extra-territorial effect, meaning that if a UK resident committed an offence under the Act (such as failing to protect the child from FGM) whilst abroad, they could be tried and punished in the UK. If similar legislation were

enacted in the Bailiwick, it would therefore criminalise (for example) a parent who travelled abroad with their child for the purpose of having FGM performed.

7.5 It is proposed provisions similar to those found in the FGM Act 2003, as summarised in this section and section 5 of the Appendix, are enacted locally so that girls in the Bailiwick have a similar level of protection from FGM.

8. Recent Complaint Evidence

8.1 In the Bailiwick there is a type of evidence that is deemed 'hearsay evidence'. A hearsay statement is a statement made outside of the current court proceedings that is then presented as evidence to the court to prove the truth of the matter asserted in the statement. In other words, it is an out-of-court statement brought into court to support the facts contained within it. As a general rule (known as "the hearsay rule") hearsay evidence cannot be used in criminal proceedings. There are however a number of exceptions to this rule, where the court will permit hearsay evidence.

8.2 One such exception is "recent complaint evidence". If a victim tells another person about a crime committed against them, that disclosure might be referred to as a "complaint". If that complaint is made a short time after the crime, then it can be referred to as a "recent complaint". This phrase, "recent complaint", is a recognised description of evidence for the purpose of the Bailiwick's customary laws of evidence.

8.3 A recent complaint could be made in a whole range of scenarios. For instance, it could be made to a police officer, or to a friend or relative. It could take the form of a formal witness statement, or it could be stated informally and verbally. The complainant might be an adult or a child.

8.4 The recipient of the complaint becomes a potential witness as they could tell a court what the victim had said to them. However, it would be considered hearsay, and thus could not be used in all circumstances in relation to court cases.

8.5 Being hearsay, the court will only permit this evidence if the victim's complaint can be said to fulfil certain criteria and thus qualify within the recent complaint exception to the hearsay rule. Currently that criteria significantly limits the circumstances in which recent complaint evidence can be used. In particular, it is only permissible when the complaint is concerning a sexual offence, and when the complaint is made a short period of time after the incident complained of. Even when these hurdles are overcome and the complaint is admissible under the recent complaint exception to the hearsay rule, there are further limitations in the Bailiwick regarding the value of that evidence. The

statement is not evidence of matters stated (i.e. evidence that the alleged offender committed the offence) but is admissible to show that V's conduct in complaining was consistent with V's testimony and, where consent is an issue, to show that this conduct was inconsistent with consent.

8.6 In E&W, there are three key differences due to legislative reform of this area. Firstly, the recent complaint evidence is admissible to prove the truth of the matter stated. Secondly, the doctrine is no longer limited to sexual offences as was previously the case under English common law. Thirdly, the test is simply that the complaint is made "as soon as could reasonably be expected" meaning that this can be much later than was previously the position under the common law, and in some cases even months or years later, depending on the circumstances of the case.

8.7 This reform occurred in E&W because the common law position was believed to be wholly unsatisfactory and failed to consider the difficulty that witnesses, including child witnesses, have in finding the courage or gaining the understanding of abuse to be able to discuss it with another person.

8.8 It is important to note that while the statutory provisions allow for the admission of such complaints in E&W, the courts may restrict excessive use of this provision to prevent self-serving evidence. This is under the court's power to exclude evidence to prevent unfairness, which is also applicable in the Bailiwick. This means that somewhat arbitrary rules banning the use of such evidence have been removed in E&W, whilst retaining the court's important safeguarding powers, with a judge having regard to the particular circumstances of the case.

8.9 It is proposed that local legislation reflects the position in E&W. An added benefit of making this change locally is that, by having very similar rules of admissibility as E&W in this area, local judges may benefit from a large volume of (non-binding, but often persuasive) case law from that much larger jurisdiction.

9. Prohibiting Contact between Remanded Defendants and Victims and Witnesses

9.1 Currently, remanded defendants can be prevented from contacting witnesses (including alleged victims) by virtue of administrative processes within the prison. This requires the Guernsey Prison to decide to impose, monitor and enforce restrictions. In practice this is done via liaison with the Guernsey Police, who will raise any concerns with that specific case.

9.2 Although banning the use of certain telephone numbers by a remanded defendant can facilitate this process, remanded defendants have been known

to use third parties they are permitted to contact (e.g. friends) to facilitate direct or indirect contact with the prohibited contact.

9.3 Although there are separate criminal offences that can be charged for brazen behaviour such as witness intimidation or perverting the course of justice, this will not tackle unwanted calls that fall short of such offences, for example calls designed to put emotional pressure on a complainant in a domestic violence case to withdraw their cooperation with the prosecution.

9.4 It is proposed that a criminal offence is created to supplement the existing administrative measures, with a view to protecting witnesses and alleged victims, including those who are vulnerable, from undesirable contact. In particular, the courts could be empowered to impose something akin to a restraining order. This order would prohibit any contact from the remanded prisoner, whether direct or indirect, with persons listed in the order during the period of remand.

9.5 A breach of such a restraining order would be a separate criminal offence. There would be an expectation that the punishment for such an offence would be consecutive to any punishment received for the primary offence on conviction. This would ensure that breaching such a restraining order makes a material difference to the defendant's sentence and would send out a clear message that such contact will not be tolerated.

10. The use of recorded cross-examination and re-examination within court hearings

10.1 It is already possible for the Prosecution to apply to the court to have a visual recording of a witness admitted in evidence as their examination in chief. Usually this takes the form of an Achieving Best Evidence (ABE) interview. An ABE interview is one that is formally conducted by a specially trained police officer in an interview room and captured on a video camera.

10.2 There is currently no ability to pre-record cross-examination and re-examination, in order for this to be admitted instead of live evidence. This means that, whilst the current measures can *reduce* the amount of time a witness must spend in the courtroom, the witness will still have to go through the ordeal of a live cross-examination and re-examination in the standard courtroom setting.

10.3 Aside from reducing the stress of giving evidence, it should also be noted that the benefits of having an earlier recording (as compared with the trial date):

- reduces the risk that a witness' memory will have materially faded by the time that they give evidence, and

- reduces the risk that a witness will withdraw their cooperation due to the emotional impact of long trial delays.

10.4 In E&W, an examination of the witness, visually recorded prior to the trial, may be admitted by the court as the witness's cross-examination and re-examination. Typically, this pre-recorded cross-examination and re-examination occurs via live link from the courtroom to the witness suite.

10.5 It is proposed that Bailiwick legislation be introduced to permit the court to admit pre-recorded cross-examination and re-examination. It is noteworthy that Bailiwick law is not as restrictive as that in E&W in relation to pre-recorded evidence in chief, in that it is not essential to demonstrate that the witness is vulnerable or intimidated in order to be eligible. In the Bailiwick, the Court will consider all relevant factors, including but not limited to whether the witness is a child or other vulnerable person. The court will not grant the application for recorded evidence in chief if it is not in the interests of justice to do so. This gives the court sufficient flexibility to do justice to the particular case. It is proposed that the same test is adopted in respect of this proposed new power to admit pre-recorded cross-examination and re-examination.

11. Prohibition on cross-examination in person in civil and criminal proceedings

11.1 Occasionally within the civil (including family) and criminal courts, perpetrators of crime or violent or abusive behaviours choose not to have legal representation and conduct their own case. This might include a cross-examination of a victim of their conduct.

11.2 Sections 65 and 66 were introduced into the Domestic Abuse Act 2021 and apply to the family and civil courts in E&W. The effect of these provisions is to prohibit perpetrators and alleged perpetrators of abuse from cross-examining their victims in person and vice versa in specified circumstances. In respect of criminal matters, there are prohibitions on cross-examination in person for a long list of offences (including offences that involve an assault and threat to injure). Even where the offence charged is not within the list, the court can make a direction prohibiting cross-examination in person where the quality of the witness' evidence is likely to be diminished as a result and where it would be in the interests of justice to prohibit this.

11.3 It is widely acknowledged that cross-examination by a perpetrator can potentially diminish the quality of the evidence that a victim gives in court. Furthermore, it can also be a method of perpetuating forms of abuse against a victim, which in turn can cause them further trauma and distress. It is anticipated that the implementation of measures to protect victims whilst they give evidence in court, whilst also ensuring that the right to a fair trial is not compromised, would improve justice outcomes.

11.4 It is proposed that both the civil and criminal courts in the Bailiwick are given the power to prevent cross-examination in person in appropriate cases. It is proposed that the court is given a broad discretion, having regard for example to the nature of the case, the subject matter of the witness' evidence and the personal circumstances of the witness (including their age and any vulnerabilities). The court should only impose such a prohibition if it is in the interests of justice to do so.

11.5 In these cases, funding arrangements would need to be put in place so that advocates can be appointed to undertake that cross-examination on the unrepresented party's behalf. This could be achieved either by having such advocates appointed by the court and paid for from a central fund, or alternatively by ensuring that any necessary changes to the legislation/rules governing legal aid is amended to permit this expense to be covered by that service. The current framework would not permit this.

11.6 In E&W, and in terms of professional duties, a lawyer appointed for this purpose is not responsible to the party prohibited from conducting personal cross-examination and does not take instructions in a traditional way. Nevertheless, this lawyer must be adequately prepared to understand the key issues in the case. He or she must ensure the fairness of the proceedings by conducting the cross-examination in a manner that protects the unrepresented party's right to a fair trial.

11.7 As part of this legislative drafting process, the Committee undertakes to consult with the Guernsey Bar, the courts and the Committee *for* Employment & Social Security in relation to Legal Aid. This would establish the best practical means of ensuring that the court can appoint willing and available advocates in a timely manner where such representation is required for this purpose.

12. Domestic Abuse Related Death Reviews (DARDR)

12.1 Domestic Abuse Related Death Reviews (or Domestic Homicide Reviews (DHRs) as they are currently known in the UK[5]) aim to learn lessons following a death where domestic abuse is known or suspected to have been occurring. The reviews look to illuminate the past to make the future safer in the same way that serious case reviews take place following the death or serious injury of a child. DHRs were established on a statutory footing in E&W within the Crime and Victims Act 2004.

[5] DHRs will be changed to DADRDRs in E&W following a comprehensive review of the processes. The name change, which is immanent in E&W, reflects the need to ensure that reviews take place consistently in deaths by suicide in cases where domestic abuse has been occurring, as well as cases of murder or manslaughter.

12.2 The Domestic Abuse and Sexual Violence Strategy for Guernsey and Alderney makes prevention and early intervention an important pillar of the States' approach and recognises that responding to and raising awareness of domestic violence and abuse is a collective responsibility of the whole community. This includes health providers, law enforcement, support services, helplines, employers, and family and friends.

12.3 In the Bailiwick, there is no statutory process in place to conduct such a review. Jersey recently carried out its first DHR in 2020, however this was done without legislation being in place. Although domestic abuse related deaths are, thankfully, rare in the Bailiwick (the last homicide being in 2004), in these situations it is important for safeguarding purposes (and the benefit of the families concerned) that cases are reviewed from a multi-agency perspective to ensure that lessons can be learned.

12.4 It is proposed that DARDRs are introduced on a statutory footing in the Bailiwick. Having a statutory obligation to carry out these reviews would ensure cooperation and involvement from all relevant agencies.

13. Abolition of reasonable chastisement

13.1 Currently in the Bailiwick a parent may use moderate physical punishment on their children, provided it is "reasonable". If such a parent was charged with assault, they would have a defence known as "reasonable chastisement" meaning reasonable punishment. Whether chastisement is reasonable involves considering several factors: the nature and context of the parent's behaviour, the duration of the punishment, the physical and mental consequences for the child, the age and characteristics of the child, and the reasons given by the parent for administering the punishment. The existence of this defence means that, what would be deemed an assault against another adult (such as a slap), is deemed to be acceptable in relation to a child, because it is force inflicted by a parent or carer on a child.

13.2 Although England is in a similar position, Wales, Scotland and Jersey have all legislated to make all forms of physical punishment against children, such as smacking, hitting, slapping and shaking illegal, with no defence of "reasonable punishment".

13.3 It is vital that homes should be safe places for children and adults and that all children have equal protection from all forms of harm, including physical punishment. Physical chastisement is both a public health issue and also is a matter of children's human rights. Article 19(1) of the United Nations Convention on the Rights of the Child ("UNCRC") obliges States Parties to take

all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.

13.4 The NSPCC is clear in its view that physical punishment is not an acceptable practice in a modern society. It is unequivocal in its position that public education needs to be underpinned by legal reform.

13.5 The Committee is of the view that these changes are necessary within the Bailiwick and the abolition of this defence would remove a grey area.

13.6 Numerous stakeholders consulted as part of the development of these policy proposals held the view that this defence should be abolished in the Bailiwick. This also formed the basis of a request from the Committee *for* Health and Social Care.

14 Register of Serial Domestic Abuse offenders

14.1 The Committee proposes establishing a register of serial domestic abuse and stalking offenders that could be linked to a domestic abuse disclosure scheme. With some perpetrators, there is a long history of domestic abuse that has occurred with previous partners. Information about this may not all be held in one place, thus increasing risk to future partners. A register would provide the means to centrally collate information about abusers.

14.2 Offenders convicted of serial offences and stalking would be required to hand over personal information to the police and advise them of any change in their situation that may increase a risk of further offending.

14.3 It would be possible for the Bailiwick to forge its own way in establishing a Register of Serial Domestic Abuse Offenders, however, the Committee considers that there would be benefit in aligning with provisions established in E&W. The Committee is keen for these measures to be adopted as soon as the UK has established the systems for monitoring these cases. It is therefore proposed that an enabling law is put in place to allow the States to introduce a disclosure scheme by Ordinance at a later date, once any UK scheme has been introduced and successfully evaluated. As police systems in the Bailiwick would need to integrate with those in the UK, delaying the introduction until this point would ensure that any scheme introduced would be based on the UK legislation in order to benefit from their research and resources.

15. Spiking

15.1 To avoid confusion, it is important to define what is meant by the term "spiking". Spiking is the act of adding a substance to someone's drink, or into their bloodstream through other means such as by a needle or via their skin,

without that person's knowledge, and irrespective of the intentions of the "spiker".

15.2 If that definition is used, then it is accurate to say that there is not a dedicated (basic) offence of spiking in the Bailiwick. However, aggravated (more serious) versions of this offence are already captured, depending on whether it is the intention of the spiker to:

- endanger the life of, or inflict GBH on, the person being spiked;
- injure, aggrieve or annoy the person being spiked; or
- stupefy or overpower the person being spiked so as to enable sexual activity with them.

15.3 These offences only punish the actual act of administering the substance. If the person being spiked was seriously hurt or was then subjected to other serious offences (for example sexual offences or violent offences) there is nothing to prevent the spiker from being charged with further serious offences (murder, manslaughter, GBH, rape etc).

15.4 The Committee takes the view that substances should not be administered to people without their consent, whatever the reasons. It proposes the introduction of an offence of administering an intoxicating substance (which would include drugs and alcohol) to someone without their knowledge. This would be made a standalone offence, without requiring any proof of the perpetrator's intentions.

16 An offence of sexual harassment in a public place.

16.1 Public sexual harassment is generally understood to involve unwelcome and unwanted behaviour, directed at a person in a public space, because of the person’s sex. This sort of behaviour may involve individuals being verbally abused in the street, being followed, receiving obscene gestures, or being touched by a stranger.

16.2 In the Bailiwick there is no specific crime of "street harassment" per se. The crimes that might fall within such behaviour include:

- Behaving in an indecent or disorderly manner in a public place.
- Using threatening abusive or insulting words or behaviour.
- Harassment.
- Putting someone in fear of violence.
- Voyeurism via equipment.
- Exposure.
- Voyeurism via recording.

- Contact offences.

16.3 In the UK Section 4A of the Public Order Act 1986 creates an offence where a person, with intent to cause a person harassment, alarm or distress, use threatening, abusive or insulting words or behaviour, or disorderly behaviour, thereby causing that person or another person harassment, alarm or distress. There is a defence that the conduct was reasonable. It is important to note that a course of conduct is not required, so a single incident would be enough for the crime to be committed. The maximum penalty in the UK is 6 months imprisonment.

16.4 Another crime in the UK, that is enacted but not yet in force, is under a prospective Section 4B of the same Act. This is where someone commits the aforementioned offence under Section 4A and does so because of the victim's sex or presumed sex. The penalty increases to 2 years imprisonment, demonstrating that this is deemed to be an aggravating (more serious) version of the section 4A offence, designed to tackle sexual harassment in public.

16.5 The Committee proposes that these offences be added to the Public Order (Bailiwick of Guernsey) Law, 2006. This will further strengthen the list of offences available to the police and prosecution to tackle street harassment.

17. Power of Entry and Search for Breach of Post-Charge Bail

17.1 The Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024 has been approved by the States and is awaiting Royal Assent. This Law introduces a power to impose pre-charge bail conditions via an amendment to the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (PPACE). As a consequence of that power being introduced, the 2024 Law also amended PPACE to permit officers to enter and search properties in order to arrest those who have breached their pre-charge bail conditions. This is aligned with PACE in E&W.

17.2 The Committee now proposes to add a further update to PPACE so as to include an equivalent power of entry and search in order to arrest someone who has breached post-charge bail conditions. This update would also align us with PACE in E&W. It would remove an anomaly, given that the police currently have greater powers to enforce breaches of pre-charge bail conditions than they do to enforce breaches of post-charge bail conditions.

18. Guidance and Training

18.1 The Committee will create a discretionary power within the Law to issue guidance. This may be used to support the introduction of the new legislation.

18.2 Training will be essential in relation to the introduction of the new legislation. It is proposed that training is offered to all relevant professionals working with victims of domestic abuse.

18.3 The impact of the legislation on services and staffing will be monitored once the primary legislation is introduced to ensure that agencies are not overwhelmed. Additional staffing may be required by the police, courts and specialist domestic abuse services if the volume of cases involved within the justice system increase significantly.

19. Rationale and Benefits of Introducing New Legislation

19.1 The objective of introducing these new provisions is to fill identified gaps in existing legislation and processes, recognising the seriousness of domestic abuse and sexual violence and acknowledging as a Bailiwick that such behaviour in our community will not be tolerated. Domestic abuse activism across the UK, Europe and America has driven reforms and a deeper cultural understanding of domestic abuse. Recent legal innovation has yielded more effective options for victims of domestic abuse across these jurisdictions and as a Bailiwick we are looking to adopt best practice and promote fairness and equality, building on existing legal structures and processes.

19.2 The Committee considers that government has a responsibility to ensure that victims feel supported and perpetrators are punished and supported to change their behaviour. Society and culture are far better informed these days on matters of the dynamics of domestic abuse, sexual violence and gender/sex-based justice and want to see justice carried out. These new measures will expand the tools available to courts to render justice for victims. In particular, it will provide better justice and protection to those who experience the effects of coercive and controlling behaviour.

19.3 It is not possible to identify and monetise the majority of benefits associated with the legal measures. However, the main non-monetised benefits are intended to provide greater support to the victims of domestic abuse and sexual violence, including children. Other benefits are to recognise the seriousness of domestic abuse, raise awareness of the range of forms it can take, and support victims through the justice system.

19.4 Introducing new offences that capture the full range of behaviours that are abusive, or link into the safety and security of women and girls (as well as male victims), will better reflect the nature and impact of domestic abuse and sexual assault.

19.5 Apart from the obvious social benefits of reducing these impacts, there will be financial savings if crime can be reduced in terms of the savings to health and social services, welfare benefits and other public services. The new orders and other provisions should also allow for domestic abuse to be tackled much more effectively, hopefully reducing offending and repeat offending in many cases, due to the fear of criminal sanctions.

20. Impact of the New Legislation

20.1 The introduction of this legislation is likely to create more work initially for those agencies which have a responsibility to administer it.

20.2 The Police, the Guernsey Probation Service, St James' Chambers and the Judiciary have indicated that the introduction of new offences and protective measures will impact on their workload, however, the extent to which is difficult to quantify. In this case, the police may have more cases to charge and put through the criminal justice system, but these new legislative provisions will also provide them with new tools which have more of an impact, which may in the longer term prevent reoffending.

20.3 The tools should also help Children and Community Services within Health and Social Care, and staff working within the Education System in providing clarity around physical punishment. It will also provide a legal framework to underpin guidance relating to those who are victims of FGM making interagency working clearer and more effective.

21. Additional Resources and Financial Costs

21.1 The Committee is only seeking the most essential additional resources to deliver this new legislation at this time. Once the law is enacted, it will closely monitor the impact on the relevant agencies such as the Police, Prosecutors, Judiciary, and specialist domestic abuse services.

21.2 A significant proportion of domestic abuse offenders reoffend. The Domestic Abuse and Sexual Violence Strategy recognises that early intervention and preventative work is far better value for money than working reactively. By putting in place measures that can be put in place quickly and have more impact in terms of the sanctions, offending and repeat offending should decrease. There may also be savings in terms of investigative and Court time, and legal aid costs.

21.3 Essential costs include the following:

<u>Domestic Abuse Related Death Reviews</u>

21.4 Funding needs to be in place to ensure that domestic abuse related death reviews can take place in the unfortunate circumstance that they are needed. This is unlikely to be a common event (a domestic homicide has not taken place in the Islands since 2004), but it would be important to make funds are available if a domestic homicide, suspicious death or suicide of a domestic abuse victim occurs.

21.5 The process would involve bringing over an Independent Chair, their accommodation, daily expenses and travel, and having administrative support available for the time that the review is taking place. The cost of the Chair makes up three quarters of the overall cost in UK cases.

21.6 UK DHRs varied considerably in terms of cost, as it is dependent on the complexity of the case, and the length of time needed to carry out the review. The average cost in 2022/23 was £10,000, with the single highest figure being £39,000. The average figure is likely to be higher in Guernsey due to the costs of the Independent Chair getting to and from the island and the higher cost of living in Guernsey.

Prohibition on cross-examination in person

21.7 In order to prevent victims being cross-examined by their perpetrator, it will be necessary for the courts to appoint publicly funded legal representatives in these proceedings (or Legal Aid to be extended to cover these cases). Numbers of these cases are not high and vary considerably from year to year.

21.8 When these measures were introduced in the UK, the estimated cost was assessed to be around £5-8 million per year, in E&W. This was based on an estimate of potential volumes, using family and civil court statistics, and views of legal and operational colleagues where other data was not available. The current final hearing legal aid fee paid to legal representatives in the relevant family proceedings was used as a proxy unit cost. Extrapolating numbers based on the Guernsey / UK population size, then increasing to take account of our higher legal aid cost, means that potential cost of this measure may be around £10,000-£20,000 per annum, though this is only an indicative figure.

Recorded examination and cross-examination.

21.9 The increased cost of video recorded cross-examination and evidence associated with this measure are uncertain, but it could create additional costs in terms of Police time. Pre-recorded evidence is usually taken from the video recorded interview of the witness undertaken in accordance with ABE guidance.

22. Other Potential Impacts

22.1 As with Phase 1 of the review of domestic abuse legislation, there is a possibility that legal aid costs could rise, but again this is hard to quantify.

23. Compliance with Rule 4

23.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

23.2 In accordance with Rule 4(1):

a) The propositions contribute to the States' objectives and policy plans of Priority 3 of the Government Work Plan 'keep the island safe and secure' by enhancing domestic abuse services in line with the Domestic Abuse and Sexual Violence Strategy.

b) In preparing the propositions, consultation has been undertaken with the Domestic Abuse Strategy Law Review Group, the Bailiff, His Majesty's Procureur and the Policy and Finance Committees of Alderney and Sark.

c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) The financial implications to the States of carrying the proposals into effect are as described in Section 16 of this Policy Letter.

23.3 In accordance with Rule 4(2):

a) The propositions relate to the Committee's responsibilities to advise the States and to develop and implement policies on matters relating to its purpose including the association between justice and social policy, for example domestic abuse.

b) The propositions have the unanimous support of the Committee.

Yours faithfully

R G Prow
President

S P J Vermeulen

Vice-President

S E Aldwell
L McKenna
A W Taylor

P A Harwood OBE
Non-States Member

APPENDIX

1 Stalking Legislation

1.1 Stalking includes, but is not limited to, any behaviour or action which involves tracking, following, watching, spying, unwanted, forced, or covert contact, repeated calling, texting, harassing, entering the victim's home without their knowledge, covert or overt criminal damage to their property, disruption to property, unwanted contact from third parties instigated by the stalker, vexatious court actions, or attempts to control through menace. It can also be defined as any fixated and obsessive attention designed to make the victim fearful or distressed.

1.2 Stalking can affect people of all characteristics, and although victims are disproportionately female, they come from all walks of life. UK data shows that people with a longstanding illness or disability are disproportionately likely to be victims of stalking[6].

1.3 The offences in E&W were put in place after campaigners raised concerns that the law was inadequate, and the training of police officers and other professionals was, at best, piecemeal resulting in few prosecutions of stalking[7].

1.4 Academic research over the last decade has shown that that obsession and fixation present in stalking behaviour are significantly present in the antecedents of homicides of females. Stalking is more consistent, as a predictor of femicide, than any one action marker, including strangulation, or threats to kill, which are of even greater concern when occurring simultaneously with stalking or coercive control[8].

1.5 The most recent research around stalking[9] shows that it is important for professionals to understand the dangers of stalking (as opposed to harassment) and ensure that their clients are protected. The risks posed by those who are convicted of a new offence of stalking, and thus have stalking printed on their criminal record, will be more visible due to this distinction.

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[6] Crime Survey for England and Wales, 2021

[7] Stalking: developments in the Law, Briefing Paper, 21 November 2018, House of Commons Library

[8] Exploring the relationship between Stalking and Homicide; Vulnerability Knowledge and Practice Programme (VKPP) Domestic Homicides and Suspected Victim Suicides 2021-2022 Year 2 Report
4Risk-led policing of domestic abuse and the DASH risk model; Safe lives Risk Assessment Process

[9] Monckton-Smith, Jane, Szymanska, Karolina and Haile, Sue (2017) *Exploring the Relationship between Stalking and Homicide.* Project Report. University of Gloucestershire in association with Suzy Lamplugh Trust, Cheltenham

2. Stalking Protection Orders

2.1 Whilst an application for an SPO might occur parallel to a criminal prosecution, thus complimenting existing safeguards for the alleged victim, it is important to note that this is a civil process and as such the making of an SPO does not require the recipient of an SPO to have been convicted of a stalking offence or for there to be any ongoing criminal proceedings. Due to a lower civil standard of proof applying, an application for an SPO could even occur after the recipient is acquitted of a stalking offence or after a decision not to prosecute is made, provided the criteria are met.

2.2 The legislation in E & W allows SPOs to be used both in a domestic abuse context and in cases of 'stranger stalking'. The minimum age is linked to the age of criminal responsibility (which in the Bailiwick is 12 years old) and juveniles are dealt with by the youth court in E&W (which would be the Juvenile Court in Guernsey). The police in E&W consider applying for an order not just to protect victims of prior conduct but also, where necessary, anyone connected to the victim who may also be at risk of being stalked by the respondent.

2.3 Following procedures used in E & W, it would be important for the police (or an appropriate specialist) to have carried out an assessment of the risk posed by the individual in order to decide whether it would be proportionate to request an order from the Court. The victim may also be consulted as part of this process to ensure that the full risks to them are considered in detail, where possible, to inform decision making throughout the SPO process.

2.4 Within the SPO proposals in the Bailiwick, perpetrators would face restrictions such as having to notify the police of their whereabouts or travel. This would be done through prohibitions or requirements set by the Judge if they were necessary to protect the other person from a risk associated with stalking.

2.5 The courts would be able to direct that the SPO should continue until a further order is made or it can direct that it will last for a fixed period of a minimum of two years. Different periods might be specified in relation to different prohibitions and requirements in the SPO. Irrespective of the duration expressed, the applicant or the defendant would be able at any time apply to a magistrates' court to vary, renew or discharge an SPO.

2.6 The courts should also be able to impose an interim SPO before the application has been finally determined. This would provide immediate protection to an alleged victim without prejudging the merits of the application. An interim order is a temporary order that ensures that alleged victims are not exposed to risk during the period required to reach a final decision. This is an essential safeguarding tool where the court is not in a position to make a decision at the first hearing. It ceases upon a final decision being made and, if the court ultimately decides that an SPO is warranted, will be replaced by that final order.

2.7 Empowering law enforcement to instigate matters also means that an organisation potentially possessing evidence and intelligence regarding the stalking risk that someone poses to a particular person (or even multiple persons) can make an objective decision on whether the grounds are met and an application warranted. A member of the public might not be aware of the extent of the stalking behaviour or might not appreciate the serious risks associated with such behaviour.

3 An offence of strangulation or suffocation.

3.1 In E&W, the Domestic Abuse Act 2021 created a new offence of "strangulation or suffocation". This offence typically captures non-fatal offences, as otherwise murder or manslaughter would be charged. The offence can arise in both domestic and non-domestic contexts. Provided the offender is habitually resident in E&W, they can also be tried in E&W for this offence when it is committed abroad.

3.2 This came about due to the lobby groups, We Can't Consent to This (WCCTT) and the Centre for Women's Justice (CWJ), calling for a free-standing offence of non-fatal strangulation or asphyxiation in 2020. The proposal for a new offence was strongly supported by both the Domestic Abuse and Victims' Commissioner and numerous domestic abuse charities from around E&W.

3.3 The arguments supporting its introduction were that strangulation was a common factor reported by survivors of domestic abuse and that it was a measure often used by an abuser to instil fear, power, and control over their victim, rather than being a failed homicide attempt. They also advised that strangulation and asphyxiation were the second most common method of killing in female homicides - 29% or 17% - as compared to only 3% of male homicides. Research shows that the risk of being killed by a partner or ex-partner increases seven times when non-fatal strangulation has been reported.[10]

3.4 Non-fatal strangulation offences were significantly under-charged across the UK notwithstanding they were recognised as a common feature of domestic abuse and were a well-known risk indicator. Strangulation was also difficult to prosecute, given there was often no or very few physical marks. In some case, it was not prosecuted at all. Where strangulation was prosecuted, it was frequently charged as common assault rather than the more serious offence of

[10] A Systematic Review of the Epidemiology of Nonfatal Strangulation, a Human Rights and Health Concern; What Florida Judges Should Know When Faced With Non-Fatal Strangulation; Critical Conversations: Emerging Issues That Arise From Strangulation in Civil Cases, Including Choking During Sex (familyjusticecenter.org)

actual bodily harm (ABH). CWJ therefore argued that a new standalone offence of strangulation should be created that reflected the serious consequences and experience suffered by the victim from such behaviour. Other jurisdictions had recognised this as a serious crime and had created a standalone offence to ensure the abuser, in inflicting a terrifying ordeal on the victim, is rightly prosecuted under the law, enabling justice to be served.

3.5 As is the case with existing offences against the person, there would be a defence for a person accused with strangulation or suffocation if the other person (V) consented to the act that affected their ability to breathe. If sufficient evidence is adduced at trial to raise this defence as an issue, it would be for the prosecution to prove beyond reasonable doubt that V did not so consent. However, this defence of consent would not be available at all if V suffers serious harm and the perpetrator intended to cause V serious harm or was reckless as to whether V would suffer serious harm. In those circumstances it simply would not matter whether V consented to the acts that caused the serious harm and the defendant would be guilty. Serious harm is defined as meaning grievous bodily harm, wounding or actual bodily harm. The Bailiwick does not have the last of these offences (it is simply charged as assault) meaning it would be necessary to clarify in any local legislation what "actual bodily harm" comprises. This public policy limitation on the defence of consent is also consistent with well-established case law[11] in E&W, which aims to strike a balance between respect for an individual's private life, including the right of individuals to consent to certain acts, but drawing a line where such acts cause significant injury. This principle is also relevant to section 4 of the policy letter.

3.6 Strangulation or suffocation accurately describes the severe nature of the violence inflicted on the victim, given the high level of violence and risk that such acts involve. The present practice of charging such violence as a common law assault does not achieve these aims, given the huge range of behaviours that common law assault can capture.

4. Consent to Serious Harm for Sexual Gratification (commonly known as the 'rough sex defence')

4.1 As observed in paragraph 3.5 of this appendix, case law in E&W had already placed public policy limitations on the defence of consent[12]. It was decided in

[11] Criminalisation & Consent: Sadomasochism in R v Brown | Trinity College Law Review (TCLR) | Trinity College Dublin

[12] ibid

E&W that a statutory provision should also be introduced so that, in the context of acts done for sexual gratification, perpetrators and the wider public would be in no doubt that an act going beyond those limits would amount to a crime that would be pursued rigorously through the courts to seek justice for victims and their families.

4.2 The Committee *for* Home Affairs likewise wishes to enact a statutory provision making it abundantly clear to the public that consent is not a defence to specified crimes where serious harm is inflicted for the purpose of sexual gratification. Those specified crimes are inflicting grievous bodily harm, wounding and inflicting actual bodily harm. As the last of those crimes does not exist in the Bailiwick, it will be necessary to describe an equivalent level of harm and state that consent for sexual gratification is not a defence to a common law assault where the harm reaches that threshold. This principle will not be limited to crimes committed in a domestic context.

5. Female Genital Mutilation (FGM)

5.1 It is proposed that legislation to criminalise all forms of FGM are put in place. FGM is illegal in the UK and in most countries worldwide. It is a practice which takes place across the globe in at least 30 countries in Africa, Asia and the Middle East. It also takes place within parts of Western Europe and other developed countries, primarily among immigrant and refugee communities.

5.2 FGM has been classified by the World Health Organization into 4 types[13];

- **Type 1:** This is the partial or total removal of the clitoral glans (the external and visible part of the clitoris, which is a sensitive part of the female genitals), and/or the prepuce/clitoral hood (the fold of skin surrounding the clitoral glans).
- **Type 2:** This is the partial or total removal of the clitoral glans and the labia minora (the inner folds of the vulva), with or without removal of the labia majora (the outer folds of skin of the vulva).
- **Type 3:** Also known as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood and glans.
- **Type 4:** This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g., pricking, piercing, incising, scraping and cauterizing the genital area.

[13] World Health Organisation Fact Sheet

5.3 FGM is a complex issue - despite the harm it causes, some women and men from affected communities consider it to be normal to protect their daughters and their cultural identity. Some people believe that FGM is a way to ensure virginity and chastity. It is sometimes done to preserve girls from sex outside of marriage and from having sexual feelings. FGM is often claimed to be carried out in accordance with religious beliefs, but it is not supported by any religious doctrine.

5.4 The prevalence of FGM in E&W is difficult to estimate because of the hidden nature of the crime. However, a 2015 study estimated that around 103,000 women aged 15-49 and approximately 24,000 women aged 50 and over who have migrated to E&W are living with the consequences of FGM. In addition, approximately 10,000 girls aged under 15 who have migrated to E&W are likely to have undergone FGM, and 60,000 girls aged 0-14 were born in E&W to mothers who had undergone FGM[14]. While the latter by no means assumes that these mothers will make their daughters undergo the same procedures, having a mother who has undergone the process is considered to be a risk factor.

5.5 Communities that are most at risk of FGM include Kenyan, Somali, Sudanese, Sierra Leonean, Egyptian, Nigerian and Eritrean. Non-African communities that practise FGM include Yemeni, Afghani, Kurdish, Indonesian and Pakistani. (It should be pointed out that in many of these countries FGM is now illegal, and it should not be assumed that families from practising communities will want their girls and women to undergo FGM).

5.6 England, Wales and Northern Ireland have had FGM legislation in place since 2003.

- Section 1 of the FGM Act 2003 makes it an offence to carry out FGM on a girl.
- Section 2 makes it an offence to aid, abet, counsel or procure a girl to carry out FGM on herself.
- Section 3 makes it an offence to assist a non-UK person overseas to perform FGM.
- Section 3A makes it an offence to fail to protect a girl from a risk of FGM, and applies to those responsible for the girl (such as her parents).
- Section 4A and Schedule 1 grants a victim of FGM anonymity by placing restrictions on the publication of their identity in connection with that crime.
- Section 5A and Schedule 2 introduces FGM protection orders, being orders that can contain prohibitions, restrictions or requirements deemed necessary to prevent the commission of an FGM offence or protect a girl who has already been subjected to such an offence.

[14] Prevalence of Female Genital Mutilation in England and Wales: National and local estimates

- Section 5B creates an obligation for frontline professionals to report cases of FGM in children to the police.

5.7 The 1989 Convention on the Rights of the Child, which was extended to Guernsey and Alderney in 2020, protects against all forms of mental and physical violence and maltreatment (Article 19.1); to freedom from torture or cruel, inhuman or degrading treatment (Article 37a), and requires states to take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children (Article 24.3).

6. Recent Complaint Evidence

6.1 To provide an example of how recent complaint evidence might be used, the recipient of the complaint becomes a potential witness, in that they can tell the court what the alleged victim said to them. However, such a statement would be hearsay. To illustrate that point, if a witness (W) attends court to give evidence about a conversation she had with an alleged victim (V), and says under oath, "V told me on the 2nd of January that her father assaulted her the night before" then this is hearsay because W is giving evidence of a statement made out of court (the comment from V to W on the 2nd of January) and the court is concerned with whether that out of court statement (from V to W) is true i.e. whether V's father did indeed assault V.

6.2 Being hearsay, the court will only permit this if V's complaint can be said to fulfil certain criteria and thus qualify within the recent complaint exception to the hearsay rule. Currently that criteria significantly limits the circumstances in which recent complaint evidence can be used.

6.3 Firstly, it is a requirement that the complaint must be made soon after the incident in question to be deemed "recent". If V waited months to tell someone, even though that delay might be for very good reason, it is unlikely to be deemed recent enough.

6.4 Secondly, this exception to the hearsay rule only applies to sexual cases. So, in the above example, there is no possibility of the complaint being adduced under this exception to the hearsay rule, even if V told W very soon after the incident, because V is complaining about domestic violence rather than a sexual offence.

7. Prohibiting Contact between Remanded Defendants and Victims and Witnesses

7.1 The restraining order, used in the context of remanded defendants, would only be required during the period of remand because, a) if the defendant is released on bail prior the conclusion of proceedings, the court can revert to bail

conditions, and b) if the defendant is released because the case has concluded, there is no longer the same concern in respect of interference with a witness. There are other methods under existing legislation to protect people from unwanted contact on a longer-term basis.

7.2 There is no equivalent provision in E&W, so this would be a unique, local approach. From a human rights perspective, the order would be placing restrictions similar to bail conditions, and the judge would need to be satisfied that such a measure is necessary. It would therefore be a proportionate measure to tackle a serious issue.

8 The use of recorded cross-examination and re-examination within court hearings

8.1 It is already possible for the Prosecution to apply to the court[15] to have a visual recording of a witness admitted in evidence as their examination in chief.

8.2 If the Prosecution's application is successful, the video recording is treated as though it was evidence given in court during an examination-in-chief, and the witness will not have to give the same information live in court all over again. Prior to the witness entering the courtroom, the court watches the video and the witness likewise watches the same video from a private room within the precincts of the court building[16]. At the conclusion of the video, the witness enters the courtroom to give further evidence under oath[17]. The Prosecution may ask (live in court) supplementary questions concerning matters that were not adequately covered by the ABE interview, but generally this is only a few questions. It follows that the examination-in-chief part of the witness' evidence is considerably shortened due to the successful application to have the recording admitted in evidence.

8.3 After any supplementary questions, the witness is cross-examined by the defence, and then re-examined by the prosecution[18] in the usual way. There is currently no ability to pre-record cross-examination and re-examination for this to be admitted instead of this live evidence.

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[15] Both Royal Court and Magistrate's Court. This is under s.40 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 or under the Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017, the choice of statute depending on whether the offence in question is a sexual offence.

[16] E.g. in the witness suite.

[17] Or via live-link, or from behind a screen, if other special measures have also been granted.

[18] This part of the trial is usually very short and will only be prosecution questions arising out of the cross-examination.

8.4 In E&W[19], an examination of the witness, visually recorded prior to the trial, may be admitted by the court as the witness's cross-examination and re-examination.

8.5 The measure can only be applied for when there has also been a successful application to admit recorded evidence in chief (explained above), which in E&W requires the witness to be eligible as either a vulnerable or intimidated witness. This includes:

- Those under 18;
- Those suffering with a disorder or disability or impairment of intelligence or social functioning, where that would have an impact on the quality of the evidence;
- Those in fear or distress, where that would have an impact on the quality of the evidence; and
- Witnesses in certain offences, namely –
  - Sexual offences,
  - Modern slavery offences,
  - An offence amounting to domestic abuse,
  - Offences of serious violence involving firearms or knives.

8.6 If the criteria are met, the application for recorded evidence in chief will be granted unless this would not be in the interests of justice. This can then lead on to a similar application for pre-recorded cross-examination and re-examination.

8.7 It is proposed that the Bailiwick could likewise extend the existing power to admit a pre-recorded video as evidence in chief to also permit the court to admit pre-recorded cross-examination and re-examination

8.8 This reform would not be without some practical challenges. Careful case management would be desirable, particularly given that the witnesses involved in the procedure could be very young or vulnerable. The requirement to hold a hearing earlier than the trial for the recording of such evidence would mean that the prosecution would have to accelerate typical tasks such as the disclosure of further evidence in the case and the disclosure of unused material. This is because the defence must have all of the material that assists them in challenging the witness. There is however a safeguard in E&W that means the process can be repeated if the Court is satisfied that the defence have become aware of a matter that they could not with reasonable diligence have ascertained by the time of the original recording, or that for any other reason it is in the interests of justice. It is proposed that a similar safeguard is enacted locally to protect a defendant's right to a fair trial when evidence emerges after the recorded cross-examination has already taken place.

[19] Under s.28 of the Youth Justice and Criminal Evidence Act 1999.

9 Prohibition on cross-examination in person in civil and criminal proceedings

9.1 In E&W the provisions are not retroactive, and as such only apply to proceedings which had been brought on or after the 21st July 2022. In instances where cross-examination is required, the court can appoint a qualified legal representative who conducts the cross-examination instead of the prohibited party. Qualified legal representatives in E&W includes barristers, solicitors and Chartered Institute of Legal Executives (CILEX) practitioners.

10 Domestic Abuse Related Death Reviews (DARDR)

10.1 These reviews are carried out in order to:

- Establish what lessons are to be learned from domestic abuse related deaths regarding the way in which local professionals and organisations work individually and together to safeguard victims;
- Apply those lessons to service responses including changes to policies and procedures as appropriate; and
- Prevent domestic abuse related deaths and improve service responses for all domestic violence victims, their children and/or other relatives through improved intra and inter-agency working.

10.2 DARDR and DHRs ensure that abuse is identified and responded to effectively at the earliest opportunity. When considering the facts presented during the review, in relation to the scrutiny of practice by agencies and professionals, it is vital that a holistic approach is taken, to ensure that policy and practice is joined up and consistent.

10.3 DHRs were established on a statutory footing in E&W within the Crime and Victims Act 2004[20]. In March 2022, the UK Government's Tackling Domestic Abuse Plan outlined reforms to the DHR process, including refreshed statutory guidance and more information on conducting DHRs in instances of suicide following domestic abuse. The name change, which will take place in E&W very soon, reflects the need to ensure that reviews take place consistently in deaths by suicide in cases where domestic abuse has been occurring, as well as cases of murder or manslaughter.

10.4 In E&W reviews are commissioned by local Community Safety Partnerships (the equivalent in the Bailiwick would be the Islands Safeguarding Children and Adults Partnership). The process would need to involve an independent expert in this field visiting the island to carry out the review. It would entail the

[20] Section 9 of the Crime and Victims Act 2004

individual speaking to all the agencies concerned, plus family members and looking at evidence regarding how the case had been handled.

11 Abolition of reasonable chastisement

11.1 It has been widely recognised for many years that physical punishment such as smacking is both ineffective and detrimental to children's development. University College London (UCL) and an international team of experts analysed 20 years of research in 2021 and found that physical punishment was:

- Ineffective, harmful and had no benefits for children and their families;
- Does not improve children's behaviour and instead increases behavioural difficulties, such as aggression and anti-social behaviour; and
- Puts children at increased risk of being subjected to more severe levels of violence[21].

11.2 Article 19(1) of the United Nations Convention on the Rights of the Child ("UNCRC") obliges States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

11.3 Guernsey had the UNCRC extended to it in 2020, however such a defence is one issue that needs to be addressed in order to be compliant with the convention. Article 19 goes wider than criminal law. It sets out the positive steps this jurisdiction can take to protect children from violence and maltreatment.

11.4 The NSPCC is also clear in its view that physical punishment is not an acceptable practice in a modern society. It is unequivocal in its position that public education needs to be underpinned by legal reform. Retaining a defence of 'reasonable chastisement', it argues, serves to undermine professional arguments in favour of 'positive parenting' methods, and allows those wholly or partially committed to physical punishment a powerful reason not to adopt less harmful child-rearing practices. The organisation believes that giving children equal protection with adults under the law on assault would significantly protect children from physical danger, as well as according them their basic human right to freedom from physical violence.[22]

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[21] Physical punishment and child outcomes: a narrative review of prospective studies, The Lancet, Volume 398, Issue 10297p355-364July 24, 2021

[22] Equal protection for children: an overview of the experience of countries that accord children full legal protection from physical punishment

11.4 The abolition of the reasonable chastisement defence in the Bailiwick would remove a grey area. It would mean that it would no longer be up to parents to measure what they consider to be a reasonable level of force for the purposes of child punishment. The courts will no longer be tasked with deciding the subjective question of whether a punishment in a particular case went beyond the limits of reasonableness. Instead, there is a very clear message to the public that no degree of physical punishment is tolerated in this jurisdiction. This would protect vulnerable children in abusive homes and encourage parents to seek alternative methods that benefit the whole family.

11.5 The Committee is of the view that these changes are necessary within the Bailiwick. It has also been asked by the Committee *for* Health and Social Care, which is responsible for overseeing Article 19 of the UNCRC, to make the necessary legislation changes in relation to the physical chastisement of children in order to satisfy the requirements of the Convention.

11.6 Finally, it is noteworthy that numerous stakeholders during the consultation phase for this policy expressed a strong desire for this defence to be abolished in the Bailiwick. Comments from their feedback include the following:

> *"With the new Domestic Abuse Law, we are strengthening protections for adults, whilst children can still be legally smacked at home. It is a contradiction and sends a message to children of the Bailiwick that they are less valued, when in fact they deserve stronger protections than adults.*
>
> *The 1989 UN Convention on the Rights of the Child (UNCRC) was extended to Guernsey and Alderney in 2020. The* ***reasonable chastisement*** *defence contravenes the UNCRC, as it permits forms of corporal punishment that conflict with the convention's provisions on protecting children from all forms of violence, cruel treatment, and prioritising their best interests. The UNCRC advocates for the complete abolition of corporal punishment, urging states to adopt non-violent methods of child-rearing. Therefore, continuing to allow reasonable chastisement is inconsistent with Guernsey's obligations under the UNCRC.*
>
> *Smacking children is illegal in Scotland and Wales. Dame Rachel de Souza, the children's commissioner for England recently stated: "How we treat and protect children says something fundamental about a society — banning the reasonable chastisement defence is an important step in making sure every child's rights are not just met but valued (The Times 21.10.24)."*
> **Guernsey Victim Support & Witness Service**
>
> The Lawful chastisement of children *"falls under the umbrella of domestic abuse that this legislation intends to protect individuals from, and it feels*

incongruent to introduce more protections for adults but not do the same for children. The Committee feels very strongly that it should be covered within these legislative changes in order to ensure and maintain the safety of children, many of whom will be particularly vulnerable. It will also help to bring us up to date with best practice in other jurisdictions, and in alignment with recommendations from the recent UNCRC dialogue. It is felt that not addressing smacking in this workstream would be a missed opportunity and may take some time before it is re-considered."
The Committee *for* Health and Social Care

"I would ask to be given some consideration is changing the law relating to reasonable chastisement of a child, as Wales and Scotland have already done. This has clear links with domestic abuse. Why, when it would be considered an offence for another to smack or hit a child, is it considered acceptable for the person who supposedly loves the child above all others and is there to protect them, to do so? What message does this send to that child about how to deal and resolve issues within relationships?

The new legislation is being brought in to afford greater protection to adult victims regarding unacceptable behaviours that cause trauma and have long-term impacts. Why then, would there not be the same protection for children, from the very same behaviour?"

We of course understand that change, especially cultural change, is difficult and challenging, but this should not be a reason to not bring about change. Times change and so does our understanding and learning. A change to the law, which ultimately aims to change behaviours for the better, would have much wider and greater implications in terms of children's understanding of healthy relationships."
Safer LBG

12 Register of Serial Domestic Abuse offenders

12.1 Although this has not been put in place in E&W, the Labour Party stated this as an initiative should they come into power.

12.2 There was some opposition to this in E&W when it was initially proposed. Arguments against the introduction of such a scheme included:

- The focus should instead be to make better use of existing systems such as the Police National Computer (PNC) or ViSOR (the dangerous persons database), which already enables the police to manage risk and share

perpetrators' details across criminal justice and other relevant agencies. Serial stalking and domestic abuse perpetrators are already on existing systems such as ViSOR and can be managed through Multi-Agency Public Protection Arrangements (MAPPA).

- A distinct register, not embedded within established police systems such as the PNC, the police national database (PND) or the ViSOR system, adds unnecessary complexity, cost and, most importantly, risk. Dangerous perpetrators should not be dispersed over different systems. That is why the PND system was introduced. There are established ways of registering dangerous individuals on the PND. The disclosure and barring scheme system has access to that database, as do other agencies such as probation.

- The difficulty of knowing where to draw the line in terms of who is or who is not on the register, and the potentially very high number of registered persons if the net is cast very wide. The risks and implications if a perpetrator is not on the register because they have not been reported by the police, which might offer a false sense of security to potential victims.

12.3 These concerns are not insurmountable in the longer term, hence the proposal to put in place an enabling ordinance locally to implement a scheme in the future, when police systems locally are able to be joined up with UK systems.

13. Spiking

13.1 To summarise the provisions already enacted in the Bailiwick:

13.2If the spiker intends to endanger the life of, or inflict GBH on, the person being spiked, they are guilty of an offence punishable by up to 10 years imprisonment under Section 8 of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006. This offence does not expressly mention drinks, alcohol or drugs, but covers those who "administer" a "poison or other destructive or noxious thing" and so spiking with this intention would be covered (drugs and alcohol being noxious).

13.3 If the spiker intends to injure, aggrieve or annoy the person being spiked, they are guilty of an offence punishable by up to 5 years imprisonment under Section 9 of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006. As above this offence refers to administering a poison or other destructive or noxious thing.

13.4 If the spiker intends to stupefy or overpower the person being spiked so as to enable sexual activity with them, they are guilty of an offence punishable by up to 10 years imprisonment under Section 87 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020 ("the Sexual Offences Law"). The Sexual Offences Law refers to administering a substance, and so spiking with this intention would be

covered. 13.5 It should be noted that these offences only punish the actual act of administering the substance. If the person being spiked was seriously hurt or was then subjected to other serious offences (for example sexual offences or violent offences) there is nothing to prevent the spiker from being charged with further serious offences (murder, manslaughter, GBH, rape etc). The maximum sentences need to be considered with this in mind.13.6 The language used (in terms of "administering" something) is useful in that it will cover a variety of conduct, such as putting something in someone's drink, using a syringe to inject someone without their consent, or touching someone with something that can be absorbed through skin. The Committee notes that, because the prosecution are obliged to prove specific intentions in the above crimes, certain conduct is not currently covered, namely:

13.6.1 A case where someone's drink is spiked but the spiker does not have any of the above intentions. Examples would include where the spiker thinks the recipient will enjoy the extra intoxication (even though they don't know about it or consent to it) or where it is a misguided prank.

13.6.2 A case where there is a strong suspicion that the spiker may have had one of the above intentions, but the prosecution cannot prove to the high criminal standard that they did. This might arise, for example, where the spiker is promptly apprehended or stopped before they can engage in sexual activity with a stupefied recipient and then denies that they had any intention of committing a sexual offence.

13.6.3 Given that the existing crimes require proof of a nefarious intention, it would be logical for such a specific crime to have a lower maximum penalty i.e. the existing crimes could be considered aggravated versions of the new (basic) crime. If the prosecution are able to prove one of the intentions covered under the existing legislation, they would charge that more serious offence instead. This would also have the benefit of distinguishing between e.g. those who are proven to have spiked a drink with a sexual intention (and so are charged with the offence under the Sexual Offences Law and become a sex offender), and those who spiked a drink for other or unproven reasons. This is important not just from a sentencing perspective, but also for the purpose of ongoing notification requirements and supervision.

14 An offence of sexual harassment in a public place.

14.1 In the Bailiwick there is no specific crime of "street harassment" per se. The crimes that might fall within such behaviour include:

14.1.1 Behaving in an indecent or disorderly manner in a public place[23].
This is an extremely broad crime that could cover a very wide range of behaviour. If someone, for example, made an unwanted and inappropriate comment to a stranger in the street (such as a sexually explicit comment) then this could amount to indecent behaviour. The maximum penalty is 3 months imprisonment.

14.1.2 Using threatening abusive or insulting words or behaviour.[24]
One of the following circumstances must apply, namely

a) The defendant intends to cause the other person to believe that immediate violence will be used against them,
b) The defendant intends to provoke violence, or
c) Regardless of the defendant's intention, the other person is likely to believe that violence will be used against them or is likely to believe that violence will be provoked.

The maximum penalty is 12 months imprisonment.

14.1.3 Harassment.[25]
This would include conduct that causes someone else alarm or distress however it is important to note that this crime requires a course of conduct. A single incident of street harassment could not be charged as harassment for this reason. The maximum penalty is 4 years imprisonment.

14.1.4 Putting someone in fear of violence[26].
This also requires a course of conduct, and so might be deemed a more serious version of harassment in that the victim is not just harassed but caused to fear actual violence. The maximum penalty is 5 years imprisonment.

14.1.5 Exposure.[27]
This crime is committed when someone intentionally exposes their genitals and intends another person will see them and be alarmed or distressed. The maximum penalty is 2 years imprisonment.

14.1.6 Voyeurism via equipment.
This is where a person uses equipment with the intention of enabling someone (including themselves) to observe beneath the outer clothing of the victim the victim's genitals or buttocks, or the underwear

[23] Section 1(c)(ii) of the Summary Offences (Bailiwick of Guernsey) Law, 1982.

[24] Section 4 of the Public Order (Bailiwick of Guernsey) Law, 2006.

[25] Section 1 of the Protection from Harassment (Bailiwick of Guernsey) Law, 2005.

[26] [26] Ibid, section 3.

[27] Section 96 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

covering their genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible. A simple example is where someone discretely uses a mirror to look up someone's dress or skirt ("upskirting"). For the defendant to be guilty, they must commit this crime for the purpose of obtaining sexual gratification or humiliating, distressing or alarming the victim. There is no offence if the victim consents to this conduct. The maximum penalty is 2 years imprisonment.

14.1.7 Voyeurism via recording

This is very similar to the previous offence, however the offender records (captures) the image, such as by taking a photograph or video. The maximum penalty is 2 years imprisonment.

14.1.8 Contact offences.

The above list focuses on offences that involve no physical contact. For conduct that involves physical contact with a victim (for example inappropriate contact on public transport) there are a raft of sexual offences under the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (the most obvious being sexual assault) and non-sexual contact offences could be charged as a customary law assault or, depending on whether serious injury is caused, more serious customary law offences.

14.2 A report from the All-Party Parliament Group for UN Women looked at the prevalence and reporting of sexual harassment in public spaces in the UK. The report found that 71% of women in the UK have experienced some form of sexual harassment in a public space, but the incident was not reported to police in 95% of cases. When these additional offences are publicised to the general public (if approved by the States) it would be an opportunity to reassure the general public that the Bailiwick has a wide range of offences tackling street harassment, and that law enforcement will treat such incidents seriously. This will simultaneously send out a message to potential perpetrators that such conduct is completely unacceptable.