

# STATES OF JERSEY



## **DRAFT CRIMINAL JUSTICE (INSANE PERSONS) (AMENDMENT) (JERSEY) LAW 201- (P.160/2014): AMENDMENT**

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Lodged au Greffe on 29th January 2015  
by the Chief Minister

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**STATES GREFFE**

DRAFT CRIMINAL JUSTICE (INSANE PERSONS) (AMENDMENT) (JERSEY)  
LAW 201- (P.160/2014): AMENDMENT

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**PAGE 9, ARTICLE 2 –**

For paragraphs (b) and (c) substitute the following paragraphs –

“(b) in paragraph (2), for the words “by the Superior Number” there shall be substituted the words “by the Inferior Number”;

(c) in paragraph (3) –

(i) for the words “If the Superior Number” there shall be substituted the words “If the Inferior Number”, and

(ii) for the words “original court” there shall be substituted the words “that court”.”.

CHIEF MINISTER

## REPORT

This is an amendment to **P.160/2014** [Draft Criminal Justice (Insane Persons) (Amendment) (Jersey) Law 201-], which was lodged *au Greffe* on 27th October 2014. The purpose of **P.160/2014** is to amend the Criminal Justice (Insane Persons) (Jersey) Law 1964 (“the Law of 1964”) to enable the Bailiff and 2 Jurats (the Inferior Number), instead of the Bailiff and at least 5 Jurats (the Superior Number),<sup>1</sup> to make a determination in criminal proceedings before the Royal Court as to whether or not an accused person is fit to plead and/or can understand the nature of the trial.

This amendment does not affect the substance of the proposed change to the Law of 1964: its purpose is merely to remove a potential ambiguity in the draft amending Law. Nonetheless it will assist members to recapitulate the main points of the Report in **P.160/2014**.

This short and simple amendment is desirable in the interests of accused persons for the reasons given in the Report to **P.160/2014** in advance of the far-reaching changes which will follow the wider fundamental review of Jersey’s mental health legislation which is currently taking place.

A criminal trial before the Royal Court may take two forms, namely –

- (i) a trial before the Inferior Number without a jury (*Nombre Inférieur sans enquête*); or
- (ii) a trial before the Bailiff with a jury (*une Assise*).

As the Law of 1964 stands, where the accused’s mental state is in issue, the trial has to be adjourned to convene the Superior Number. This inevitably causes delay, which is detrimental to the interests of the accused and of justice.

The Inferior Number is as capable (invariably with the benefit of expert medical evidence) as the Superior Number of making this determination. Indeed in England and Wales, the same determination is made by a Judge sitting alone. However, unlike the position in England and Wales, the presence of the 2 Jurats would, pending the review of Jersey’s wider mental health legislation, ensure the continuation of a lay element in making the determination.

Where there is an accusation before the Royal Court (i.e. at any point before a trial begins) the Royal Court would be able to adjourn to enable the Inferior Number to make the determination (with the appropriate expert medical evidence) in relation to the accused.

In the case of a trial before the Inferior Number without a jury, the Inferior Number would be able to adjourn to make the determination itself (with the appropriate expert medical evidence) in relation to the accused.

In the case of a trial before the Bailiff with a jury, that Court would be able to adjourn to enable the Inferior Number to make the determination (with the appropriate expert medical evidence) in relation to the accused.

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<sup>1</sup> The quorum for the Superior Number was 7 Jurats in 1964, but is now 5 Jurats.

In view of the amendments to the Law of 1964 contained in **P.160/2014** and in this amendment, it will assist States members to set out the text of Article 1 of the Law of 1964 as it would read after those various amendments have been made –

- “(1) If on the accusation or trial before the Royal Court of any person charged with any act or omission punishable with imprisonment, it appears to the court that the accused may be so insane as to be unfit to plead to the accusation or unable to understand the nature of the trial, the court shall adjourn the case to try the question whether or not the accused is so insane as aforesaid.*
- (2) Such trial shall be held by the Inferior Number of the Royal Court as soon as may be at such time and place as the court may direct and may be held in the absence of the accused if it is proved to the satisfaction of the court by evidence (including the oral evidence of 2 medical practitioners who in the opinion of the court have had special experience in the diagnosis or treatment of mental disorders) that it is impracticable or inappropriate to bring the accused before the court.*
- (3) If the Inferior Number of the Royal Court finds the accused to be so insane as aforesaid, it shall be lawful for that court to order the accused to be detained during Her Majesty’s pleasure; and until Her Majesty’s pleasure is known, the accused shall be detained in such place and in such manner as the court shall order and any such order may be varied from time to time as the court thinks fit.”*

### **Financial and manpower implications**

As stated in **P.160/2014**, there are no financial or manpower implications arising, save that the amendment will reduce the administrative burden on the Bailiff’s Chambers and the Judicial Greffe by no longer having to convene the Superior Number.

### **Human Rights**

No human rights notes were annexed to **P.160/2014** because the Law Officers’ Department had indicated that the draft Law did not give rise to any human rights issues. The Law Officers’ Department has given a similar indication regarding this amendment of the *Projet de Loi*, which does not affect the substance of the draft Law.