

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 201- (P.52/2017): COMMENTS

**Presented to the States on 17th July 2017
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Education and Home Affairs Scrutiny Panel received a briefing on the Draft Criminal Procedure (Bail) (Jersey) Law 201- ([P.52/2017](#)) from Officers in the Community and Constitutional Affairs Department on 31st May 2017.

This legislation asks the States Assembly to agree a procedural framework relating to the grant of bail in criminal proceedings and police detention time limits. Current Bail law in Jersey is significantly outdated and this legislation intends to codify practices that allows greater rights for defendants and victims, whilst at the same time bestowing greater powers upon investigating Police Officers. Hereafter, the Panel has examined 2 aspects of the legislation, both relating to changes to Part 5 of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) (“PPCE”).

Pre-Charge Bail Enforcement

This legislation will introduce powers for Police Officers to arrest a defendant, without a warrant for breach or anticipated breach of bail conditions, on the condition that they are presented before a magistrates no later than 48 hours subsequent to the arrest. In exceptional circumstances this can be extended by a further 24 hours, meaning a suspect can be held up to 72 hours without coming before a magistrate. The Panel initially questioned if this timescale of detention was compatible with the European Convention of Human Rights.¹ During the recent Quarterly Public Hearing with the Minister for Home Affairs, the Panel questioned the compatibility of the legislation and was given the following assurance –

“Director for Criminal Justice, Community and Constitutional Affairs:

Before the law is lodged, the Law Officers’ Department will perform a full human rights audit and then the Minister has to sign a statement prior to the lodging of it that it is fully human rights compliant.²”

The Panel note that the draft legislation was not available to it prior to the briefing and therefore any notes detailing its compatibility with European Convention of Human Rights were also unavailable. Having seen the report from the Law Officer’s Department appended to the proposition and having questioned the Minister publically, the Panel is satisfied that this time limit is compatible.

Bail Time Limits – Comparisons

The Panel notes that this draft legislation proposes a 6 month time limit on the length of bail where a suspect has not been charged with an offence. It should be noted that this is the maximum time limit and not one that should be adhered to. Research undertaken by the Panel into other European countries has shown that similar legislation only exists in the following countries –

¹ The Panel note that the draft Law was not available to it at the time of the briefing with the department.

² Public Hearing with the Minister for Home Affairs – 27th June 2017 – pages 3 and 4 [at the time of publication this transcript was not available on the Scrutiny Website <http://www.scrutiny.gov.je/QuarterlyHearings/Pages/default.aspx>]

The United Kingdom³

From 3rd April 2017, the police have been able to hold people on pre-charge bail for no more than 28 days, without an extension. Police may extend bail beyond the 28 day limit to 3 months, if authorised by a senior police officer at superintendent level or above. After that there needs to be a review by a Court. (As set out in The Policing and Crime Act 2017)

Isle of Man⁴

There is the facility to apply for pre-charge bail, however, there is currently no time limit that must be adhered to. Police Powers and Procedures Act 1998 covers this subject with bail being granted by the Custody Officer at a Police Station.

Further information received from the Community and Constitutional Affairs Department explained that extensive discussion was undertaken in order to identify the appropriate length of time to be applied, as little evidence of legislation in other countries existed. In the event of complex fraud cases or investigations requiring the forensic examination of computers, the Police have indicated that a longer time limit (unlike the 28 days recently introduced in the UK) would allow for a thorough investigation. As this type of legislation is difficult to compare, the Community and Constitutional Affairs Department and States of Jersey Police intend to monitor and review the legislation as it progresses.

On the condition that the Department does monitor this closely after its implementation, the Panel is satisfied that this area of the legislation meets its requirements.

General comments

The Panel recognises that a significant concern surrounding existing Bail law is that it does not allow for the effective protection of victims in cases of domestic violence. The proposition states –

“Where a person is under investigation for an assault on a partner and is bailed pending a charging decision, there is little that can currently be done to protect the victim or prevent interference with witnesses during the ongoing investigation.”⁵

The Panel is pleased to see that this proposed legislation will introduce measures to allow both the Police and Courts to effectively enforce bail conditions on offenders. The Panel feels that it is important for the States Assembly to support any new legislation that can have a positive impact in preventing and tackling domestic abuse.

³ The Policing and Crime Act 2017 – Chapter 1 Pre-charge Bail –

<http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted>

⁴ Police and Procedures Act 1998 – Page54 –

http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1998/1998-0009/PolicePowersandProceduresAct1998_1.pdf

⁵ P.52/2017 – Draft Criminal Procedure (Bail) (Jersey) Law 201-

<http://www.statesassembly.gov.je/AssemblyPropositions/2017/P.52-2017.pdf>

Conclusion

In conclusion, the Panel is satisfied that the issues above have been clarified and that this draft Law is fit for purpose. The Panel will therefore be supporting the Proposition.