

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (LIFE SENTENCES) (JERSEY) LAW 201-

Lodged au Greffe on 4th June 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (LIFE SENTENCES) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Criminal Justice (Life Sentences) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 4th June 2014

REPORT

1. The Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 (“the 2005 Law”) made provision regarding persons who had committed offences for which there was a mandatory sentence of life imprisonment. It required the Royal Court, in relation to any such person, to order a mandatory minimum period of imprisonment in respect of the offence or offences concerned.
2. The reasons for the 2005 Law were as follows –
 - 2.1 Article 6(1) of the European Convention on Human Rights provides that a defendant in a criminal case has a right to a fair trial by an independent and impartial tribunal. In a case in the United Kingdom in 2001¹ the following principles were upheld –
 - (a) the imposition of a sentence is part of the trial;
 - (b) the sentence therefore should be imposed by an independent and impartial tribunal;
 - (c) the fixing of the tariff of a convicted murderer is legally indistinguishable from the imposition of a sentence;
 - (d) it follows that the tariff should be fixed by an independent and impartial tribunal;
 - (e) the Home Secretary is not an independent and impartial tribunal;
 - (f) it follows that the Home Secretary should not fix the tariff of a convicted murderer.
 - 2.2 In England and Wales, since 1965, murder had been punishable with a mandatory sentence of life imprisonment. The Home Secretary, however, had a discretion to release an offender on licence if recommended to do so by the Parole Board.
 - 2.3 The arrangements worked as follows. When imposing the life sentence, the trial judge would review the factors which mitigated or aggravated the offence and would advise the Lord Chief Justice of the day. The Lord Chief Justice was in a position to obtain an overall view from reports from trial judges up and down the country, and so would advise the Home Secretary. The Home Secretary would then make the decision on how long the offender should remain in prison before being eligible for parole. Usually the period fixed was in line with the judicial recommendations, but in a small minority of cases the period set by the Home Secretary was either longer or shorter than the Judge recommended. This process was known colloquially as “*fixing the tariff*”. Towards the end of the period of the tariff term, the case of the convicted murderer would be referred to the Parole Board, which would consider whether it was necessary for the protection of the public that the convicted murderer should continue to be confined. If the Board concluded that it was necessary, the Home Secretary had no power to release the prisoner. If, on the other hand, the Board recommended that the convicted murderer should be released on

¹ *R v. Secretary of State for the Home Department (ex parte Anderson)* [2001] EWCA Civ 1698

licence, then the Home Secretary could, after consultation with the Lord Chief Justice, order his or her release, and indeed ordinarily did so, although the Home Secretary retained a discretion.

- 2.4 It was this process that was found not to be compliant with Article 6 of the European Convention on Human Rights. As a result the Government in the United Kingdom made provision – in the Criminal Justice Act 2003 – for the tariff to be fixed instead by the trial judge.
 - 2.5 In Jersey there had been a mandatory life sentence for murder since 1986.² Routinely, persons convicted were sent to the United Kingdom where they were treated as if they had been convicted before a Court in England and Wales, and therefore were eligible to be released on licence. The Jersey trial judge had a discretion to recommend a minimum period which the convicted murderer should serve, in similar fashion to the procedure which existed in England and Wales.
 - 2.6 The transfer from La Moye Prison to one of Her Majesty’s Prisons in England and Wales (or another part of the United Kingdom) was put into effect by the Secretary of State using powers conferred by the Crime (Sentences) Act 1997. In practice, these are unrestricted transfers in the case of life sentences. This provision means that the rules of the receiving jurisdiction (the relevant part of the United Kingdom) apply for the purposes of any release on licence, notwithstanding that the person incarcerated there has not been convicted before a court in the United Kingdom.
 - 2.7 The 2005 Law – as mentioned at the outset – changed the position in Jersey so that the trial judge, in cases of mandatory life sentences, had to fix the tariff. It would not have been compliant with the European Convention on Human Rights had the Home Secretary continued to have any discretion to fix the minimum term of imprisonment which those convicted of murder in Jersey should serve. The 2005 Law therefore substantially adopted the approach followed in the Criminal Justice Act 2003. Accordingly, a distinction was drawn between exceptionally serious cases where the Court could reach the view that life imprisonment should mean life; particularly serious cases, where the Court was to start at a period of 30 years’ imprisonment and then increase it or reduce it having regard to particular aggravating or mitigating circumstances; and other cases where, if the offender was 18 years of age or older, the starting point was 15 years, and in the case of an offender under the age of 18, of 12 years before again the same process of an increase or reduction according to aggravating or mitigating circumstances, was applied.
 - 2.8 The order of the Court which set a mandatory minimum period of imprisonment took effect as a sentence against which the accused or the Attorney General had a right to appeal to the Court of Appeal.
3. On 29th October 2012, in the case of *The Attorney General v. Damien David Rzeszowski*³ the accused had been acquitted of 6 counts of murder, but convicted of manslaughter by reason of diminished responsibility. It fell to the Superior Number of the Royal Court to impose sentence. If the 2005 Law had

² Under the Homicide (Jersey) Law 1986

³ [2012] JRC198

permitted, the Crown would have moved for 6 life sentences with a minimum period of 20 years. In the event, the Crown moved for 30 years' imprisonment in respect of each count.

4. The 2005 Law was based substantially on the Criminal Justice Act 2003 of the United Kingdom. Separate provision was made in that country – by the Criminal Justice and Court Services Act 2000⁴ – in relation to life sentences in circumstances where the sentence was not fixed by law *i.e.* where it was discretionary. That other provision was not mirrored in the 2005 Law, which was confined in its scope to sentencing in cases where the sentence was fixed by law *i.e.* where it was mandatory.
5. The Court in *Rzeszowski* urged that the 2005 Law be amended to make the necessary provision in relation to discretionary life sentences.
6. On 2nd July 2013 the Chief Minister lodged *au Greffe* the Draft Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Amendment) (Jersey) Law 201- [P.84/2013]⁵ which would have amended the 2005 Law accordingly, *i.e.* to require a court that sentenced an offender to a discretionary life sentence to order, in relation to the offender, a minimum period of imprisonment in respect of the offence or offences concerned.
7. That draft Law would have enabled such minimum period in appropriate cases to be the whole of the offender's life (unless the offender was under 21 years of age).
8. However, on 9th July 2013, the Grand Chamber of the European Court of Human Rights gave a judgment in the case of *Vinter and Others v. the United Kingdom*.⁶ The argument before the European Court was whether a 'whole life' tariff was a breach of Article 3 of the European Convention (the prohibition against torture or inhuman or degrading treatment or punishment). The Court held⁷ that: "*in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.*"
9. The Court looked at the practice across Europe, as well as various international instruments, and concluded that the overwhelming practice was not to impose sentences with no chance of release.⁸ The United Kingdom accepted⁹ that any sentence that was 'grossly disproportionate' would amount to ill-treatment that was incompatible with Article 3 and therefore unlawful. The Court concluded that a whole life tariff, *where there was no effective review mechanism*, fell into that category and was therefore unlawful.
10. The United Kingdom Government argued that, whilst that might seem to be the case with a whole life sentence,¹⁰ section 30 of the Crime (Sentences) Act

⁴ inserting s.82A Powers of Criminal Courts (Sentencing) Act 2000 & amending s.28 Crime (Sentences) Act 1997

⁵ <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.084-2013.pdf>

⁶ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122664>
(Application Nos. 66069/09, 130/10 and 3896/10)

⁷ At paragraph 119

⁸ Paragraphs 59–81

⁹ Paragraph 83

¹⁰ Scots law does not provide for whole life tariffs, as such

1997¹¹ meant that even a whole life sentence did not have to mean that an individual spent the remainder of his or her life in prison, because it allows the Secretary of State “*at any time [to] release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.*”

11. The Court noted that the criteria for the exercise of that discretion were set out in Prison Service Order 4700¹² chapter 12, issued under the authority of the Secretary of State. It set out policy and guidance for the management of prisoners serving an indeterminate sentence (including those serving a mandatory life sentence), both during custody and after release on licence. Chapter 12 provided for release to be ordered only in certain exhaustively listed circumstances, namely, if a prisoner was terminally ill or physically incapacitated, and other additional criteria could be met, *viz.* that the risk of re-offending was minimal, further imprisonment would reduce the prisoner’s life expectancy, there were adequate arrangements for the prisoner’s care and treatment outside prison, and early release would bring some significant benefit to the prisoner or his or her family. This was considered by the European Court to be too restrictive. For that reason, a sentence of life imprisonment with a whole life tariff was a breach of Article 3 and therefore unlawful.
12. This was relevant to the position in Jersey. **P.84/2013** sought to amend the 2005 Law and (as we have seen) life prisoners were as a matter of practice transferred to England and Wales (or other parts of the United Kingdom) to serve their sentences. Such transfers were ‘unrestricted’ which meant that the prisoner’s release was governed by the provisions in the United Kingdom which the Court in *Vinter* had found to be inadequate to meet the needs of the European Convention on Human Rights. Moreover, Jersey did not have any statutory provisions of its own for release on licence of life prisoners and, even though ‘lifers’ were unlikely in practice to serve their sentences in Jersey, the absence of local statutory provision in this respect was inconsistent with the ruling in *Vinter*.
13. **P.84/2013** was therefore withdrawn. In its place, this draft Law would repeal and replace the 2005 Law in a more extensively amended form. The draft Law would –
 - (a) confer on the Royal Court the power to order a minimum period of imprisonment when passing a “discretionary life sentence” (as did **P.84/2013** – the reasons for which have been explained in detail in paragraphs 2–6 *above* and need not be repeated); and
 - (b) make domestic provision for prisoners sentenced to life imprisonment to be able to apply for release from prison on licence.
14. It is *Part 4* of the draft Law that would provide the domestic mechanism for review of a life sentence – not only where the court had imposed a whole life tariff, but where it had imposed a minimum term above a certain length – to assess whether or not the prisoner’s continued incarceration was able to be justified on legitimate penological grounds. This directly addresses the issues arising from the case of *Vinter* and article 3 ECHR.

¹¹ <http://www.legislation.gov.uk/ukpga/1997/43/section/30>

¹² <http://www.justice.gov.uk/offenders/psos/ps0-4700-indeterminate-sentence-manual>

15. The European Court emphasized¹³ that it was well-established that a State's choice of a specific criminal justice system was in principle outside the scope of the European Court's supervision, provided that the system did not contravene the principles set forth in the Convention. The Court was also aware that States had a duty under the Convention to protect the public from violent crime. Nevertheless, it held¹⁴ that, for a life sentence to remain compatible with article 3, there had to be a prospect of release and a possibility of review. Reference was made to the earlier English Court of Appeal judgment in *R v. Bieber*.¹⁵ In considering "[i]n what circumstances will an irreducible life sentence raise an issue under article 3?" the Court of Appeal held that "*an irreducible life sentence raises an issue under article 3 in circumstances where it may result in an offender being detained beyond the term that is justified by the legitimate objects of imprisonment. This is implicit in the fact that no issue under article 3 appears to arise provided that there is, in law and in practice, a possibility of the offender being released, even though it remains possible, or even likely, that no release will be granted in his lifetime. The essential requirement appears to be the possibility of a review that will determine whether imprisonment remains justified.*" [emphasis supplied] The Court of Appeal went on: "*The legitimate objects of imprisonment are punishment, deterrence, rehabilitation and protection of the public. Where a mandatory life sentence is imposed in respect of a crime, the possibility exists that all the objects of imprisonment may be achieved during the lifetime of the prisoner. He may have served a sufficient term to meet the requirements of punishment and deterrence and rehabilitation may have transformed him into a person who no longer poses any threat to the public. If, despite this, he will remain imprisoned for the rest of his life it is at least arguable that this is inhuman treatment. Thus we have concluded that, where a crime attracts a mandatory and irreducible life sentence regardless of the particular circumstances of the crime, an issue will arise in relation to article 3.*"
16. Essentially, the European Court held that the mechanism for review in England and Wales¹⁶ fell short of the level set in *Bieber*.
17. It is against this background that *Part 4* of the draft Law has been framed. It is unnecessary to replicate the detail of the draftsman's Explanatory Note, save –
- (a) to draw specific attention to *Article 17* which provides for the establishment of a Panel comprising the Bailiff and 2 Jurats (appointed by the Bailiff) to exercise the functions conferred on the Panel by *Part 4*, and
 - (b) to say that the draft *Article 20* is pivotal in terms of human rights compliance.
18. *Article 20* would empower the Panel, following a referral by the Minister for Home Affairs, to direct the Minister to release from prison on licence a life prisoner in respect of whom there was an order for a minimum sentence of more than 25 years (including a minimum sentence for life) if –
- (a) the life prisoner had served 25 years or more of his or her sentence; and

¹³ At paragraph 104 of the judgment

¹⁴ At paragraph 110

¹⁵ [2009] 1 WLR 223

¹⁶ (s.30(1) of the Crime (Sentences) Act 1997 – release on compassionate grounds)

- (b) the Panel was satisfied that it was no longer necessary that the life prisoner should be confined in prison for the purposes of –
- (i) retribution and deterrence to others,
 - (ii) rehabilitation of the prisoner, or
 - (iii) protection of the public.
19. A life prisoner would be able to require the Minister to refer his or her case to the Panel at any time after he or she had served 25 years of his or her sentence; and thereafter at 2 yearly intervals following any previous (unsuccessful) reference.
20. Why 25 years? There is no sanctity about this particular length of time, but it may be helpful in this respect to note the following passage from *Vinter*:

“Life sentences in the Contracting States

68. *On the basis of the comparative materials before the Court, following practices in the Contracting States may be observed.*

First, there are currently nine countries where life imprisonment does not exist: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. The maximum term of imprisonment in these countries ranges from twenty-one years in Norway to forty-five years in Bosnia and Herzegovina. In Croatia in a case of cumulative offences, a fifty-year sentence can be imposed.

Second, in the majority of countries where a sentence of life imprisonment may be imposed, there exists a dedicated mechanism for reviewing the sentence after the prisoner has served a certain minimum period fixed by law. Such a mechanism, integrated within the law and practice on sentencing, is foreseen in the law of thirty-two countries: Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Belgium (15 with an extension to 19 or 23 years for recidivists), Bulgaria (20), Cyprus (12), Czech Republic (20), Denmark (12), Estonia (30), Finland (12), France (normally 18 but 30 years for certain murders), Georgia (25), Germany (15), Greece (20), Hungary (20 unless the court orders otherwise), Ireland (an initial review by the Parole Board after 7 years except for certain types of murders), Italy (26), Latvia (25), Liechtenstein (15), Luxembourg (15), Moldova (30), Monaco (15), Poland (25), Romania (20), Russia (25), Slovakia (25), Slovenia (25), Sweden (10), Switzerland (15 years reducible to 10 years), the former Yugoslav Republic of Macedonia (15), and Turkey (24 years, 30 for aggravated life imprisonment and 36 for aggregate sentences of aggravated life imprisonment).

In respect of the United Kingdom, the Court notes that, in Scotland, when passing a life sentence, a judge is required to set a minimum term, notwithstanding the likelihood that such a period will exceed the remainder of the prisoner’s natural life: see the Convention Rights (Compliance) (Scotland) Act 2001.

Third, there are five countries which make no provision for parole for life prisoners: Iceland, Lithuania, Malta, the Netherlands and Ukraine. These countries do, however, allow life prisoners to apply for commutation of life sentences by means of ministerial, presidential

or royal pardon. In Iceland, although it is still available as a sentence, life imprisonment has never been imposed.

Fourth, in addition to England and Wales, there are six countries which have systems of parole but which nevertheless make special provision for certain offences or sentences in respect of which parole is not available. These countries are: Bulgaria, Hungary, France, Slovakia, Switzerland (for sex or violent offenders who are regarded as dangerous and untreatable: and Turkey.”

21. Article 21 of the draft Law would empower the Panel to release a prisoner at any time on licence if satisfied that exceptional circumstances justified the prisoner's release on compassionate grounds. Before releasing a prisoner under this provision, however, the Panel would be required to consult the Minister, unless the circumstances were such as to render consultation impracticable.
22. In the normal run of cases where a prisoner had served the minimum sentence laid down by the sentencing court, the prisoner would be able, under Article 19, to require the Minister to refer his or her case to the Panel. If the Panel were satisfied that it was no longer necessary for the protection of the public that the life prisoner should be confined in prison, the Panel would be required to order the prisoner's release on licence. If the prisoner were not released, a further reference would not be able to be made until 2 years had elapsed.

Financial and manpower implications

This Draft Law has no implications for the financial or manpower resources of the States.

Human Rights

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

Criminal Justice (Life Sentences) (Jersey) Law 201-

This Note has been prepared in respect of the Draft Criminal Justice (Life Sentences) (Jersey) Law 201- (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

1. By way of a preliminary observation, the Report to this *Projet de Loi* has been prepared with the assistance of the Law Officers’ Department and already addresses in detail the implications of the Judgment of the Grand Chamber of the European Court of Human Rights given in the case of *Vinter and Others v. the United Kingdom*¹⁷ (Applications Nos. 66069/09, 130/10 and 3896/10) and the manner in which the issues arising from that judgment have been addressed in the draft Law.
2. It may be noted that the Court Of Appeal (Criminal Division), on 18th February 2014 in the case of *McLoughlin* [2014] EWCA Crim 188, re-affirmed that the regime for reducibility of the sentence has to be in place at the time of imposing the whole life order. This is pertinent to the absence in Jersey legislation of relevant statutory provision for such a regime, and the need for such provision to be made (as it is in the draft Law).
3. The Court of Appeal also held that the regime under s.30 of the Crime (Sentences) Act 1997 for reducibility did in fact satisfy article 3 ECHR (but it may also be noted that this is subject to appeal to the Supreme Court). In any event the grounds in the draft Law, on which the sentence may be reviewed after 25 years, are clearly aimed at the satisfying the criteria in *Vinter*, which they undoubtedly do.
4. The following was said in relation to **P.84/2013** and applies equally to this draft Law insofar as it adds to the provisions of the 2005 Law.

Article 6 ECHR

5. The draft Law engages Article 6 as it involves the determination of the minimum period a person sentenced to life imprisonment must serve before being able to benefit from early release provisions. The 2005 Law provided for this in circumstances where a life sentence was required by law, and the purpose of the draft Law is to extend this regime to cases where the Royal Court in its discretion imposes a life sentence.
6. The draft Law only makes provision for the minimum period to be ordered by the Court and does not prescribe the actual minimum period itself, leaving this decision to the Court. This therefore guarantees that the determination, of when a person may be able to benefit from early release, shall be made by the Royal Court, a self-evidently independent and impartial tribunal for the purposes of article 6 ECHR.

¹⁷ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122664>

7. The 2005 Law was introduced to cure the article 6 defect, as identified in a House of Lords case, whereby the Home Secretary made this determination as opposed to an independent court. For more details on the background and the article 6 reasoning for bringing the 2005 Law into force, members are referred to **P.80/2005**.
8. The draft Law does not introduce anything which might undermine article 6 ECHR but instead, it extends an already article 6 compliant regime to discretionary life sentences, as well as statutory life sentences.
9. **The draft Law is therefore compatible with article 6 ECHR.**
10. No other provisions of the ECHR are engaged by the draft Law. **Article 5 ECHR** provides of course for the right to liberty, but this right is qualified by allowing deprivation when a person is convicted of an offence by a competent court. This does not therefore need to be considered in detail.

Explanatory Note

This draft Law would repeal and replace, with changes, the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005. The 2 main changes relate to (a) giving a court the power to order a minimum period of imprisonment when passing a “discretionary life sentence” (explained below) and (b) making provision for prisoners sentenced to life imprisonment to be released from prison on licence. These changes are set out in Parts 3 and 4 of the draft Law and explained in more detail below.

Part 1 – Interpretation

Article 1 is an interpretation provision. In particular it defines a “mandatory life sentence” as a sentence of life imprisonment that is fixed by law, that is, where a court is required by law to impose such a sentence. Conversely, “discretionary life sentence” is defined to mean a sentence of life imprisonment which is not a mandatory life sentence. The Article also defines a “life prisoner” as a person serving in Jersey a sentence in respect of whom an order for a minimum period of imprisonment has been made under this Law. “Minister” means the Minister for Home Affairs.

Article 2 sets out the meaning of “racially or religiously aggravated murder” and *Article 3* sets out the meaning of “murder which is aggravated by sexual orientation or disability”. These terms are used in Article 6(2) as cases that would normally be regarded as particularly serious for the purpose of determining an appropriate starting point for a minimum period of imprisonment where a person has been given a mandatory life sentence.

Part 2 – Minimum periods of imprisonment for mandatory life sentences

Article 4 requires a court to fix an appropriate starting point in accordance with Article 5, 6, 7 or 8, as the case may be, for a minimum period of imprisonment in relation to an offender who has been given a mandatory life sentence by the court.

Article 5 sets out the appropriate starting point in exceptionally serious cases as being the whole of the offender’s life if the offender was aged at least 21 years at the time of the commission of the offence and the court considers the offence to be exceptionally serious having regard to the factors set out in Article 5. These factors include murders involving abduction, sexual or sadistic behaviour towards a child or of at least 2 persons; murder for a political, religious or ideological cause, and a murder by a previously convicted murderer.

Article 6 sets out the appropriate starting point for particularly serious cases as 30 years if the offender was aged at least 18 years at the time of the commission of the offence, the court does not consider Article 5 to apply and the court considers the offence to be particularly serious having regard to the factors set out in Article 6. These factors include the murder of police officers; murder involving firearms; murder for gain; murder involving sexual or sadistic behaviour; murder of at least 2 persons, murder which is racially or religiously aggravated or murder aggravated by sexual orientation or disability.

Article 7 sets out the appropriate starting point for other cases as 15 years if the offender was aged at least 18 years at the time of the commission of the offence and the court does not consider Article 5 or 6 to apply.

Article 8 sets out the appropriate starting point as 12 years if the offender was aged less than 18 years at the time of the commission of the offence.

Article 9 requires a court to consider any aggravating and mitigating factors, as set out in that Article. The aggravating factors are those set out in Articles 5 and 6. The mitigating factors relate to lack of intention to kill; mental disorder or disability, provocation, self-defence, mercy killing and age.

Article 10 requires the court to order a minimum period of imprisonment having fixed an appropriate starting point under Article 4 and having considered any aggravating or mitigating factors under Article 9. The effect of an order of a minimum period of imprisonment concerns the time at which a prisoner may be released from prison on licence.

Article 11 gives the court power to order a minimum period of imprisonment under Article 10 of any length, including the whole of an offender's life, if the offender was aged at least 21 years at the time of the offence.

Article 12 provides that the court must order a minimum period of imprisonment that is the whole of an offender's life if the offender was aged at least 21 years at the time of the offence and the court, having regard to the principles set out in Article 5, 6, 7, 8 or 9, as the case may be, considers that such a period is justified having regard to the seriousness of the offence (whether by itself or in combination with other offences).

Article 13 provides that the court must give its reasons in open court for the minimum period of imprisonment which it has ordered under Article 10.

Part 3 – Minimum periods of imprisonment for discretionary life sentences

Article 14 requires a court to order a minimum period of imprisonment where it sentences an offender to a discretionary life sentence. As stated above in relation to Article 10, the effect of an order of a minimum period of imprisonment concerns the time at which a prisoner may be released from prison on licence.

Article 15 allows the court to order a minimum period of imprisonment of any length. This may include a minimum period of imprisonment that is the whole of the offender's life, but only if the offender was aged at least 21 years at the time of the offence and the court considers that such a period is justified having regard to the seriousness of the offence (whether by itself or in combination with other offences).

Article 16, the equivalent to Article 13, provides that the court must give its reasons in open court for the minimum period of imprisonment which it has ordered under Article 14.

Part 4 – Release on Licence

Part 4 sets out the early release provisions that apply to a life prisoner (as defined in Article 1), that is, an offender who is serving a life sentence in Jersey.

Article 17 provides for the establishment of a Panel comprising the Bailiff and 2 Jurats appointed by him to exercise the functions conferred on the Panel under this Part.

Article 18 sets out general provisions relating to the release from prison on licence of a life prisoner. It provides that a licence remains in force until the death of the life prisoner unless previously revoked by the Minister on the direction of the Panel. A life prisoner who is recalled to prison following such revocation has the right to be informed of the reasons for the recall and to make representations. Following consideration of such representation, if the Panel so directs, the Minister must release the prisoner from prison on licence. The Panel can specify conditions in a licence and modify or cancel such conditions at any time.

Article 19 applies to a life prisoner who has served the minimum period of imprisonment ordered by a court under Article 10 or 14. Such a life prisoner can require the Minister to refer his or her case to the Panel. The Panel can, if satisfied that

the life prisoner's detention in prison is no longer necessary for the protection of the public, direct the Minister to release the life prisoner from prison on licence.

Article 20 applies to a life prisoner who is subject to an order for a minimum period of imprisonment of 25 years or more (including a minimum sentence for the whole of the person's life) and who has served at least 25 years of his or her sentence. Such a life prisoner can require the Minister to refer his or her case to the Panel. The Panel can, if satisfied that the life prisoner's detention in prison is no longer necessary for the protection of the public and no longer necessary for retribution or deterrence to others, direct the Minister to release the life prisoner from prison on licence.

Article 21 allows the Panel, after consulting the Minister, to release a life prisoner from prison on licence at any time on compassionate grounds in exceptional circumstances.

Part 5 – Miscellaneous and Closing Provisions

Article 22 provides that nothing in this Law restricts the application of any laws relating to previous convictions, bail or a guilty plea.

Article 23 provides that nothing is to prevent or limit the application of this Law to a person who commits an offence before this Law comes into force.

Article 24 repeals the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 ("2005 Law").

Article 25 provides that, notwithstanding the repeal by Article 23, the transitional provision in Article 19 of the 2005 Law relating to persons sentenced before that Law came into force shall be treated as continuing.

Article 26 makes a consequential amendment to the Court of Appeal (Jersey) Law 1961 to substitute a reference to this Law for a reference to the 2005 Law.

Article 27 allows the States by Regulations to make transitional and savings provisions and to amend any enactment in consequence of any provision of this Law and to amend any provision of this Law by Regulations.

Article 28 sets out the title of this Law and provides that it will come into force 7 days after registration.



Jersey

DRAFT CRIMINAL JUSTICE (LIFE SENTENCES) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT CRIMINAL JUSTICE (LIFE SENTENCES) (JERSEY) LAW 201-

A LAW to make provision for a minimum period of imprisonment to be ordered by a court when a person is sentenced to life imprisonment and for review of such a person's detention and release from prison on licence

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“child” means a person who has not attained the age of 18 years;

“discretionary life sentence” means a sentence of life imprisonment which is not a mandatory life sentence;

“licence”, in relation to the release of a life prisoner from prison, shall be construed in accordance with Article 18;

“life prisoner” means a person serving in Jersey a sentence in respect of which an order for a minimum period of imprisonment has been made;

“mandatory life sentence” means a sentence of life imprisonment which is fixed by law as described in paragraph (2);

“minimum period of imprisonment” means the period specified by a court in an order under Article 10 or Article 14;

“Minister” means the Minister for Home Affairs;

“murder which is aggravated by sexual orientation or disability” shall be construed in accordance with Article 3;

“murder which is racially or religiously aggravated” shall be construed in accordance with Article 2;

“prison” includes any form of custody or detention in which a person is lawfully placed under a sentence of life imprisonment;

“starting point”, in relation to an offender, means a period calculated under Article 5, 6, 7 or 8, as the case may be, in relation to the offender.

- (2) In this Law, a sentence of life imprisonment is taken to be fixed by law if a court that finds a person guilty of the offence to which the sentence relates must, by law, impose that sentence.
- (3) In this Law, a reference to a sentence of life imprisonment includes a sentence of custody for life or detention during Her Majesty’s pleasure.

2 Meaning of “racially or religiously aggravated murder”

- (1) For the purposes of this Law, a murder is racially or religiously aggravated if –
 - (a) at the time of, or immediately before or after, committing the murder the offender demonstrates towards the victim of the offence hostility based on the victim’s membership of (or presumed membership of), or association with, a racial or religious group; or
 - (b) the offence is motivated wholly or partly by hostility –
 - (i) towards members of a racial or religious group based on their membership of that group, or
 - (ii) towards persons who associate with a racial or religious group.
- (2) For the purposes of paragraph (1)(a) or (b), it is immaterial whether or not the offender’s hostility is also based, to any extent, on –
 - (a) the fact or presumption that any person or group of persons belongs to any racial or religious group; or
 - (b) any other factor not mentioned in that paragraph.
- (3) In this Article –

“presumed” means presumed by the offender;

“racial group” means a group of persons that may be defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

3 Meaning of “murder aggravated by sexual orientation or disability”

- (1) For the purposes of this Law, a murder is aggravated by sexual orientation or disability if –

- (a) at the time of, or immediately before or after, committing the murder, the offender demonstrates towards the victim of the offence hostility based on –
 - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
 - (ii) a disability (or presumed disability) of the victim; or
 - (b) the offence is motivated wholly or partly –
 - (i) by hostility towards persons who are of a particular sexual orientation, or
 - (ii) by hostility towards persons who have a disability or a particular disability.
- (2) In this Article –
- “disability” means any physical or mental impairment;
- “presumed” means presumed by the offender;
- “sexual orientation” of a person includes whether the person engages in prostitution.

PART 2

MINIMUM PERIODS OF IMPRISONMENT FOR MANDATORY LIFE SENTENCES

4 Starting points

A court which sentences an offender to a mandatory life sentence shall fix, in accordance with Articles 5, 6, 7 or 8, as the case may be, the appropriate starting point in relation to the offender for the purposes of Article 10.

5 Starting point for exceptionally serious cases

- (1) The appropriate starting point in relation to an offender who is given a mandatory life sentence shall be the whole of the offender’s life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the starting point relates; and
 - (b) the court considers that the offender’s offence, or the combination of the offender’s offence and other offences of the offender that are associated with the offence, is exceptionally serious.
- (2) Without limiting the generality of paragraph (1), cases that would normally be regarded as exceptionally serious include the following –
 - (a) murder of 2 or more persons, where each murder involves any of the following –
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim,

- (iii) sexual or sadistic conduct;
- (b) murder of a child, if the murder involves the abduction of the child or sadistic or sexual motivation;
- (c) murder for the purposes of advancing a political, religious or ideological cause;
- (d) murder by an offender previously convicted of murder.

6 Starting point for particularly serious cases

- (1) The appropriate starting point in relation to an offender who is given a mandatory life sentence shall be the period of 30 years if –
 - (a) the court does not consider that the offender’s case falls within Article 5(1);
 - (b) the offender was 18 years of age or older when he or she committed the offence or offences to which the starting point relates; and
 - (c) the court considers that the offender’s offence, or the combination of the offender’s offence and other offences of the offender that are associated with the offence, is particularly serious.
- (2) Without limiting the generality of paragraph (1), cases that would normally be regarded as particularly serious include the following –
 - (a) murder of a police officer, or prison officer, in the course of the officer’s duty;
 - (b) murder involving the use of a firearm or explosives;
 - (c) murder for gain (such as murder in the course of a robbery or burglary, or for payment or in the expectation of gain as a result of death);
 - (d) murder done with the intention of obstructing or interfering with the course of justice;
 - (e) murder involving sexual or sadistic conduct;
 - (f) murder of 2 or more persons;
 - (g) murder which is racially or religiously aggravated;
 - (h) murder which is aggravated by sexual orientation or disability.

7 Starting point for other cases where offence committed whilst offender was an adult

The appropriate starting point in relation to an offender who is given a mandatory life sentence shall be the period of 15 years if –

- (a) the court does not consider that the offender’s case falls within Article 5(1) or 6(1); and
- (b) the offender was 18 years of age or older when he or she committed the offence or offences to which the starting point relates.

8 Starting point for other cases where offence committed while offender was a child

The appropriate starting point in relation to an offender who is given a mandatory life sentence shall be the period of 12 years if the offender had not attained the age of 18 years when he or she committed the offence or offences to which the starting point relates.

9 Aggravating and mitigating factors

- (1) After having fixed a starting point in relation to an offender, the court shall take into account any aggravating or mitigating factors, to the extent that it has not allowed for those factors in fixing the starting point.
- (2) Aggravating factors that may be relevant to the offence of murder include the following –
 - (a) the factors mentioned in Articles 5(2) and 6(2);
 - (b) a significant degree of planning or premeditation;
 - (c) that the victim was particularly vulnerable because of age or disability;
 - (d) mental or physical suffering inflicted on the victim before death;
 - (e) the abuse of a position of trust;
 - (f) the use of duress or threats against another person to facilitate the commission of the offence;
 - (g) that the victim was providing a public service or performing a public duty;
 - (h) concealment, destruction or dismemberment of the body.
- (3) Mitigating factors that may be relevant to the offence of murder include the following –
 - (a) an intention to cause serious bodily harm rather than to kill;
 - (b) lack of premeditation;
 - (c) that the offender suffered from any mental disorder or mental disability which, although not within Article 3(1) of the Homicide (Jersey) Law 1986¹, lowered the degree of culpability of the offender;
 - (d) that the offender was provoked (for example by prolonged stress) in a way not amounting to the defence of provocation;
 - (e) that the offender acted to any extent in self-defence;
 - (f) a belief by the offender that the murder was an act of mercy;
 - (g) the age of the offender.

10 Court to order minimum period of imprisonment

The court shall, after having –

- (a) fixed under Article 4 a starting point in relation to an offender; and

- (b) considered under Article 9 aggravating or mitigating factors in relation to the offender,

order in relation to the offender a minimum period of imprisonment in respect of the offence or offences.

11 Determination of duration of minimum period of imprisonment

- (1) The court may, under Article 10, order a minimum period of imprisonment of any length, including a period that is the whole of the offender's life, irrespective of the starting point fixed by the court.
- (2) Notwithstanding paragraph (1), the court shall only order a minimum period of imprisonment that is the whole of the offender's life if the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates.
- (3) In determining the length of a minimum period of imprisonment in relation to an offender, the court may take into account any period that, before the offender was sentenced for the offence or offences to which the minimum period of imprisonment relates, he or she spent on remand in relation to the offence or offences.

12 When court shall order minimum period of imprisonment to be for whole of offender's life

- (1) The court shall, under Article 10, order a minimum period of imprisonment that is the whole of an offender's life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates; and
 - (b) the court is satisfied that such a period is justified because of the seriousness of the offence or the seriousness of the combination of the offence and other offences associated with the offence.
- (2) In determining whether to make an order under Article 10 of a minimum period of imprisonment that is the whole of an offender's life, the court shall have regard to the principles set out in Articles 5, 6, 7, 8 and 9.

13 Court must give reasons for order made

After making an order under Article 10 the court shall state in open court, in ordinary language, its reasons for making the order.

PART 3

MINIMUM PERIODS OF IMPRISONMENT FOR DISCRETIONARY LIFE SENTENCES

14 Court to order minimum period of imprisonment

A court which sentences an offender to a discretionary life sentence shall order, in relation to that offender, a minimum period of imprisonment in respect of that offence or offences.

15 Determination of minimum period of imprisonment

- (1) The court may, under Article 14, order a minimum period of imprisonment of any length, including a period that is the whole of the offender's life.
- (2) Notwithstanding paragraph (1), the court shall only order a minimum period of imprisonment that is the whole of the offender's life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates; and
 - (b) the court is satisfied that such a period is justified because of the seriousness of the offence or the seriousness of the combination of the offence and other offences associated with the offence.
- (3) In determining the length of a minimum period of imprisonment in relation to an offender, the court may take into account such matters as it thinks fit, including any of the following –
 - (a) the seriousness of the offence;
 - (b) the seriousness of the combination of the offence and other offences associated with the offence; and
 - (c) any period that, before the offender was sentenced for the offence to which the minimum period of imprisonment relates, the offender spent on remand in relation to the offence.

16 Court must give reasons for order made

After making an order under Article 14 the court shall state, in open court, in ordinary language, its reasons for making the order.

PART 4

RELEASE ON LICENCE

17 Panel

- (1) For the purposes of this Part, there shall be a Panel comprising the Bailiff and 2 Jurats appointed by the Bailiff.

- (2) Subject to paragraph (3), the Panel shall determine its own procedures for the purposes of exercising its functions under this Part.
- (3) A decision is binding on the Panel if it is agreed by the Bailiff and at least one other member of the Panel.

18 General provisions relating to licences

- (1) Where a life prisoner is released from prison on licence under this Part, the licence shall, unless previously revoked under paragraph (4), remain in force until his or her death.
- (2) A life prisoner subject to a licence shall be under the supervision of such person as may be specified in the licence and shall comply with such conditions as may be specified in the licence by the Panel.
- (3) The Panel may modify or cancel any condition in the licence at any time.
- (4) If so directed by the Panel in the case of any life prisoner who has been released from prison on licence under this Part, the Minister shall revoke the licence and recall the life prisoner to prison.
- (5) A life prisoner recalled to prison under paragraph (4) –
 - (a) on his or her return to prison, shall be informed of the reasons for his or her recall and of his or her right to make representations; and
 - (b) may make representations in writing with respect to his or her recall.
- (6) If, after consideration of the representations made under paragraph (5), the Panel directs the immediate release from prison on licence of the life prisoner, the Minister shall release the prisoner on licence immediately.

19 Duty to release on licence certain life prisoners

- (1) In this Part, a reference to the relevant part of a life prisoner's sentence is a reference to the part of the sentence specified in an order under Article 10 or 14 made in respect of the life prisoner for a minimum period of imprisonment.
- (2) If a life prisoner is serving 2 or more sentences in respect of which there is an order for a minimum period of imprisonment, this Article does not apply to him or her unless he or she has served the relevant part of each such sentence.
- (3) As soon as –
 - (a) a life prisoner has served the relevant part of his or her sentence; and
 - (b) the Panel has directed the life prisoner's release from prison following a referral of the life prisoner's case by the Minister,the Minister must release the life prisoner from prison on licence.
- (4) A life prisoner may require the Minister to refer his or her case to the Panel at any time –

- (a) after he or she has served the relevant part of his or her sentence; and
 - (b) where there has been a previous referral by the Minister under this Article, after the end of the period of 2 years beginning with the disposal of that referral.
- (5) The Panel shall not give a direction under paragraph (3) unless the Panel is satisfied that it is no longer necessary for the protection of the public that the life prisoner should be confined in prison.
- (6) In determining for the purposes of this Article whether a life prisoner has served the relevant part of his or her sentence, no account shall be taken of any time the prisoner is unlawfully at large within the meaning of Article 30 of the Prison (Jersey) Law 1957².

20 Power to release on licence other life prisoners

- (1) The Panel may, at any time, following a referral by the Minister, direct the Minister to release from prison on licence a life prisoner in respect of whom there is an order for a minimum sentence of more than 25 years (including a minimum sentence for life) if –
- (a) the life prisoner has served 25 years or more of his or her sentence; and
 - (b) the Panel is satisfied that it is no longer necessary that the life prisoner should be confined in prison for each of following the purposes –
 - (i) retribution and deterrence to others,
 - (ii) rehabilitation of the prisoner, and
 - (iii) protection of the public.
- (2) A life prisoner may require the Minister to refer his or her case to the Panel at any time –
- (a) after he or she has served 25 years of his or her sentence; and
 - (b) where there has been a previous referral by the Minister under this Article, after the end of the period of 2 years beginning with the disposal of that referral.
- (3) In determining for the purposes of this Article whether a life prisoner has served 25 years or more of his or her sentence, no account shall be taken of any time the prisoner is unlawfully at large within the meaning of Article 30 of the Prison (Jersey) Law 1957.

21 Power to release on licence life prisoners on compassionate grounds

- (1) The Panel may, at any time, release a life prisoner from prison on licence on compassionate grounds if it is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.
- (2) Before releasing a prisoner under paragraph (1), the Panel shall consult the Minister, unless the circumstances are such to render such consultation impracticable.

PART 5

MISCELLANEOUS AND CLOSING PROVISIONS

22 Law not to restrict application of certain other laws

Nothing in this Law restricts the application of any law relating to previous convictions, bail or a guilty plea.

23 Transitional provision – application to offences committed before this Law comes into force

Nothing is to be taken to prevent or limit the application of this Law to a person who commits an offence before this Law comes into force.

24 Repeal

The Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005³ is repealed.

25 Saving provision

Notwithstanding the repeal of the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005, Article 19 of that Law in relation to applications for orders shall be treated as if it continued in force in respect of persons sentenced before that Law came into force and references to the powers of the Royal Court under that Law shall be construed as referring to the equivalent powers under this Law.

26 Court of Appeal (Jersey) Law 1961 amended

In Article 24(2) of the Court of Appeal (Jersey) Law 1961⁴ for the words “the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005” there shall be substituted the words “Article 10 of the Criminal Justice (Life Sentences) (Jersey) Law 201-⁵”.

27 Regulations

- (1) The States may, by Regulations –
 - (a) make such transitional provisions and savings as it considers necessary or expedient, or amend any enactment, in consequence of any provision of this Law; or
 - (b) amend any provision of this Law.
- (2) Any Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

28 Citation

This Law may be cited as the Criminal Justice (Life Sentences) (Jersey) Law 201-. and shall come into force 7 days after it is registered.

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- ¹ *chapter 08.600*
 - ² *chapter 23.775*
 - ³ *L.11/2005 (chapter 08.335)*
 - ⁴ *chapter 07.245*
 - ⁵ *P.113/2014*