

STATES OF JERSEY



DRAFT SEXUAL OFFENCES (JERSEY) LAW 201- (P.18/2018): SECOND AMENDMENT

**Lodged au Greffe on 6th March 2018
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

DRAFT SEXUAL OFFENCES (JERSEY) LAW 201- (P.18/2018):
SECOND AMENDMENT

PAGE 55, ARTICLE 41 –

For Article 41 substitute the following Article –

“41 Mixed indictments: mode of trial

- (1) For the purpose of the Loi (1864) réglant la Procédure Criminelle, on an indictment falling within paragraph (2), the Royal Court is to decide, having regard to the nature and gravity of the offences and after hearing any submissions from the defence and the prosecution, the method by which the defendant is to be tried.
- (2) An indictment falls within this paragraph if it charges 2 or more offences, of which –
 - (a) at least one is an offence under customary law; and
 - (b) at least one other is an offence under any Part of this Law.”.

EDUCATION AND HOME AFFAIRS SCRUTINY PANEL

REPORT

Introduction

1. The Education and Home Affairs Scrutiny Panel has undertaken a review of the [Draft Sexual Offences \(Jersey\) Law 201-](#) (the “draft Law”), which has been lodged for debate by the States Assembly on 20th March 2018. The Panel intends to produce comments detailing the work it has undertaken prior to the debate taking place, however, in advance of the publication of its full comments, the Panel has identified 3 amendments to the draft Law which it shall be lodging separately.

Amendment to Article 41

2. This amendment seeks to address concerns that have been raised in relation to Article 41. As currently drafted, the draft Law provides for the statutory offences within Part 2 (non-consensual offences), Part 3 (offences by adults against children aged 12 or younger), and Part 4 (offences by adults against children aged 13 to 15) to be tried by jury (as is the case with customary law offences).
3. The Panel received a submission from Jersey Action Against Rape (“JAAR”) in relation to the conviction rates of rape cases in the Island, and the concern that juries are not an appropriate mode of trial for these type of offences. The submission states –

Submissions from JAAR

“JAAR is disappointed to learn that despite the obvious advantages of trials before the Jurats, the offences of Rape and inciting sexual acts with young children (inter-alia) will still be heard before juries. JAAR wish to be clear that it has no difficulty in principle with the concept of a trial by jury. However, JAAR remains concerned that the practical impossibility of effectively educating potential jurors about some of the commonly held misconceptions regarding rape and sexual assault in general will mean that it still proves extremely difficult to secure convictions for those indicted for such offences.¹”

4. The Panel met with representatives of JAAR and discussed the issue further and agreed that the myths around rape and sexual assault are a common issue within society.² Educating the general public on issues relating to these myths is a high priority for JAAR, however in reality this is a very difficult and time-consuming task, with no guarantee of the prejudices being addressed.
5. Within its submission, JAAR made the suggestion that cases of rape and indecent assault, if tried by the Jurats, could mitigate many of the issues that surrounded existing prejudices in potential jurors. It was also highlighted to the Panel that training on the myths and perceived prejudices around rape would be more effective if targeted at the Jurats –

¹ [Written Submission – Jersey Action Against Rape – 12th January 2018](#)

² <https://rapecrisis.org.uk/mythsvsrealities.php>

Submissions from JAAR

“If it was the case that at least some sexual offences, such as rape and indecent assault, were always to be tried by Jurats, it would be eminently possible to ensure that a specialist tribunal was always empanelled to hear these cases. This would ensure that all of the issues that arose, such as those which often arise with questions of consent, would be fully understood by the tribunal. This would also mitigate the risk of any misconceptions resulting in a not-guilty verdict.”³

6. The Panel questioned the Minister for Home Affairs on this issue at a public hearing on Monday 19th February 2018. H.M. Attorney General provided the following guidance on the notion of rape trials being tried by the inferior number (i.e. Judge and 2 Jurats) and the reason why it was not taken forward by the draft Law –

H.M. Attorney General:

“In order to have a higher success rate it is important that we educate and train not only police officers, lawyers and judges but the public at large and certainly that would be an easier task if, of course, the tribunal of fact was the Jurats and not a jury and one can easily appreciate that. But if we simply codified the offence of rape, as we have done, and created a number of new offences without more then they would automatically be tried by the inferior number because, as you know, statutory offences are tried by the judge and 2 Jurats and Customary Law offences by the jury unless we have specified to the contrary. The view was that it would not be right simply to dispose of a defendant’s right to a jury trial when confronted by an allegation of a serious sexual offence and that is why the draft law preserves the right to jury trial for those offences; the offences which would traditionally be tried by a jury in similar offences.”⁴

7. Whilst the Panel acknowledges the right of a defendant to elect to be tried by a jury (especially in light of the seriousness of the offence of rape), there is still concern over whether or not appropriate training and resources can be provided to the general public to guarantee a jury is fully informed on the myths of rape and sexual assault. It is also concerned by anecdotal evidence about the low number of convictions for rape in 2017. According to JAAR, of the 12 cases put forward to the Royal Court in 2017, none resulted in a prosecution. The Panel questioned this further at the public hearing with the Minister for Home Affairs –

H.M. Attorney General:

“There was a conviction in one case of rape last year and it is right though to observe, as JAAR has, that there is a disappointingly high number of acquittals.”⁵

³ [Written Submission – Jersey Action Against Rape – 12th January 2018](#)

⁴ [Public Hearing with the Minister for Home Affairs – 19th February 2018 p.7](#)

⁵ [Public Hearing with the Minister for Home Affairs – 19th February 2018 p.7](#)

8. The Panel has requested figures relating to the number of prosecutions in relation to rape cases over the past 5 years, however these have not been received in time to provide them in this report. It is the intention of the Panel to put forward these figures when it reports in full on the draft Law prior to the debate.
9. It is the opinion of the Panel that, based on the evidence it has received on this matter, the decision as to whether serious sexual offences are tried by Jurats or Jury is a debate that is needed by the States Assembly. During the public hearing on the draft Law, the Minister agreed that a debate on this issue would be welcomed –

Minister for Home Affairs:

“There was discussion and I think, as the Attorney General has described, it was decided that because under Customary Law rape had the ability to elect a jury trial then it should continue to do so but, as I say, if scrutiny think that that is an issue that should be debated by the Assembly then I welcome that debate.”⁶”

10. Initially the Panel agreed to bring forward an amendment which would allow for trial by Jurat for the offences of Rape (Article 5) and Sexual Penetration without consent (Article 6). However, it was suggested by the Attorney General that this narrow approach could create difficulty in the Law, especially when mixed indictments were being considered. Furthermore, it was noted that provision would still exist for a trial by jury for a defendant charged under Parts 3 and 4 of the draft Law, and offences contained within those parts could be seen as equally as serious as those of rape and sexual penetration without consent. It was suggested that trying all offences under Parts 2, 3 and 4 by Jurat would therefore address this problem and would provide a unified approach to the mode of trial for serious sexual offences.
11. After discussion, the Panel has agreed that it would bring forward this amendment to have all offences under Parts 2, 3 and 4 of draft Law tried by Jurats as opposed to jury trial as it stands in the draft Law.
12. The Panel has acknowledged that this approach could potentially raise concerns about the human rights implications of denying trial by jury to defendants charged with serious sexual offences. The Panel has addressed this concern with the Law Officers’ Department and has been informed that the changes will indeed be compliant with relevant human rights legislation.

Financial and manpower implications

13. There are no financial or manpower implications for the States arising from the adoption of this amendment.

⁶ [Public Hearing with the Minister for Home Affairs – 19th February 2018 p.8](#)