



Jersey

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CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 2005

Arrangement

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CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 2005

A LAW prescribing the period that offenders sentenced to mandatory life imprisonment must spend in prison, and for connected purposes.

Adopted by the States 24th May 2005

Sanctioned by Order of Her Majesty in Council 7th June 2005

Registered by the Royal Court 17th June 2005

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;

“mandatory minimum period of imprisonment” has the meaning assigned to it by Article 10(2);

“murder which is aggravated by sexual orientation or disability” has the meaning assigned to it by Article 3;

“murder which is racially or religiously aggravated” has the meaning assigned to it by Article 2;

“prescribed” means prescribed by Regulations made under Article 19;

“starting point”, in relation to an offender, means a period calculated under Article 5, 6, 7 or 8 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, “early release provisions” means the prescribed provisions of any enactment of Jersey, or of any of the other British Islands, that are provisions in accordance with which an offender who is in prison, custody or detention under a sentence of life imprisonment may be released from the imprisonment, custody or detention before the completion of the sentence.
- (4) 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 sub-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 –

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- (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

MANDATORY MINIMUM IMPRISONMENT ORDERS

4 Starting points

A court that, after this Law comes into force, sentences an offender to life imprisonment as fixed by law for an offence or offences shall fix, in accordance with Articles 5, 6, 7 and 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 sentenced to life imprisonment as fixed by law for an offence or offences 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 sentenced to life imprisonment as fixed by law for an offence or offences 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 while offender was an adult

The appropriate starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences 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 sentenced to life imprisonment as fixed by law for an offence or offences 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 1986,¹ 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 mandatory minimum period of imprisonment

- (1) The court shall, after having –

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- (a) fixed under Article 4 a starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences; and
 - (b) considered under Article 9 aggravating or mitigating factors in relation to the offender,

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

- (2) A mandatory minimum period of imprisonment in relation to an offender is the period specified in an order under paragraph (1) in relation to the offender during which early release provisions shall not apply in relation to the offender in respect of the offence or offences to which the order relates.
- (3) If the court orders a mandatory minimum period of imprisonment under paragraph (1), early release provisions shall not apply in relation to the offender in respect of the offence or offences to which the order relates –
 - (a) until the end of the period; or
 - (b) if the order is made for the whole of the offender's life – at any time during the remainder of the offender's life.
- (4) If the court orders a mandatory minimum period of imprisonment that is less than the whole of the offender's life, the court shall order that early release provisions shall, after the end of the mandatory minimum period of imprisonment specified under paragraph (1), apply in relation to the offender in respect of the offence or offences to which the order relates.

11 Determination of duration of mandatory minimum period of imprisonment

- (1) The court may, under Article 10, order a mandatory 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 mandatory 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 mandatory 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 mandatory minimum period of imprisonment relates, he or she spent on remand in relation to the offence or offences.

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

- (1) The court shall, under Article 10, order a mandatory 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

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- (b) the court is satisfied that early release provisions should not apply to the offender at any time 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 mandatory 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(1) the court shall state in open court, in ordinary language, its reasons for making the order.

PART 3

APPLICATION IN RELATION TO OTHER LAWS

14 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.

15 Effect of release in another jurisdiction on sentence in Jersey

If a person who is sentenced by a court in Jersey to a term of life imprisonment as fixed by law –

- (a) serves part of that term in a prison in any of the other British Islands; and
- (b) returns to Jersey after being released from custody,

the person is not to be taken to be unlawfully at large in Jersey only because he or she has not served all of the sentence ordered by the court in Jersey.

16 Appeal to Privy Council not restricted

Nothing in this Law shall be taken to restrict a right that a person or the Attorney General has to appeal to the Privy Council.

17 Court of Appeal (Jersey) Law 1961 amended

In Article 24 of the Court of Appeal (Jersey) Law 1961² –

- (a) for the words “A person” there shall be substituted the words “(1) A person”;
- (b) at the end there shall be added the following paragraphs –
 - “(2) The reference in paragraph (1)(c) to a sentence fixed by law shall not be taken to include a reference to an order imposed under the

Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005.

- (3) The Attorney General may, with the leave of the Court of Appeal, appeal against a sentence insofar as it consists of an order imposed under the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005, on the grounds that the order does not impose a mandatory minimum period of imprisonment of sufficient length, having regard to the circumstances of the offence or offences in relation to which the order relates.”.

18 Homicide (Jersey) Law 1986 amended

In Article 1 of the Homicide (Jersey) Law 1986, paragraph (2) shall be deleted.

PART 4

CONCLUDING PROVISIONS

19 Regulations

The States may make Regulations –

- (a) amending any provision of this Law; or
- (b) prescribing anything that this Law specifies shall be prescribed.

20 Transitional provision – application to offences

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.

21 Transitional provisions – applications for orders

- (1) A person who, before this Law came into force, was sentenced by a court in Jersey to a term of life imprisonment that is fixed by law may apply to the Royal Court to order a mandatory minimum period of imprisonment in relation to the person in respect of the offence or offences to which the sentence relates.
- (2) The Attorney General may apply to the Royal Court to order a mandatory minimum period of imprisonment in relation to a person in respect of an offence or offences for which the person was, before this Law came into force, sentenced by a court in Jersey to a term of life imprisonment that is fixed by law.
- (3) An application may be made under paragraph (1) or (2) in relation to a person whether or not any minimum period has been set by the court under Article 1(2) of the Homicide (Jersey) Law 1986 in relation to the person in respect of the offence or offences to which the application relates.

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- (4) At the hearing of an application under paragraph (1) or (2) in relation to a person, the Royal Court shall deal with the person under this Law as if the court had just sentenced him or her to life imprisonment for the offence or offences in respect of which the application is made.
 - (5) The Royal Court shall, at the hearing of an application under paragraph (1) or (2) in relation to a person, dismiss the application if the person has, in accordance with any early release provisions or on compassionate grounds, been released from custody in relation to the offence or offences to which the application relates, whether or not the person has subsequently been taken into custody for any reason.
 - (6) In determining the length of a mandatory minimum period of imprisonment to order under Article 10 in relation to a person to whom an application under paragraph (1) or (2) relates, the Royal Court may, in addition to taking into account any other matter that a court shall take into account in accordance with this Law, take into account any period that the person has spent in prison for the offence or offences to which the order is to relate.
 - (7) If a mandatory minimum period of imprisonment is, in accordance with this Article, set under Article 10 in relation to a person, any minimum period set by the court under Article 1(2) of the Homicide (Jersey) Law 1986 in relation to the person ceases to be of effect.

22 Citation and commencement

This Law may be cited as the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 and shall come into force on a day to be appointed by the States.

A.H. HARRIS

Deputy Greffier of the States.

¹ Chapter 08.600.

² Chapter 07.245.