



Jersey

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## CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 2003

### Arrangement

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## CRIMINAL JUSTICE (SUSPENSION OF PRISON SENTENCES) (JERSEY) LAW 2003

**A LAW** to enable a court to order, in specified cases, that an offender shall not be imprisoned in accordance with a sentence of imprisonment it has passed unless the offender is convicted of another offence, committed during a specified period, for which the offender may be imprisoned; and for related purposes.

*Adopted by the States*

*8th July 2003*

*Sanctioned by Order of Her Majesty in Council*

*13th November 2003*

*Registered by the Royal Court*

*12th December 2003*

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

### **1 Interpretation**

(1) In this Law –

“operational period”, in respect of a suspended sentence, means the period specified in respect of the suspended sentence in accordance with Article 2(1)(a) or, if a period is substituted for that period by an order made under Article 3(4)(c), the substituted period;

“sentence of imprisonment” does not include imprisonment –

- (a) in default of payment of a sum; or
- (b) for a failure to do or abstain from doing anything required to be done or to be left undone;

“supervision order” means an order made under Article 6(1);

“suspended sentence” means a sentence to which a suspension order relates;

“suspension order”, in respect of a sentence of imprisonment, means an order made in respect of that sentence in accordance with Article 2(1).

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- (2) A reference in this Law to an Article by number only is a reference to the Article of that number in this Law.
  - (3) A reference in an Article or any other division of this Law to a paragraph or sub-paragraph by number or letter only is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division.
  - (4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.
  - (5) If on an appeal a court passes a suspended sentence the court that imposed the original sentence shall for the purposes of this Law be taken to have passed the suspended sentence.
  - (6) For the purpose of this Law consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term of imprisonment.

## **2 Power to suspend sentence of imprisonment**

- (1) Except as provided by paragraph (5), a court that has sentenced an offender to a term of imprisonment of not more than 2 years may order that the offender shall not be imprisoned in accordance with that sentence unless –
  - (a) during a period specified in the order, being not less than one year and not more than 2 years, the offender commits in the Island a further offence punishable by imprisonment; and
  - (b) the court that convicts the offender for that offence makes an order under Article 3 that the offender shall be imprisoned, either for the original term or for a lesser term.
- (2) A court shall not make a suspension order unless it is satisfied that if it did not have the power to do so a sentence of imprisonment would still be an appropriate sentence.
- (3) If a court makes a suspension order it shall not –
  - (a) make a probation order in respect of the offender; or
  - (b) impose a term of imprisonment in respect of another offence of which the offender is convicted by or before the court or for which the offender is dealt with by the court unless the suspension order also applies in respect of that term of imprisonment,but the court is not otherwise prohibited from imposing on the offender any other penalty, sanction or obligation it has the power to impose by virtue of the offence or offences committed by the offender.
- (4) On passing a suspended sentence the court shall explain to the offender in ordinary language the offender's liability under Article 3 if during the operational period the offender commits an offence punishable by imprisonment.
- (5) A court has no power to make a suspension order in respect of –

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- (a) youth detention - being a sentence of detention in a young offenders institution imposed by virtue of Article 4(1) of the Criminal Justice (Young Offenders) (Jersey) Law 1994;<sup>1</sup> or
  - (b) a sentence of imprisonment that is to take effect during or after an existing term of imprisonment in respect of which no suspension order has been made.
- (6) The fact that a suspension order has been made in respect of a sentence of imprisonment has no effect on any right of appeal the offender may have in respect of that sentence.
- (7) If a court imposes consecutive terms of imprisonment or terms of imprisonment that are wholly or partly concurrent and the total term of imprisonment is more than 2 years the court has no power under this Article to make a suspension order in respect of any of those terms of imprisonment.

### **3 Conviction of further offence punishable by imprisonment**

- (1) This Article applies where –
- (a) a court has passed a suspended sentence in respect of an offender;
  - (b) a court has not made an order under paragraph (2) or (4)(a) in respect of that sentence; and
  - (c) the offender has been convicted of a further offence punishable by imprisonment committed during the operational period in respect of the suspended sentence.
- (2) Except as provided by paragraph (3) and Article 4, the court that convicted the offender of the further offence shall order that the offender shall be imprisoned in accordance with the original sentence with the term of imprisonment unaltered.
- (3) The court shall not make an order under paragraph (2) if it is satisfied that it would be unjust to do so having regard to any circumstances that have arisen since the suspended sentence was passed, including the facts of the further offence.
- (4) If by virtue of paragraph (3) a court does not make an order under paragraph (2) it shall state its reasons for not doing so and shall order –
- (a) that the offender shall be imprisoned in accordance with the original sentence but with the substitution of a lesser term of imprisonment for the original term;
  - (b) that the offender shall continue not to be imprisoned; or
  - (c) that the operational period in respect of the suspended sentence shall be varied by substituting for the original period a period ending not later than 2 years after the date of the variation.
- (5) When a court makes an order under paragraph (2) or (4)(a), it shall state in that order whether imprisonment in accordance with the original sentence is to start immediately or on the expiration of another term of imprisonment passed on the offender by that or another court.

- (6) Where the Royal Court could be required to make an order under this Article any question as to whether an offender has been convicted of an offence punishable by imprisonment shall be determined by the Bailiff sitting alone.
- (7) If a court makes an order under this Article and it is not the court that passed the suspended sentence it shall give details of the order it makes under this Article to the court that passed the suspended sentence.
- (8) For the purposes of any enactment conferring rights of appeal in criminal cases an order made by a court under this Article shall be treated as a sentence passed on the offender by the court that passed the suspended sentence.

#### **4 Power of Magistrate's Court under Article 3**

- (1) This Article applies where –
  - (a) Article 3 applies and, but for this Article, the Magistrate's Court would be required to make an order under that Article; and
  - (b) the relevant suspended sentence was passed by the Royal Court.
- (2) Where this Article applies the Magistrate's court may –
  - (a) commit the offender (on bail or in custody) to the Royal Court for an order to be made under Article 3 and for the offender to be sentenced for the subsequent offence; or
  - (b) deal with the offender in respect of the subsequent offence and make an order under Article 3(4)(b) that the offender shall continue not to be imprisoned under the suspended sentence.
- (3) If the Magistrate's Court acts in accordance with paragraph (2)(a) the Royal Court shall have –
  - (a) the power to make an appropriate order under Article 3; and
  - (b) the same power as the Magistrate's Court to sentence the offender for the subsequent offence.
- (4) If the Magistrate's Court acts in accordance with paragraph (2)(b) it shall give the Royal Court and the Attorney General details of the manner in which it dealt with the offender for the subsequent offence.

#### **5 Court fails to make order under Article 3**

- (1) If the Royal Court is satisfied that it or the Magistrate's Court should have made an order under Article 3 in respect of an offender but failed to do so it may order that the offender be apprehended or warned to appear before the Royal Court which may thereupon make an order under Article 3.
- (2) If the Magistrate's Court passed the relevant suspended sentence it shall have the same power under paragraph (1) as the Royal Court.

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**6 Court may order supervision**

- (1) Where a court passes a suspended sentence it may also make an order placing the offender under the supervision of a supervising officer, being either a probation officer (as that term is defined in the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée<sup>2</sup>) or another person appointed by the court.
- (2) A court does not require the consent of the offender before making a supervision order.
- (3) The court shall specify in a supervision order the period during which the offender is to be subject to supervision, being a period that does not exceed the operational period in respect of the suspended sentence.
- (4) The court shall –
  - (a) give a copy of the supervision order to the offender and to the supervising officer; and
  - (b) explain to the offender in ordinary language the effect of the order.
- (5) An offender in respect of whom a supervision order is in force shall –
  - (a) keep in touch with the supervising officer in accordance with instructions given to him or her by the officer; and
  - (b) notify the officer of any change of address.
- (6) A supervision order shall cease to have effect if before the end of the period specified in it –
  - (a) a court makes an order under Article 3(2) or (4)(a); or
  - (b) the order is discharged under paragraph (7) or replaced under paragraph (8).
- (7) A court that has made a supervision order may discharge it on the application of the supervising officer or the offender.
- (8) If a court makes an order under Article 3(4)(a) or (b) it may also make a supervision order in respect of the offender, which shall replace any supervision order already in effect.
- (9) If it appears to the Magistrate's Court that an offender in respect of whom a supervision order is in effect has not complied with an obligation under paragraph (5) it may order that the offender be apprehended or warned to appear before that Court and may thereupon enquire into the matter and if satisfied that the offender has failed to comply with the requirement may impose on him or her a fine not exceeding level 3 on the standard scale<sup>3</sup> and also impose a term of imprisonment, not exceeding one month, to be served if the fine is not paid within a specified period.
- (10) For the purposes of any enactment conferring rights of appeal in criminal cases a supervision order made by a court under this Article shall be treated as a sentence passed on the offender by that court.

**7 Legislative effect of suspended sentence**

Unless a contrary intention appears a suspended sentence shall be treated as a sentence of imprisonment for the purpose of all enactments.

**8 Rules of Court**

- (1) Provision may be made by Rules of Court for any purpose for which it appears to be necessary or expedient that provision should be made in connection with this Law.
- (2) The power to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948<sup>4</sup> shall include a power to make Rules for the purposes of this Article.

**9 Rehabilitation of Offenders (Jersey) Law 2001 amended**

- (1) For Article 2(4) of the Rehabilitation of Offenders (Jersey) Law 2001<sup>5</sup> there shall be substituted the following paragraph –

“(4) An individual shall not be treated as having failed to satisfy the condition in paragraph (2)(b) by reason only of –

- (a) the failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a binding over order;
- (b) the breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he or she is in fact so dealt with); or
- (c) a failure to comply with any requirement of a suspended sentence supervision order.”.

- (2) For Article 3(5) of the Rehabilitation of Offenders (Jersey) Law 2001<sup>6</sup> there shall be substituted the following paragraph –

“(5) For the purposes of this Article –

- (a) ‘sentence of imprisonment’ includes a sentence of penal servitude or hard labour, and ‘term of imprisonment’ shall be construed accordingly;
- (b) consecutive terms of imprisonment or of detention and terms that are wholly or partly concurrent, being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings, shall be treated as a single term;
- (c) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and

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- (d) a sentence imposed by a court outside the Island shall be treated as a sentence of that one of the descriptions in this Article which most nearly corresponds to the sentence imposed.”.

**10 Citation and commencement**

- (1) This Law may be cited as the Criminal Justice (Suspension of Prison Sentences) (Jersey) Law 2003.
- (2) It shall come into force on the seventh day following registration.

**M.N. DE LA HAYE**

*Greffier of the States.*

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<sup>1</sup> *Volume 1994-1995, page 38.*

<sup>2</sup> *Tome VII, page 188, Volume 1994-1995, page 24, Volume 1998, page 657 and Volume 2001, page 46.*

<sup>3</sup> *Volume 1992-1993, page 437.*

<sup>4</sup> *Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.*

<sup>5</sup> *Volume 2001, page 58.*

<sup>6</sup> *Volume 2001, page 63.*