STATES OF JERSEY

DRAFT CRIMINAL JUSTICE (PROCEDURES) (JERSEY) AMENDMENT LAW 202-

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Lodged au Greffe on 10th February 2026
by the Minister for Justice and Home Affairs
Earliest date for debate: 24th March 2026

STATES GREFFE

Jersey

DRAFT CRIMINAL JUSTICE (PROCEDURES) (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Justice and Home Affairs has made the following statement –

In the view of the Minister for Justice and Home Affairs, the provisions of the Draft Criminal Justice (Procedures) (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.R. Le Hegarat of St. Helier North**

Minister for Justice and Home Affairs

Dated: 6th February 2026

REPORT

In 2018, the Assembly approved the Criminal Procedure (Jersey) Law 2018, which made foundational improvements to the operation of the criminal justice system in Jersey. That Law has contributed significantly to the operation of a cohesive and efficient criminal courts system with effective systems for case management.

Unsurprisingly, a number of potential improvements have been identified in the eight years since its adoption. Some of these have resulted from changes in operational practice over the period, some from general shifts in expectations and the introduction of new legislation, and some minor issues have been raised which would ideally have been dealt with at inception. These matters are dealt with in Part One of the report.

While the process of refinement has been in train for some time, the updating of this Law has been given considerable impetus by the outcome of the recent cases concerning the collision at sea which resulted in the tragic loss of life on the fishing vessel L'Ecume II.

In the trial of one of the accused, the jury was unable to reach even a majority verdict, resulting in a 'hung jury' on the principal charge of manslaughter. That eventuality had been provided for in the Criminal Procedure (Jersey) Law as originally drafted, with provision made for a retrial to take place.

However, in 2018 the Assembly adopted an amendment to the Law from the (then) Education and Home Affairs Panel that removed the capacity to retry such cases. This left the possibility open that a jury could be 'hung', resulting in neither a guilty nor not guilty verdict, but removed the capacity to resolve that uncertainty by trying the matter again.

At the time of the original debate, the question of a hung jury was a theoretical one, which might occur at some point in future. Today, we have seen the significant confusion, expense, and distress that is caused by a trial ending in this uncertain manner.

To ensure that this unfortunate outcome does not reoccur, I have worked with the Law Officers and the judiciary to develop the proposals detailed in Part Two of this report, which will allow retrials in cases which result in a hung jury.

The Criminal Procedure Law does contain some existing provision for retrials, but these concern the 'quashing' (or overturning) of acquittals in the face of compelling new evidence. While these existing powers are not expanded, the administration of the quashing process is improved. Part Three of this report considers that in detail.

Lastly, after consultation with the judiciary, this set of amendments would reduce the quorum of the Superior Number of the Royal Court from the Bailiff and five Jurats to the Bailiff and three. This method of operation proved perfectly satisfactory when initially introduced during the pandemic, and having reverted to the full quorum of five Jurats for some time now, it is felt that a reduction to a minimum of three would serve to ensure that sentencing hearings can be scheduled in a more effective and timely manner, without doing any injury to the operation of justice.

Part One – updates and improvements

Wording of summons and arrest

- Where a person is arrested after committing an offence, they may be asked to attend a Parish Hall Enquiry. If the person fails to attend, it may become necessary to issue a summons to appear before the Magistrate's Court. **New Article 3** serves to clarify the relevant wording to remove any confusion about whether that prior arrest interferes with

the issue of a summons to Magistrate's Court. It also clarifies that the person is charged via the summons.

Magistrate's case management

- Where the Magistrate decides to send a defendant 'up' to the Royal Court for sentencing or trial, they should be able to issue case management directions to ensure the transition goes smoothly. However, the Law seems to only allow the Magistrate to pass a case to the Royal Court or make case management directions. This is corrected by **new Article 4**.

Time to correct minor errors

- When minor errors are made in a court judgement (minor misunderstandings, incorrect names or dates, inconsistencies etc) there are rules allowing the judge to correct them for a certain period. This is sometimes referred to as to the 'slip rule'. In the UK Crown Court that period in 56 days, in Jersey our Magistrate's Court only has 28 days. This is undesirable as the result of a mistake 'timing out' could be an unnecessary appeal, so **new Article 5** aligns this period with the UK Crown Court at 56 days.

Jury lists

- Lists of potential jurors in court cases are drawn from the electoral roll. In order to future-proof the development of these lists against any future changes in the management of electoral registration, **new Article 6** expands the scope of the Regulation making power in the Law to allow the Viscounts Department to work with existing or live lists they have access to, as well as to compile their own jury lists.

Very long trials – increase in reserve jurors

- Currently, if a trial is expected to last for more than 5 days, as well as the usual jury of 12, two additional 'reserve' jurors are drawn, who will keep abreast of the case in the same way as the jury and who may be moved onto the jury to replace any jurors who drop out for any reason. Verdicts can be returned with as few as 10 jurors, but a full jury is preferable in the interests of justice and to ensure against the significant distress and delay caused by the collapse of a trial.

This has been a useful improvement to the system, and reserve jurors have been called upon on several occasions. However, there is a concern that in some exceptionally long cases there may be a need for more than two substitutes to be available. So, **new Articles 7 and 8** provides that where a trial is expected to last over 30 days (which is exceptionally long and unusual) an additional two reserve jurors may be drawn, for a total of four reserve and 12 in the jury itself.

Defence case statements

- A defence case statement is a document served by the defence in criminal trials outlining the defendant's case, including defences, disputed facts, points of law, and intended witnesses. Currently, the Criminal Procedure Law allows the court to dispense with the requirement for a defence case statement from an unrepresented defendant only. **New Article 12** allows greater flexibility by allowing defendants to decline to give such statements whether they are legally represented or not, if the court allows it.

Regardless of this change, there may still be occasions where the court requires that a defence case statement be submitted, but the defendant refuses to do so. This creates real costs by causing delay and confusion in an already busy system. At the moment, the Law allows costs to be awarded to reflect this, but where a defendant has a legal representative, only that representative can be the target of a costs award. This would be unfair where good advice has been given to provide a defence case statement, but the defendant refuses to do so. Accordingly, **new Article 12** allows the court to decide whether the representative or the defendant will be responsible for the costs.

Attendance at sentencing

- In criminal cases, it is generally seen as just and appropriate that a guilty party is required to attend their sentencing, so they can hear the remarks of the judge and be party to the resolution of their criminal conduct. To that end, in the unusual cases where a defendant is convicted in their absence, the Law requires the relevant court to endeavour to ensure they attend the sentencing and to go as far as reasonably practicable to ensure they are legally represented. However, The Magistrate's Court deals with a range of offences, and for some of them, (for example some traffic offences) this is disproportionate and an inefficient use of scarce court time. So, **new Article 13** removes that obligation from the Magistrate's Court, as well as removing any obligation on the court to secure legal representation, which is a matter for the defendant. The defendant would still be notified of the hearing and remain entitled to and expected to attend.

Cross examination in person

- When a person is accused of committing a crime, they will normally seek legal representation. Nevertheless, it is a person's right to choose to defend themselves if they wish. In the interests of justice, Courts are required to make arrangements for this, despite the additional complexity and cost of doing so. However, there are a few limits on what an unrepresented defendant can do. Most notably, if a person is accused of committing a sexual or violent crime, they are not allowed to personally cross-examine the victim, any children or any vulnerable people. Instead, the court will appoint someone to do this for them where necessary. **New Article 14** adds more offences to the list which triggers this provision.

Regulation making power

- In recognition of the complexities that arise from making this broad collection of administrative and policy updates to our criminal justice legislation, **New Article 15** introduces a Regulation-making power specific to this amending law, in case any refinements prove necessary. This is not expected to be used, but should anything emerge, it will avoid passing minor adjustments for Royal Assent.

Some changes are also made to the Criminal Procedure (Bail) (Jersey) Law 2017, to simplify arrangements and align the Law with current practice –

Bailiff sits alone for bail decisions

- When a person has been charged with an offence and appears before a court, it is up to the court whether they are released on bail with or without conditions or remanded in custody. Bail applications are usually much more straightforward than trials themselves, so **new Article 19** will clarify that the Bailiff may sit alone (i.e. sit without accompanying

Jurats) to determine bail applications made to the Royal Court. It is already the case that bail applications in the Magistrate's Court are determined by the Magistrate alone.

Location of custody for bail breaches

- If a person released on bail breaches any condition of that bail, for instance by approaching a witness or contacting the victim, they can be arrested. They will be held in custody until the relevant court can convene to consider what should be done. An issue has arisen when a person is arrested at certain times, such as on a Friday evening, as the Court would not sit until the following Monday. While it is clear the person can be held until the court sits, the Law is not sufficiently clear as to whether they meet the specific rules on prison intake. This is best clarified, as the alternative would be for the person to spend days in the police cells. **New Articles 20 and 21** make the necessary changes to the Bail Law, and **New Article 23** makes related changes to the Police Procedures and Criminal Evidence (Jersey) Law 2003 (PPCE).

One additional change is made to PPCE –

Bail conditions to ensure appearance at Royal Court

- Before the adoption of the Criminal Procedure Law, all criminal cases in Jersey started in the Magistrate's Court, but since then there has been a route to directly initiate proceedings in the Royal Court. However, a reference in PPCE concerning bail was not altered following that change. When a Centenier grants a person bail, they may make conditions necessary to ensure they attend court. However, the refence in PPCE Article 31B still refers to the Magistrate's Court (or Youth Court), when there is now a possibility the person will first appear in the Royal Court. **New Articles 24 and 25** change the necessary references to reflect the changes in the Criminal Procedure Law.

Part Two – retrial in the case of a hung jury

When the Assembly adopted the Criminal Procedure Law as amended by the Education and Home Affairs Panel in 2018, with the provision for retrials removed, it did so following a debate in which three main areas of concern were raised. These three areas are discussed below.

The principle of retrials

Much was said in the original debate about the principles which retrials engage. It is very much to the credit of the Assembly that members engaged so eagerly with the foundational principles of justice, but it is possible that some material factors were not fully considered in the 2018 debate.

The argument was made that it was an affront to justice to try a person more than once, but the well-founded and near-universal rules on double jeopardy are intended to inhibit oppressive use of state power by stopping a person being retried after acquittal.

A trial ending in a hung jury does not result in any verdict, so it is in no way an acquittal, and the two should not be confused. Retrials in such situations are consistent with the international standard across common law jurisdictions[1].

Allowing a retrial ensures the justice system can fulfil its core function of resolving criminal allegations, instead of suspending them permanently. Leaving a trial in an indeterminate state

[1] The United Kingdom, Canada, Australia, New Zealand, and Ireland allow retrials in these cases, as do most US States. None consider this to breach double-jeopardy protections, because there is no verdict to revisit.

does not reflect the purpose or logic of the jury system, which is to establish whether or not the evidence proves a person's guilt, not to abandon the question.

Further, the amendment provides that in the event of a hung jury a person can be retried once, not as many times as is desired.

While that does mean that there is a chance a person might be convicted in the second trial, that must be balanced against the significant factors designed into the justice system to weigh in favour of the defendant, and the need for a jury to actually reach a majority (or unanimous) verdict before conviction, and the need for the verdict to survive any relevant appeals.

Ultimately, it must be recognised that deadlock is not a verdict. In such cases, despite the exacting standard to which evidence is held, and despite the need to prove the crime beyond any reasonable doubt, the jury did not find the accused guilty or not guilty, and treating such an outcome as an acquittal in different terms is to equate indecision with exoneration.

Media reporting of the initial trial

Members expressed reservations about the effect of media reporting on the original trial, as once the trial commences many of the reporting restrictions fall away.

It is undeniable that there will be more information concerning a case in the public domain after the conclusion of a trial than before it. However, our courts and jury selection process already have strong safeguards to protect fairness, and Judges provide strict directions to jurors, who are required to decide the case only on the evidence they hear in court, not on any external commentary.

Given the accessibility of social media and the rapid modern news cycle, reporting on high-profile court cases can occur nearly in real time. Arguably, with the exception of the final result, high profile trials already take place in a similar cloud of facts and commentary, and it is already incumbent upon jurors not to succumb to the temptation of research (which is an offence).

This works effectively in criminal trials because jurors are trusted to follow judicial directions. Indeed, even in exceptionally reported trials such as in the UK case of R v Abu Hamza (2006), the Court of Appeal considered that with proper direction a jury would be able to bring impartial judgment to the case[2].

This chimes with a long history of research and experience which shows that juries are capable of putting media commentary out of their minds when directed to do so. The justice systems in most jurisdictions routinely handle serious, sensitive, and widely reported cases without any prejudice to fairness.

Management of retrials

It was proposed at the time of the debate that the retrial provision could add an additional 2 or 3 trials a year to the burden on the justice system. It was further proposed that this issue would be amplified by the difficulty of managing more than one jury trial at a time.

It is entirely true that justice is a costly business, and that high-profile trials reflect a significant investment of resources, but the immediate and secondary costs of failing to deliver effective justice could be far higher.

It is difficult to ask the public to place faith in a justice system that has a pathway for jurors to communicate that they are not sure if a person is guilty, but which then allows nothing to be done to clarify that. It must also be devastating for a victim to hear that the person who harmed them

[2] This judgement was summarised by the Crown Prosecution Service in its 'Abuse of Process' guidance (15 March 2023), stating that the Court *"was satisfied that with proper direction a jury would be able to bring impartial judgment to the case and to decide whether, despite being labelled by some as a public enemy, the defendant really did commit the offences with which he was charged".*

is not 'guilty', but neither are they not 'not guilty', but something in between, and there can never be any resolution to that.

Indeed, it would place the justice system in a complicated place if a person who was the subject of a hung jury trial were to reoffend, with legitimate questions to be asked about how the system permitted that to happen.

In summary, cost alone is not a principled reason to close off fair adjudication of serious offences.

For these reasons, it is my opinion as Minister, with the support of the judiciary, that we should have the capacity to retry hung jury cases.

Part Three – changes to the administration concerning quashing of acquittals

Where a person is acquitted of a crime, and significant and compelling new evidence emerges which points to their guilt, an application can be made to the Court of Appeal to 'quash' the acquittal and initiate a new trial.

This is an established role for the Court of Appeal, and these changes do not expand its scope or make it more likely to occur. Unlike the issue of hung juries, this is only a clarification and standardisation of existing process.

When such an application is made, the duties for dealing with the case and the defendant sit entirely with the Court of Appeal. This is unusual, as that higher court does not otherwise have to manage things like summons, bail, ordering arrests etc, and the Law lacks a dedicated explanation of how the Court of Appeal should manage those duties.

New Article 16 addresses this, and clarifies how notice is served, how bail is managed, the results of non-attendance by the defendant etc. These mirror the provisions already in place for other courts as far as practicable.

Part Four – changing the constitution of the Superior Number

The Superior Number of the Royal Court is the body of Jurats and the Bailiff which hears

the more serious criminal sentencing cases, and some limited civil matters. It is distinguished in criminal law from the Inferior Number as it can impose sentences of over four years imprisonment.

The Superior Number is currently made up of the Bailiff and five Jurats. However, for the period between April 2020 and September 2022 the Covid-19 (Emergency Provisions – Courts) (Jersey) Regulations 2020 were in force, which reduced the number of Jurats required to form the Superior Number to three.

Although this was an emergency response, this period provided the courts with considerable experience managing trials with that reduced number of Jurats.

After considerable deliberation, the Minister has been advised that to better manage court scheduling, and in the absence of any injury to justice resulting from operating this system for thirty months during the pandemic, it would be preferable as part of these modernisations to reduce the quorum of the Superior Number back to three.

This change will apply to all the general functions of the Superior Number, including responsibilities outside trials such as approving civil Rules of Court for the Royal Court. However, it will not apply to the formation of the Superior Number for the purposes of considering appeals under the Court of Appeal (Jersey) Law 1961, where the quorum will remain five Jurats.

Financial and staffing implications

Overall, it is anticipated that this set of updates for the justice system will benefit resource allocation and simplify procedure. The effect of retrials following hung juries is extremely hard to predict, but it is anticipated that any additional requirements which result can be accommodated within existing resources.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

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.

APPENDIX TO REPORT

Human rights notes on the Draft Criminal Justice (Procedures) (Jersey) Amendment Law 202-

These Notes have been prepared in respect of the Draft Criminal Justice (Procedures) (Jersey) Amendment Law 202- (the "draft Law") by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights (the "ECHR" or the "Convention").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Article 5 – right to liberty and security

1. Article 5 ECHR protects the physical liberty and security of the person. Its aim is to ensure that no one is deprived of their liberty in an arbitrary or unjustified fashion.

2. Article 5(1) of the Convention provides that:

> "*Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ...*"

3. Article 5(1) ECHR permits a deprivation of liberty in a number of specific cases, where that deprivation is lawful and in accordance with a procedure prescribed by law. Six situations are set out in Art. 5(1) in which the deprivation of a person's liberty may be permissible. The European Court of Human Rights ("ECtHR") has stated that the list of exceptions to the right to liberty secured in Art. 5(1) is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty.

4. The Criminal Procedure (Bail) (Jersey) Law 2017 (the "Bail Law") and the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the "PPCE Law"), make provision in relation to the remand in custody and grant of bail in criminal proceedings, and by the police during, prior to and following a person being charged with a criminal offence.

5. The draft Law contains powers for the criminal courts to grant bail or remand a defendant in custody, and for the arrest, in appropriate circumstances, of defendants granted bail. These provisions include Art. 16, which amends Sch. 2 (Quashing of person's acquittal and retrial) to the Criminal Procedure (Jersey) Law 2018 (the "CPL") to make provision for bail and custody by the Royal Court and Court of Appeal in relation to an application under that Schedule, and Part 2 of the draft Law, which amends the Bail Law to clarify beyond doubt that a person on remand may be detained at a police station or, with appropriate authorisation, at the prison.

6. Article 1(6) of the CPL provides that where bail is grantable under any provision of the CPL, the provisions of the Bail Law shall apply unless express provision is made to the contrary, or alternative or different provision is made by or under the CPL.

7. The exception from the right to liberty of primary relevance to bail is Art. 5(1)(c) of the ECHR, which permits the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

8. The ECtHR has held that the said Art. 5(1)(c) must be read in conjunction with Art. 5(3), "with which it forms a whole". Article 5(3) is intended to minimise the risk of a detention under Art. 5(1)(c) being arbitrary. Article 5(3) provides that:

"*Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*"

9. The first requirement introduced by Art. 5(3) is to ensure "prompt and automatic judicial control of police or administrative detention ordered in accordance with the provisions of Article 5(1)(c)". What is prompt must be assessed in each case according to its special features, but the Strasbourg jurisprudence confirms that ordinarily the period should be no longer than four days. Strasbourg Jurisprudence also confirms that the "judge or other officer" must be independent of the prosecuting authorities, must consider the circumstances militating for and against continued detention and have the power to order that the accused person be released.

10. The second requirement introduced by Art. 5(3), read literally, appears to give the national authorities a choice between two courses of action, either of which will satisfy the requirements of the ECHR: either to bring the defendant to trial "within a reasonable time" or to release the defendant pending trial. However, it has been established that Art. 5(3) confers a right both to trial within a reasonable time and a right (albeit not an absolute right) to release pending trial.

11. With regard to the right to release pending trial, the approach of the ECtHR is that the persistence of reasonable suspicion that the person arrested has committed an offence is essential for the validity of the continued detention of the person concerned. However, after a certain lapse of time, it is no longer sufficient on its own. Pursuant to Art. 5(3) of the ECHR, subsequent detention will be found to be justified only if it was necessary in pursuit of a legitimate purpose.

12. The ECtHR has recognised that pre-trial detention may be compatible with the defendant's right to release under Art. 5(3) ECHR where it is for the purpose of avoiding a real risk that, were the defendant released:

    c. he or she would

        i. fail to attend trial;

        ii. interfere with evidence or witnesses, or otherwise obstruct the course of justice;

        iii. commit an offence while on bail; or

        iv. be at risk of harm against which he or she would be inadequately protected; or

d. a disturbance to public order would result.

13. Although these purposes (or grounds as they are often referred to) are capable of justifying pre-trial detention, the detention of an accused person will only be justified in the public interest, if the existence of concrete facts outweighing the rule of respect for individual liberty has been convincingly demonstrated.

14. Moreover, the circumstances in which some grounds can be relied upon are more restricted than in the case of other grounds. If, for example, there is good reason to suppose that the defendant would abscond if granted bail, the ECtHR is likely to accept that a remand in custody is justified. Detention on the grounds of a supposed risk to public order or a need to protect the defendant, however, will be appropriate only in exceptional circumstances.

15. The Bail Law is compatible with Art. 5 of the ECHR because Art. 7(1) of the Bail Law requires a court to consider whether to grant bail on each occasion that the defendant appears in criminal proceedings and Art. 7(2) of the Bail Law provides that the defendant has the right to be granted bail, subject to the exceptions to that right introduced by Art. 8 of, and Sch. 1 to, the Bail Law, and the requirement for the court to be satisfied that there are "substantial grounds" justifying the denial of bail should ensure that these grounds are convincingly demonstrated, satisfying the requirement in Art. 5(3) ECHR.

16. Art. 10 of the CPL places restrictions on the maximum length of adjournments during the course of criminal proceedings:

"…(2) Where the Royal Court adjourns a hearing in the exercise of case management powers or under any other provisions of this Law and the defendant has no legal representation, that hearing shall be adjourned for a period not exceeding –

(a) 42 days in respect of a defendant in custody; and

(b) 60 days in respect of a defendant on bail."

17. These limits help ensure that a defendant's case, including the grant or refusal of bail, is regularly reviewed at appropriate intervals by the courts during the course of proceedings, in compliance with Art. 5(3) ECHR. The draft Law makes similar provision in respect of the Court of Appeal at new para. 3B of Sch. 2 to the CPL, which is inserted by Art. 16.

18. Additionally, under Art. 7(1) of the Human Rights (Jersey) Law 2000, a court must not act in a way which is incompatible with a Convention right, meaning that a court making any decision in respect of bail or detention – whether the Royal Court, the Court of Appeal or another court – would need to have regard to ECHR considerations of the kind outlined above and which are reflected in the Bail Law.

Article 6 – right to a fair trial

19. Article 6 of the ECHR guarantees the right to a fair trial. It provides that:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic

society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

20. Article 6 of the ECHR guarantees, inter alia, the rights of a defendant in criminal proceedings, including additional implied rights. The requirements of Art. 6 of the ECHR inform the whole of the framework for the conduct of criminal proceedings reflected in the CPL, and to provide a full account of every aspect of the draft Law where Art. 6 of the ECHR is engaged would be impractical. However, a smaller number of areas of note in the draft Law are set out below.

Independent and impartial tribunal

21. Article 19 of the Draft Law amends the Bail Law to permit the Bailiff sitting alone to decide matters of bail, and Art. 26 amends the Royal Court (Jersey) Law 1948 to reduce the quorum of the Superior Number of the Royal Court from – in addition to the Bailiff – five Jurats to three Jurats.

22. A reduction in the required number of persons for a court to be constituted is not incompatible with the requirement for an independent and impartial tribunal, as the relevant 'tribunals' would remain, following those amendments, independent and impartial.

Cross examination of witnesses

23. Article 6(3)(c) of the ECHR includes the right to defend oneself in person.

24. Article 6(3)(d) of the ECHR (with Art. 6(1)) affords three distinct rights, namely the rights to:

d. challenge witnesses for the prosecution;

e. in certain circumstances, call a witness of one's choosing to testify at trial; and

f. examine defence witnesses under the same conditions as prosecution witnesses.

25. Where the ability to cross-examine a witness is restricted this has the potential to infringe these rights.

26. Article 103 of the CPL operates to prohibit a defendant charged with any of the offences listed in Art. 103(3) (which include sexual offences) from cross-examining, in person, the complainant, a person under the age of 18, or a person aged 18 or more who is vulnerable (as described in Art. 103(1)(c)). Further, Art. 104 enables the court to make an order prohibiting the defendant from cross-examining, in person, a witness, if it appears to the court that the quality of the witness' evidence on cross-examination is likely to be diminished, that the quality of evidence would be likely to be improved if such an order were to be made, and that it would not be contrary to the interests of justice to make such an order.

27. These Articles of the CPL may interfere with the defendant's Art. 6(3)(d) ECHR rights. However, the CPL enables the court to consider the interests of justice and put sufficient safeguards in place to ensure that the trial as a whole remains fair. Articles 105 and 106 provide that where a defendant before the Royal Court is prevented from crossexamining, in person, a witness, the witness may be cross examined by a lawyer, and the Bailiff must give the Jurats or jury such warning as he or she considers necessary to ensure that the defendant is not prejudiced by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness.

28. These Articles of the CPL are compatible with Art. 6(3)(d) of the ECHR in view of the safeguards attached to them. Article 14 of the draft Law amends Art. 103(3) of the CPL to update the list of offences where it is appropriate for a defendant not to cross examine, in person, a witness within the meaning of Art. 103(1).

The right to legal assistance

29. Article 6(3)(c) of the ECHR includes a right, where the defendant is not of sufficient means to pay for it, and where the interests of justice so require, to be given free legal assistance.

30. Article 13 of the draft Law amends Art. 88(4) of the CPL, removing a requirement on the courts, in the case of a defendant who was convicted in his or her absence, to arrange for the defendant to be legally represented at sentencing. However, separate arrangements exist in Jersey for defendants to be provided with legal representation where the interests of justice require it.

Defendant's duty to attend, and hearings in absence

31. Article 6(1) of the ECHR concerns, in respect of criminal charges against a person, the determination of those charges. This Article and Art. 6(3) provide a right for a defendant to be present at his or her trial but this does not mean that there is an obligation on the authorities to bring a defendant to a hearing if the defendant decides not to participate in the proceedings. A defendant may be tried in his or her absence without infringing Art. 6(1) and (3) of the ECHR.

32. However, the amendments to the CPL made by the draft Law that are relevant to a defendant's attendance do not relate to the trial hearing.

33. Article 13 of the draft Law amends Art. 88(4) of the CPL, which concerns the defendant's presence at the sentencing hearing where the defendant has been convicted in his or her absence. The existing requirement on the courts to endeavour to secure the presence of the defendant at the sentencing hearing – which is not an absolute requirement to secure

attendance – would be limited by the amendment, to apply only to the Royal Court, where the more serious cases tend to be heard.

34. Article 16 of the draft Law amends Sch. 2 (quashing of person's acquittal and retrial) to the CPL. New para. 3B(2) provides that, subject to limited exceptions, a person who is subject to an application under para. 3 to that Schedule must be present at the hearing of that application. New para. 3B(3) and (4) make provision for circumstances in which the Court of Appeal may determine an application under the said para. 3 in the defendant's absence. The court may do so where a person in custody refuses to attend, or where a person granted bail has been given notice of the hearing but fails without reasonable excuse to attend.

35. Those amendments are not incompatible with the right to a fair trial.

Duty to provide a defence case statement

36. The right to remain silent and not to incriminate oneself has been found to arise from the "fair trial" requirement in Art. 6(1) of the ECHR. This right prevents the prosecution from obtaining evidence it could otherwise gain by requiring the accused to testify against himself.

37. Article 83 of the CPL requires the defendant to provide to the prosecution and the court a defence case statement which is a written statement setting out matters such as the nature of the defendant's defence and the matters of fact relied upon by the prosecution which the defendant disputes. Article 86 of the CPL provides that the court may comment upon, or draw adverse inferences if a defendant has failed to comply with the requirements with respect to defence case statements.

38. The requirement to provide a defence case statement does not infringe the rights in Art. 6(1) and (2) of the ECHR to remain silent and be presumed innocent. The purpose of the defence case statement is to ensure that there is consistency and clarity as to the nature of the defence that the defendant wishes to put forward at trial.

39. Article 12 of the draft Law amends Art. 83 of the CPL to provide the court with more flexibility to dispense, where appropriate, with the requirement to give a defence case statement. Currently, Art. 83(3) allows the court to do so only in respect of an unrepresented defendant. The amendment would extend this to a defendant who is represented.

Quashing an acquittal

40. Article 6(1) of the ECHR requires respect for the principle that once a criminal acquittal has become final, it must become binding and there should be no risk of its being overturned. However, exceptions from this principle may be made.

41. Article 114 of, and Sch. 2 to, the CPL, set out the provisions dealing with the quashing of a person's acquittal. This only applies with respect to a "qualifying offence". The offences that amount to qualifying offences are prescribed by the Criminal Procedure (Qualifying Offences) (Jersey) Regulations 2019, and are limited to very serious offences. Further, there must also be new and compelling evidence in the case, and it must be in the interests of justice for the order to be made. The limits on the extent of the power to quash an acquittal are therefore sufficient to comply with the ECHR.

42. Article 16 of the Draft Law amends Sch. 2 to the CPL. It does not alter its scope in terms of the basic requirements for the quashing of an acquittal or the ordering of a re-trial.

Instead, it clarifies procedural steps including to make express provision for matters of bail and detention by the relevant courts.

Retrial following hung jury

43. Articles 10 and 11 of the draft Law amend Part 9 (Juries) of the CPL, to permit up to one retrial in the event that the jury has been unable to reach a verdict.

44. A retrial where there is a hung jury is compatible in principle with the ECHR, and it is noted that retrials are already possible following an appeal or under Sch. 2 to the CPL.

45. A retrial is capable of being a fair trial for much the same reasons as the initial trial is, and the court must exercise its powers as necessary and in an ECHR-compliant manner to ensure that is so. Given that the jury at the initial trial will not have reached a verdict, no issue arises in terms of re-trying an acquitted person, because the defendant has not been acquitted.

46. Successive trials do not per se raise an issue under Art. 6(1) ECHR, and there is a public interest in a jury deciding one way or another whether the charge was established.

EXPLANATORY NOTE

The Criminal Justice (Procedures) (Jersey) Amendment Law 202- (the "Law"), if passed, will amend certain procedures for, or in relation to, the conduct of criminal proceedings under the Criminal Procedure (Jersey) Law 2018 (the "CPL"), the Criminal Procedure (Bail) (Jersey) Law 2017 (the "Bail Law"), the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the "PPCE Law") and the Royal Court (Jersey) Law 1948 (the "Royal Court Law").

Article 1 states that *Part 1* of the Law amends the CPL.

Article 2 amends Article 1 of the CPL to introduce definitions for the expressions "majority verdict" and "reserve juror".

Article 3 amends Article 19 of the CPL to remove an ambiguity relating to the effect of a previous arrest of a person who is to be charged with an offence. That previous arrest does not prevent the person from being summoned to appear before the Magistrate's Court. Furthermore, the existing provision implies that once a person is summoned, the charge will be made at the person's appearance before the Magistrate's Court. The amendment clarifies that the summons is the charging instrument.

Article 4 amends Article 28(1) of the CPL to remove an ambiguity that suggests that if the Magistrate issues a direction about setting the date of the first hearing of a case before the Royal Court, the Magistrate cannot issue other directions concerning the procedural management of the case. The amendment now clarifies that if it is practicable to issue directions about setting the date of the Royal Court hearing, the Magistrate can also issue other directions about the management of the case.

Article 5 increases the 28-day time limit for rectifying a mistake concerning the passing of a sentence or the making of an order to 56 days. This brings Article 31 of the CPL into line with analogous provision under the Sentencing Act 2020 of the United Kingdom.

Article 6 amends Article 64 of the CPL so that the Criminal Procedure (Juries – Tirage) (Jersey) Regulations 2021 providing for requirements about the creation of juror lists can now be amended to enable the Viscount to have access to lists of people eligible to serve as jurors rather than requiring the Viscount to compile the actual list of those people.

Articles 7 and 9 make minor amendments needed as a consequence of inserting new Article 66A into the CPL.

Article 8 inserts new Article 66A into the CPL to provide for the selection of reserve jurors if a trial is expected to last more than 5 court sitting days. 2 reserve jurors must be selected if the trial is expected to last not more than 30 sitting days and 4 reserve jurors must be selected if the trial is expected to last more than 30 sitting days. Article 66A also provides for the circumstances in which a reserve juror is discharged from jury service.

Article 10 makes amendments to Article 75 of the CPL that are needed as a consequence of inserting new Articles 75A to 75D. Those new Articles relate to procedures concerning a "hung" jury, meaning that the jury is unable to reach a unanimous or majority verdict. Article 75 is amended to clarify that a jury is to be allowed a reasonable amount of time, but not less than 2 hours, to consider their verdict before the Bailiff directs that the jury may deliver a majority verdict. Article 75 is also updated in line with current drafting practice.

Article 11 inserts the following new Articles into the CPL –

- Article 75A –
    - provides that the Attorney General may seek a retrial if there is a hung jury;
    - describes the procedure for the jury to be discharged from their duty to give a verdict on the charge in the indictment, or on any other alternative or lesser

offence for which they cannot reach a unanimous or majority verdict ("any verdict"). The jury cannot be discharged from the proceedings until all the charges in the indictment or other alternative or lesser offences have been considered;

- provides that not later than 14 days after the jury has been discharged from the proceedings, the Attorney General must notify the defendant and the Bailiff if there is to be a retrial of any charge in the indictment, or of any alternative or lesser offence in respect of which the jury is unable to reach any verdict.

- Article 75B provides for the procedure following the Attorney General's notification that there is to be no retrial. The defendant must be discharged from the charges in the indictment and of any other alternative or lesser offences for which the jury was unable to reach any verdict. The Bailiff must declare that the defendant is not guilty of those charges or other offences. The Viscount must record the not guilty declaration as a not guilty verdict.
- Article 75C provides for the procedure following notification of a retrial and the procedure for a retrial. As a consequence of the notification given under Article 75A(5), in a case in which the jury has been required to consider an alternative or lesser offence to the offence charged in the indictment (the "primary offence"), for example, the alternative offence of manslaughter instead of the primary offence of murder, any verdict delivered in relation to the alternative or lesser offence must be quashed to allow the primary offence to be retried. When the notification of a retrial is received, the Bailiff must order a directions hearing to be held not later than 7 days after receipt of the retrial notification.
- Article 75D provides that if the jury is unable to reach any verdict on a retrial, the Baillif must declare that the defendant is not guilty of the charges in the indictment or of other offences not in the indictment. As in Article 75B, the Viscount must record the not guilty declaration as a not guilty verdict.

Article 12 amends Article 83 of the CPL. Currently under that Article, if a defendant has no legal representative the court may, on the application of the defendant or of the court's own motion, dispense with the requirement to give a defence case statement. The amendment would now enable the court to dispense with a defence case statement whether a defendant is legally represented or not. The amendment also extends the power to make a prosecution costs order against a represented defendant personally instead of, as is the existing position, just against their legal representative.

Article 13 amends Article 88 of the CPL. The effect is to remove the obligation on the Magistrate's Court and the Royal Court to arrange for the defendant to be legally represented at a sentencing hearing, and to require only the Royal Court to make all reasonable efforts to ensure that the defendant is present at their sentencing hearing.

Article 14 updates the lists of offences in Article 103 of the CPL in respect of which a defendant is not permitted to cross-examine a witness.

Article 15 amends Article 115 of the CPL to enable the States to further amend the CPL if required as a consequence of the amendments made by this Law.

Article 16 amends Schedule 2 to the CPL. That Schedule contains provisions that enable the Attorney General to apply to the Court of Appeal to quash a person's acquittal for a qualifying offence under the Criminal Procedure (Qualifying Offences) (Jersey) Regulations 2019 and for a retrial, or in the case of a person acquitted elsewhere than in Jersey, for a determination whether the acquittal is a bar to the person being tried in Jersey for the qualifying offence, and if it is, an order that the acquittal is not a bar. The amendments relocate and update the provisions currently contained in paragraph 7 (procedure and evidence) to new paragraphs 3A and 3B and include new

provision for the Attorney General to apply for a warrant for the arrest of the person who is the subject of the application and for the Royal Court to remand the person in custody or on bail pending the hearing of the application before the Court of Appeal. New paragraph 3B also provides that if a person in custody refuses to be present in the Court of Appeal, or a person granted bail fails without reasonable excuse to attend before the Court of Appeal, the Court may proceed with the hearing in their absence.

Article 17 states that *Part 2* of the Law amends the Bail Law.

Article 18 amends Article 1 of the Bail Law to introduce some new defined terms that are consequential on the amendments to Articles 17 (court order for arrest) and 18 (police power of arrest) of the Bail Law.

Article 19 introduces new Article 6A of the Bail Law. It enables the Bailiff to sit alone to determine all matters relating to bail under Part 2 of the Bail Law, apart from an appeal to the Royal Court under Article 16 of the Bail Law against the Magistrate's decision to deny bail.

Article 20 amends Article 17 of the Bail Law so that a court order to arrest a person granted bail authorises a police officer or the Viscount to detain the person arrested in a police station or in prison. If the person is to be detained in prison, the order must comply with Rule 3(2) of the Prison (Jersey) Rules 2007 (the "Prison Rules"), which provides that the order must state the day on which it is made, the person's name and date and place of the person's birth.

Article 21 amends Article 18 of the Bail Law so that a police officer who, in accordance with that Article, arrests a person granted bail, the police officer may detain the person in a police station or in prison. If the person is to be detained in prison, a police officer must obtain an authorisation that complies with Rule 3(2) of the Prison Rules and is signed by the Magistrate, a Jurat or the Bailiff.

Article 22 states that *Part 3* of the Law amends the PPCE Law.

Article 23 amends Article 28A of the PPCE Law. The effect is to require a police officer to obtain an authorisation which complies with Rule 3(2) of the Prison Rules, to detain a person in prison. The authorisation must also be signed by the Magistrate, a Jurat or the Bailiff. This will apply in respect of a person who returns to a police station to answer to bail or is arrested for breach of bail under Article 44 of the PPCE Law.

Articles 24 and *25* amend Articles 31B, 36 and 43 of the PPCE Law so that those provisions apply in relation to proceedings before the "court" as defined in Article 1(1) of the PPCE Law being the Magistrate's Court, Royal Court or Youth Court.

Article 26 amends Article 16 of the Royal Court Law to reduce from 5 to 3 the number of Jurats required for the purpose of constituting the Superior Number of the Royal Court. The amendment also removes an unnecessary reference to the CPL and confirms that 5 Jurats are required for the purpose of constituting the Superior Number of the Royal Court when sitting as the Court of Appeal.

Article 27 gives the name of the Law and provides for it to come into force 7 days after it is registered in the Royal Court.

Jersey

DRAFT CRIMINAL JUSTICE (PROCEDURES) (JERSEY) AMENDMENT LAW 202-

Contents

Article

Jersey

DRAFT CRIMINAL JUSTICE (PROCEDURES) (JERSEY) AMENDMENT LAW 202-

A LAW to amend procedures under the Criminal Procedure (Jersey) Law 2018, the Criminal Procedure (Bail) (Jersey) Law 2017 and the Police Procedures and Criminal Evidence (Jersey) Law 2003, and to amend the Royal Court (Jersey) Law 1948 for connected purposes.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of His Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*
Coming into force	*[date to be inserted]*

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

PART 1

CRIMINAL PROCEDURE (JERSEY) LAW 2018

1 Criminal Procedure (Jersey) Law 2018 amended

This Part amends the Criminal Procedure (Jersey) Law 2018.

2 Article 1 (interpretation and application) amended

In Article 1(1) –

(a) after the definition "Magistrate's Court" there is inserted –

"majority verdict" means a verdict delivered by a jury constituted in accordance with Article 75(3);

(b) after the definition "relevant programme" there is inserted –

"reserve juror" means a person selected to serve on a jury in accordance with Article 66A;

3 Article 19 (summons) amended

(1) For Article 19(1) there is substituted –

> (1) A person who is to be charged with an offence may be summoned to appear before the Magistrate's Court at the time and on the date notified in the summons by –
>
> (a) the Attorney General; or
>
> (b) with the Attorney General's approval, a prosecutor or a Centenier.

(2) Article 19(2) is deleted.

(3) In Article 19(3) –

(a) for "Such summons shall contain a statement setting out the following" there is substituted "A summons is the document that charges the person with an offence and must contain the following";

(b) for sub-paragraph (a) there is substituted –

> (a) the specific offence with which the person is charged including any particulars that are necessary to provide a reasonable amount of information about the charge;

(c) in sub-paragraph (c), "to be" is deleted.

4 Article 28 (Magistrate's directions in respect of cases sent to the Royal Court) amended

In Article 28(1)(a), for "; or" there is substituted "; and".

5 Article 31 (Magistrate's power to rectify mistakes) amended

(1) In Article 31(1), for "28" there is substituted "56".

(2) In Article 31(3), for "28 day period" there is substituted "56-day period".

6 Article 64 (jury and panel lists) amended

(1) In Article 64(1)(a), after "to compile" there is inserted ", or have access to,".

(2) In Article 64(1)(b), after "compilation of" there is inserted ", or access to,".

7 Article 66 (selection of persons for jury service) amended

Article 66(5) to (9) is deleted.

8 Article 66A (selection and discharge of reserve jurors) inserted

After Article 66 there is inserted –

66A Selection and discharge of reserve jurors

> (1) This Article applies if a trial is expected to last for more than 5 days.
>
> (2) Once 12 people have been selected to serve as jurors and depending on how long the trial is expected to last, the Judicial Greffier must, subject to

Articles 66(4) and 68, read out from the panel list the names of up to 4 additional people (the "reserve jurors") in the order in which their names appear on the list.

(3) If the trial is expected to last –

(a) not more than 30 days, 2 reserve jurors must be selected; or

(b) more than 30 days, 4 reserve jurors must be selected.

(4) A reserve juror must be called to serve on the jury if the number of jurors is reduced at any time up to the point that the Bailiff concludes their summing up of the case.

(5) The Bailiff may discharge a reserve juror from jury service –

(a) if they have not been required to serve on the jury immediately before the start of the Bailiff's summing up of the case; or

(b) at any earlier point during the trial if the Bailiff considers that, in the case of a trial that is expected to last more than 6 weeks, there need only be 2 reserve jurors.

(6) The Bailiff must discharge a reserve juror from jury service if they have not been required to serve on the jury when the jury retires to deliberate its verdict.

(7) The selection of a reserve juror may be challenged in accordance with Article 69.

9 Article 70 (swearing of jurors) amended

In Article 70(1), for "Article 66" there is substituted "Articles 66 and 66A".

10 Article 75 (verdicts) amended

(1) In Article 75(1), for "the proceedings shall" there is substituted "the trial must".

(2) After Article 75(2) there is inserted –

(2A) The Bailiff must allow a reasonable period to elapse before directing that the jury may deliver a majority verdict.

(2B) In determining the reasonable period to allow, the Bailiff must have regard to the nature and complexity of the charge against a defendant but must, in any event, allow a period of not less than 2 hours to elapse before directing that the jury may deliver a majority verdict.

(2C) The 2-hour period commences when the jury retires to consider their verdict.

(3) In Article 75(5), for "the defendant shall stand convicted of the offence and sentenced" there is substituted "the defendant stands convicted of the offence and must be sentenced".

(4) For Article 75(6) there is substituted –

(6) In the case of a not guilty verdict, provided the defendant is not convicted of another offence charged in the indictment or an alternative or lesser offence not charged in the indictment, the defendant must be discharged from the proceedings.

(5) After Article 75(6) there is inserted –

(6A) Paragraphs (5) and (6) do not apply if a verdict is delivered in respect of an alternative or lesser offence to a charge in the indictment, and the Attorney

General has given a notification under Article 75A(5) that there is to be retrial in respect of that charge.

(6) In Article 75(7), for "shall make" there is substituted "must make".

(7) Article 75(8) is deleted.

11 Articles 75A to 75D (procedures relating to discharge of jury and retrials) inserted

After Article 75 (verdicts) there is inserted –

75A Procedure if jury unable to deliver verdict

(1) This Article applies if –

(a) the Bailiff has directed that the jury may deliver a majority verdict;

(b) following that direction the Bailiff, having had regard to the nature and complexity of the charge against the defendant, has allowed a further reasonable period to elapse; and

(c) following that period, the jury is still unable to deliver either a unanimous or a majority verdict in respect of –

(i) a charge in the indictment; or

(ii) an alternative or lesser offence not charged in the indictment.

(2) If there are no other charges in the indictment, and no alternative or lesser offences that require the jury's consideration, the Bailiff must discharge the jury from the proceedings and from the custody of the Viscount.

(3) If there are other charges in the indictment, or alternative or lesser offences that require the jury's consideration, the Bailiff must discharge the jury only from their duty to give a verdict in respect of the charge or offence for which they were unable to deliver a unanimous or majority verdict.

(4) If paragraph (3) applies, the Bailiff must discharge the jury from the proceedings and from the custody of the Viscount only when there are no remaining charges left in the indictment and no alternative or lesser offences that require the jury's consideration.

(5) The Attorney General must, not later than 14 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of any charge in the indictment, or any alternative or lesser offence not charged in the indictment, in respect of which the jury was unable to deliver a unanimous or majority verdict.

(6) Christmas Day, Good Friday or a public holiday (as specified in the Public Holidays and Bank Holidays (Jersey) Act 2010) is disregarded for the purpose of determining when the 7 days expire.

75B Procedure following notification of no retrial

(1) This Article applies if, under Article 75A(5), the Attorney General notifies the defendant and the Bailiff that there is to be no retrial.

(2) The Bailiff must –

(a) discharge the defendant in respect of any charge in the indictment, and of any alternative or lesser offence not charged in the indictment, for which the jury was unable to deliver a unanimous or majority verdict; and

(b) declare the defendant not guilty of that charge or alternative or lesser offence.

(3) A declaration under paragraph (2)(b) is taken to be a not guilty verdict for the purposes of the Judicial Greffier's record under Article 75(7).

75C Procedure following notification of retrial and procedure on retrial

(1) This Article applies if, under Article 75A(5), the Attorney General notifies the defendant and the Bailiff that there is to be a retrial.

(2) If there was an alternative or lesser offence to a charge in the indictment in respect of which the Attorney General has given notice of a retrial under Article 75A(5), the Bailiff must quash any verdict delivered in relation to that alternative or lesser offence.

(3) The Bailiff must order that the case is listed for a directions hearing to be held not later than 7 days after receipt of the Attorney General's notification.

(4) Article 75A(6) applies for the purpose of determining when the 7 days expire.

75D Procedure if jury unable to deliver verdict on retrial

(1) This Article applies if a defendant is retried, and following the end of the reasonable period allowed by the Bailiff under Article 75A(1) the jury is unable to deliver either a unanimous or a majority verdict in respect of –

(a) a charge in the indictment; or

(b) an alternative or lesser offence not charged in the indictment.

(2) The Bailiff must –

(a) discharge the defendant in respect of any charge in the indictment, and of any alternative or lesser offence not charged in the indictment, for which the jury was unable to deliver a unanimous or majority verdict; and

(b) declare the defendant not guilty of that charge or alternative or lesser offence.

(3) A declaration under paragraph (2)(b) is taken to be a not guilty verdict for the purposes of the Judicial Greffier's record under Article 75(7).

12 Article 83 (duty to give defence case statement) amended

(1) For Article 83(3) there is substituted –

(3) Whether a defendant is represented or not, the court may dispense with the requirement to give a defence case statement –

(a) on the application of the defendant; or

(b) of the court's own motion.

(2) For Article 83(5) there is substituted –

(5) Paragraph (5A) applies if –

(a) the court has not, under paragraph (3), dispensed with the requirement to give a defence case statement; and

(b) it appears to the Magistrate or Bailiff that the defendant has not given a defence case statement in accordance with paragraph (1), or a case statement that complies with the requirements set out in paragraph (2).

(5A) The Magistrate or Bailiff may order the following people to pay the sum of the prosecution's costs that are attributable to the defendant's failure to comply with paragraph (1) or (2) –

(a) the defendant's legal representative; or

(b) the defendant whether represented or not.

(3) For Article 83(6) there is substituted –

(6) If the Magistrate or Bailiff makes an order under paragraph (5A), it must be made as soon as practicable after the date directed for service of the defence case statement has expired.

(4) In Article 83(7), for "paragraph (5) shall" there is substituted "paragraph (5A) must".

13 Article 88 (defendant's duty to attend trial and trial in defendant's absence) amended

For Article 88(4) there is substituted –

(4) If a defendant is convicted in their absence in the Royal Court, the Court must make all reasonable efforts to ensure that the defendant is present at their sentencing hearing.

14 Article 103 (defendant charged with certain offences – prohibition of cross-examination by defendant in person) amended

In Article 103(3) –

(a) in sub-paragraph (a), after "murder;" there is inserted "outraging public decency;";

(b) in sub-paragraph (b), after "le droit criminel" there is inserted "(as in force before 23 November 2018)";

(c) after sub-paragraph (b) there is inserted –

(ba) an offence under Article 35 (causing harm to or neglecting children under 16) of the Children (Jersey) Law 2002;

(d) for sub-paragraph (c) there is substituted –

(c) in the Protection of Children (Jersey) Law 1994 –

(i) an offence under Article 2 (indecent photographs or pseudo-photographs of children); and

(ii) an offence under Article 2C (making, possessing, distributing or showing a prohibited image of a child);

(e) in sub-paragraph (d), after "Sexual Offences (Jersey) Law 2007" there is inserted "(as in force before 23 November 2018)";

(f) for sub-paragraph (e) there is substituted –

(e) in the Mental Health Law, an offence under Article 73 (offence of wilful neglect) and any sexual offence under Articles 74 to 76;

15 Article 115 (Regulations) amended

After Article 115(2) there is inserted –

(2A) The States may, by Regulations, amend this Law to make further or different provision that appears to the States to be necessary as a consequence of the coming into force of the Criminal Justice (Procedures) (Jersey) Amendment Law 202-.

16 Schedule 2 (quashing of person's acquittal and retrial) amended

(1) This Article amends Schedule 2.

(2) In paragraph 1 (interpretation), after the definition "officer" there is inserted –

"paragraph 3 application" means an application to the Court of Appeal under paragraph 3(1) or (2);

(3) In paragraph 2(1)(d) (cases that may be retried), after "Loi (1864) Réglant la Procédure Criminelle" there is inserted "(as in force before 1 October 2021)".

(4) In paragraph 3 (application to Court of Appeal), in the heading, after "Appeal" there is inserted "for order quashing acquittal and retrial or determination about acquittal outside Jersey".

(5) After paragraph 3 there is inserted –

3A Notice of paragraph 3 application, arrest and bail

(1) The Attorney General must give notice to the Court of Appeal of a paragraph 3 application.

(2) Not later than 7 days after the day on which notice of the paragraph 3 application is given, the Attorney General must serve on the person to whom the application relates –

(a) notice that the Court of Appeal has been given notice of a paragraph 3 application; and

(b) notice that the person is charged with the qualifying offence to which the application relates.

(3) Sub-paragraph (2) applies whether the person to whom the application relates is in Jersey or elsewhere, but the Court of Appeal may, on application by the Attorney General, extend the 7-day period for service of the notice if it considers it necessary to do so because of the person's absence from Jersey.

(4) At any time before the Court of Appeal begins to consider the application, the Royal Court may, on the application of the Attorney General, issue a warrant for the arrest of the person to whom the paragraph 3 application relates.

(5) A person arrested must be brought before the Royal Court not later than 48 hours after arrest and the Court must, pending the person's appearance before the Court of Appeal for the hearing of a paragraph 3 application –

(a) remand the person in custody; or

(b) grant the person bail.

(6) If a person arrested is granted bail, the Attorney General must serve that person with notice to appear before the Court of Appeal at the time and on the date specified in the notice.

3B Court of Appeal procedure for paragraph 3 application

(1) The Court of Appeal must hold a hearing to consider a paragraph 3 application.

(2) A person to whom a paragraph 3 application relates –

(a) unless they are in custody elsewhere than in Jersey or excused attendance by the Court of Appeal, must be present at any hearing under this paragraph even if they are in custody, subject to sub-paragraph (3); and

(b) is entitled to be represented at the hearing, whether they are present or not.

(3) If a person in custody in Jersey refuses to be present at a hearing under this paragraph (including an adjourned hearing), the Court of Appeal may proceed with the hearing in the person's absence.

(4) If a person granted bail under paragraph 3A(5)(b) fails without reasonable excuse to attend a hearing under this paragraph, the Court of Appeal may proceed with the hearing in the person's absence if the Court is satisfied that the person was served with notice of the hearing in accordance with paragraph 3A(6).

(5) The Court of Appeal may –

(a) at any adjournment of a hearing under this paragraph grant the person bail or remand them in custody; or

(b) when it makes an order under paragraph 4(1)(a) or 4(3)(a), or a declaration under paragraph 4(4), grant the person bail or remand them in custody pending –

(i) trial in the Royal Court; or

(ii) the determination of an appeal to the Judicial Committee of the Privy Council under paragraph 8.

(6) If a person granted bail under sub-paragraph (5)(a) fails without reasonable excuse to attend an adjourned hearing, the Court of Appeal may proceed with the hearing in the person's absence.

(7) If the person has no legal representation, any hearing adjourned under this paragraph must not be for a period of more than –

(a) 42 days in respect of a person in custody; and

(b) 60 days in respect of a person on bail.

(8) For the purposes of a paragraph 3 application and determination under paragraph 4, the Court of Appeal may, if it is in the interests of justice to do so –

(a) order the production of any document, exhibit or other thing, the production of which appears to the Court to be necessary for the determination of the application; or

(b) order to attend for examination before the Court any person who appears to be a person who could be required to give evidence at a retrial (if ordered) and capable of assisting the Court's determination of the application.

(9) The Court of Appeal may consider more than 1 paragraph 3 application (whether relating to the same person or not) at the same hearing, but only if the offences concerned could be charged in the same indictment.

(6) Paragraph 7 (procedure and evidence) is deleted.

(7) In paragraph 9(5), (6) and (8) (restrictions on publication in the interests of justice), for "given under paragraph 7(1)" there is substituted "given under paragraph 3A(1)".

PART 2

CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 2017

17 Criminal Procedure (Bail) (Jersey) Law 2017 amended

This Part amends the Criminal Procedure (Bail) (Jersey) Law 2017.

18 Article 1 (interpretation) amended

In Article 1(1) –

(a) after the definition "police officer" there is inserted –

"police station" has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003;

(b) after the definition "prescribed" there is inserted –

"prison" has the meaning given in Article 1(1) of the Prison (Jersey) Law 1957;

"Prison Rules" means the Prison (Jersey) Rules 2007;

19 Article 6A (Bailiff's power to determine bail) inserted

Immediately before Article 7 (duty of court to consider bail and defendant's general right to bail) there is inserted –

6A Bailiff's power to determine bail

Except for the determination of an appeal to the Royal Court under Article 16, the Bailiff sitting alone may exercise any duty imposed or power conferred on the court under this part.

20 Article 17 (court order for arrest) amended

(1) In Article 17, in the heading, after "arrest" there is inserted "and detention".

(2) For Article 17(3) there is substituted –

(3) An order under paragraph (1) or (2) authorises a police officer or the Viscount to arrest and detain the defendant to whom the order relates –

(a) at a police station or in prison; and

(b) to bring the defendant before the court.

(3A) An order authorising detention of a defendant in prison must comply with Rule 3(2) of the Prison Rules.

(3) In Article 17(4) –

(a) for "shall" there is substituted "must";

(b) for "his or her" there is substituted "their".

21 Article 18 (police power of arrest)

(1) In Article 18, in the heading, after "arrest" there is inserted "and detention".

(2) After Article 18(1) there is inserted –

(1A) A defendant arrested under this Article may be detained at a police station or in prison.

(1B) If a defendant is to be detained in prison, a police officer must obtain an authorisation that –

(a) complies with Rule 3(2) of the Prison Rules; and

(b) is signed by the Magistrate, a Jurat or the Bailiff.

(3) In Article 18(2) –

(a) for "shall" there is substituted "must";

(b) for "his or her" there is substituted "their".

PART 3

POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003

22 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended

This Part amends the Police Procedures and Criminal Evidence (Jersey) Law 2003.

23 Article 28A (person may not be detained in custody without authorisation) amended

For Article 28A(1) there is substituted –

(1) This Article applies to –

(a) a person arrested on suspicion of having committed an offence; or

(b) a person who is treated as arrested for an offence under Article 32(6).

(1A) A person to whom this Article applies may be detained in custody in prison if the arresting police officer obtains an authorisation that –

(a) complies with Rule 3(2) of the Prison (Jersey) Rules 2007; and

(b) is signed by the Magistrate, a Jurat or the Bailiff.

24 Articles 31B (grant of bail by Centenier where person is charged with an offence) and 36 (duties of Centenier after charge) amended

In Articles 31B(2)(a) and 36(2)(b), for "Magistrate's Court or Youth Court (as the case may be)" there is substituted "court".

25 Article 43 (detention after charge) amended

(1) In Article 43(2), (4), (5) and (6), for "Court" there is substituted "court".

(2) Article 43(7) is deleted.

PART 4

ROYAL COURT (JERSEY) LAW 1948 AMENDED AND FINAL PROVISION

26 Royal Court (Jersey) Law 1948 amended

(1) This Article amends Article 16 (quorum of the Superior Number) of the Royal Court (Jersey) Law 1948.

(2) In Article 16(1) –

(a) for "Subject to paragraph (2), the Superior Number of the Royal Court shall" there is substituted "The Superior Number of the Royal Court must";

(b) for "5 Jurats" there is substituted "3 Jurats".

(3) For Article 16(2) there is substituted –

"(2) This Article does not affect the constitution of the Superior Number of the Royal Court under Article 23 of the Court of Appeal (Jersey) Law 1961.

27 Citation and commencement

This Law may be cited as the Criminal Justice (Procedures) (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.