

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201- (P.118/2017): COMMENTS

**Presented to the States on 15th January 2018
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

1. The Draft Criminal Procedure (Jersey) Law 201- (the “CPL”), [P.118/2017](#), prescribes the procedure to be followed in, or in connection with, criminal proceedings against a person charged with or convicted of an offence. The CPL repeals and re-enacts, with modifications, the following enactments –
 - ❖ [Loi \(1835\) sur la procédure devant la Cour Royale](#)
 - ❖ [Loi \(1853\) établissant la Cour pour la répression des moindres délits](#)
 - ❖ [Loi \(1862\) sur la procédure devant la Cour Royale](#)
 - ❖ [Loi \(1864\) Régulant la Procédure Criminelle](#)
 - ❖ [Loi \(1912\) sur la Procédure devant la Cour Royale](#) (*Jours Fériés, Assises Criminelles, etc.*)
 - ❖ [Magistrate’s Court \(Miscellaneous Provisions\) \(Jersey\) Law 1949](#).
2. The CPL also introduces new measures permitting the prosecution to seek a retrial where a defendant has been acquitted, and amends the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) (“PPCE Law”).
3. The Education and Home Affairs Scrutiny Panel has established a Sub-Panel to undertake a review of the CPL, which has been lodged by the Council of Ministers for debate on 16th January 2018. The Sub-Panel’s membership currently consists of Deputy S.Y. Mézec of St. Helier, *Chairman*; Deputy T.A. Vallois of St. John, *Vice-Chairman*; and Deputy R.J. Renouf of St. Ouen.
4. On Thursday 21st December 2017, the Sub-Panel received a briefing from H.M. Attorney General and Officers from the Department of Community and Constitutional Affairs, which provided a detailed overview of the changes that, subject to States approval, would be brought into effect by the CPL. The Sub-Panel has also written to key stakeholders, requesting any views and comments on the CPL.
5. As a result of this briefing, and following examination of the consultation responses to the CPL, the Sub-Panel has identified significant issues which it believes require further scrutiny.
6. The Minister for Home Affairs has been made aware that it is the intention of the Sub-Panel to refer the CPL for further scrutiny under Standing Order 72, should the principles be adopted during the debate on 16th January.
7. The Sub-Panel notes that the CPL contains fundamental changes to the criminal justice system; and it would like to draw Members’ attention to the following areas that it has identified through its initial work. The Sub-Panel is keen to hear the views of Members and promote further discussion during the debate on the following areas –
 - ❖ Provision for the prosecution to seek a retrial where a defendant has been acquitted.
 - ❖ Imposing a duty on the defence to disclose its case prior to trial (which some consultees consider a breach of the right to silence).

- ❖ Abolishing committal proceedings in the Magistrate’s Court (which the Law Society has described as a “fundamental right”).
 - ❖ Provision for cases elevated to the Royal Court to be returned to the Magistrate’s Court.
 - ❖ Changes to jury selection and management, including allowing lawyers, Police Officers and civil servants to serve on juries; and the appointment of reserve jurors. Changes are also made to the manner in which the foreman of the jury is appointed and how the Jury returns its verdict.
 - ❖ Provisions to compel spouses and civil partners of defendants to give evidence in certain trials.
 - ❖ Provision for the prosecution to introduce evidence of a defendant’s previous criminal record, to show a propensity to commit similar offences to the one with which they have been charged.
 - ❖ Provision allowing the prosecution to withhold evidential material from the defence, where it considers disclosure would not be in the public interest.
 - ❖ Provisions preventing an unrepresented defendant from cross-examining complainants and vulnerable witnesses in certain cases.
 - ❖ Provisions introducing special measures for the protection of vulnerable witnesses, including children and young people.
8. The views of Members will be taken into account by the Sub-Panel when it begins its detailed examination of the legislation, if the principles are adopted during the debate.
9. It is the intention of the Sub-Panel to complete its work to enable further debate in the second reading of the Law at the States Sitting on 20th March 2018, assuming the principles are adopted by the States Assembly. As stated previously, the Sub-Panel has written to key stakeholders for views on the proposed Law, and will be arranging further Hearings with relevant witnesses as the review progresses.
10. The Sub-Panel’s Terms of Reference for the review are as follows –
- (i) to conduct detailed legislative scrutiny of the Draft Criminal Procedure (Jersey) Law 201- to ensure the accuracy and adequacy of the draft Law;
 - (ii) to assess the responses to the consultation undertaken to inform the draft Law;
 - (iii) to examine the draft legislation in relation to best practice in other common law jurisdictions;
 - (iv) to examine the consequential amendments to any other Laws.