

516/51 (2)

LA MOYE · JERSEY
**INDEPENDENT
PRISON
MONITORING
BOARD**

Deputy S. Y. Mézec,
Scrutiny Office,
States Greffe,
Morier House,
St Helier, JE1 1DD.



12th January 2018

Ref: 516/51

Dear Deputy Mézec,

**Education and Home Affairs Scrutiny Panel - Draft Criminal Procedure (Jersey) Law 201-
Sub-Panel Review**

Thank you for your letter dated 18 December 2017 inviting the Independent Prison Monitoring Board to comment on the Draft Criminal Procedure (Jersey) Law (DCPL).

The Board was established by the Prison (Independent Prison Monitoring Board) (Jersey) Regulations 2017 and in relation to prisoners its function is to “satisfy itself as to [their] treatment and welfare” (Regulation 2(2)(a)), by implication *in* the prison. Most prisoners will find court proceedings difficult to varying degrees and for a multitude of reasons, but it is not within the remit of this Board to deal with matters concerning prisoners’ cases and nor in our technical capacity to comment on much of what is covered by the DCPL.

Obviously, all prisoners experience “deprivation of liberty”, a situation permitted by the European Convention on Human Rights (ECHR), (incorporated as Schedule 1 into The Human Rights (Jersey) Law 2000), if the arrest and detention is “lawful”, as set out in Article 5 paragraphs (1) (a) to (f) of the ECHR. Article 5 paragraphs (2) and (3) require that an arrested person is “promptly” given information, “promptly” brought before a judge and given a trial “within a reasonable time”. Therefore, in considering the DCPL, the Board has focussed on time-frames.

Most prisoners will want their cases resolved without delay. A few will be acquitted, not given a custodial sentence, or acquitted or have their sentence reduced on appeal; for those, any time spent in custody cannot be counted towards a custodial sentence, so it is time lost, for which nothing can ever compensate. The Board recognises that preparation of cases and the administration of justice are complex logistical matters and therefore it is difficult to set specific times for most events, other than bringing an accused to court for a first hearing after arrest and charge. Therefore, the general provisions of the DCPL, need to be clear and sturdy in the face of any attempt to amend or dilute them.

We are pleased to note in Part 2 that the “overriding objective” of the DCPL is to “ensure that cases in criminal proceedings are dealt with justly” and that “justly” includes dealing with a case “efficiently and expeditiously” (Articles 2 and 3(e)). Reference can always be made to these

*c/o Independent Prison Monitoring Board, HMP La Moye,
La Rue Baal, St Brelade, Jersey, JE3 8HQ.*

fundamental aims so it is disturbing that Article 6 states that Part 2 can be amended by Regulation; the Board respectfully suggests that something so fundamental should only be amended by law.

Similarly, Part 3 deals with the courts' "Active management of criminal proceedings" and Article 7(2) lays down the basics including "early" actions, the discouragement of delay and the encouragement of co-operation, all laudable aims, but potentially undermined by the possibility of them also being amended by Regulation. No other Part (except Part 1 on Interpretation where the ability to easily amend is understandable) is stated to be amendable by Regulation, although subsequent Parts relate to more specific matters.

In the context of "deprivation of liberty" the prisoners at La Moye can be put into 4 categories:

i) Those who are held in custody awaiting their first court appearance

There is no mention in the DCPL of the period between arrest, charge and first appearance before a court, an action which is required by EHCR 5(3) to be "prompt". However, buried in the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004, at Code C 17 J, in italics and under the heading "Notes for Guidance", (at p.70) the person must be brought before a court "*as soon as practicable and in any event not later than the first sitting after he or she is charged*".

www.jerseylaw.je/laws/enacted/Pages/RO-143-2004.aspx#_Toc89241844

Given the obscure placement of this important provision, perhaps it should be incorporated into the DCPL or reference made to it.

ii) Those who are held in custody awaiting trial

The Board has noted some lengthy periods in the prison statistics, for which there may be an explanation, such as the accused is mentally unfit to stand trial, but it is a matter for concern if prisoners are held in custody for unreasonable periods before trial, especially if the result is an acquittal. Some jurisdictions set a time limit for a trial, after which the charge must be withdrawn; such a limit is not provided for in the DCPL and may not be something which is suitable for Jersey. If there is no such limit, it is important that the "overriding objective" and "active management" by the courts is not weakened by Regulation or other means.

Article 10 deals with hearings and adjournments, with para 10(1) setting 30 days as a maximum period in the Magistrate's Court for all cases. Paragraph 10(2) gives the only nod to the difference between an accused in custody or on bail, by setting maximum adjournments in the Royal Court to 42 and 60 days respectively but only when the accused is not legally represented. There is no maximum period in the Royal Court when the accused has representation. If the Court is to "actively manage" the proceedings, perhaps there should be a maximum adjournment period for those with legal representation, which would sharpen the minds of all participants. It could be fairly long such as 90 or 120 days.

- iii) Those who have been convicted and given a custodial sentence but who are appealing against conviction and/or sentence
 - a) Articles 33 to 41 deal with appeals from the Magistrates' Court to the Royal Court and an application to the Magistrate to state a case. No time directions are provided for, but as 12 months is the maximum custodial sentence within the jurisdiction of a Magistrate, it seems essential that such an appeal be determined speedily to avoid a successful appellant being wrongly held for a significant portion of the sentence.
 - b) Article 58 deals with appeals from the Royal Court to the Court of Appeal, but, again, does not provide any time frames as to when the appeal should be heard.

- iv) Those who have been convicted and given a custodial sentence but who are not appealing, or their appeal has been finalised and a custodial sentence still stands.
Court proceedings have concluded so this category, the majority in La Moye, do not need consideration in this context.

7-day notice periods

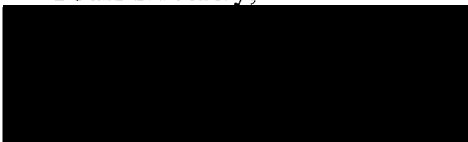
There are several Articles where a period of 7 days is specified for the service of notices; in some, but not all, cases this is qualified by the exclusion of Christmas Day, Good Friday and all Public Holidays. Whichever participant is serving the notice it would seem that the exclusion is sensible and consistency preferable. Articles 34 (1) is qualified by 34(5), Article 71 (4) by 71(5). Article 75 (9) by 75(10) but Articles 37(3), 43(2) and Schedule 2 (7) are not qualified, so Christmas Day etc would be counted.

Jury service exemption

Article 63 (2) lists categories of people who are exempt from jury service. This should include members of the Independent Prison Monitoring Board, this having been agreed with Home Affairs and the Viscount's Department. Prison Officers should also be exempt, possibly this should be extended to all prison staff too and those working in the Probation Service.

The short deadline combined with the Christmas break has meant that the Board has not had the opportunity to formally meet to fully discuss and consider the DCPL. The Board was keen to make a submission within the identified timescale and hopes that this contribution is helpful.

Yours sincerely,



Andrew Baudains
Chair, Independent Prison Monitoring Board