

PROJET DE LOI

ENTITLED

The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 *

[CONSOLIDATED TEXT]

NOTE

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* No. III of 2012; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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THE STATES, in pursuance of their Resolution of the 28th day of September, 2011^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART 1

MINIMUM TERMS FOR MANDATORY SENTENCES OF LIFE IMPRISONMENT

Starting points.

1. Where a court sentences an offender to a mandatory sentence of life imprisonment for an offence, it shall set, in accordance with sections 2, 3, 4, 5 and 6, as the case may be, the appropriate starting point in relation to the offender for the purposes of section 8.

Starting point for exceptionally serious cases.

2. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the whole of the offender's life if –

(a) the offender was aged 21 or over when he committed

^a Article XIX of Billet d'État No. XV of 2011.

the offence, and

- (b) the court considers that –
 - (i) the offence, or
 - (ii) the combination of the offence and any other offence committed by him which is associated with that offence,

is exceptionally serious.

(2) Without limiting the generality of subsection (1), cases that would normally be considered as exceptionally serious include the following –

- (a) murder of 2 or more persons, where each murder involves any of the following –
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) murder of a child, if the murder involves the abduction of the child or sadistic or sexual motivation,
- (c) murder for the purposes of advancing a political, religious, racial or ideological cause, and

- (d) murder by an offender previously convicted of murder.

Starting point for particularly serious cases.

3. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 30 years if –

- (a) the case does not fall within section 2(1),
- (b) the offender was aged 18 or over when he committed the offence, and
- (c) the court considers that –
 - (i) the offence, or
 - (ii) the combination of the offence and any other offence committed by him which is associated with that offence,

is particularly serious.

(2) Without limiting the generality of subsection (1), cases that would normally be considered as particularly serious include the following –

- (a) murder of a police officer, or prison officer, in the course of the officer's duty,
- (b) murder involving the use of a firearm or explosives,
- (c) murder for gain (such as murder in the course of a

robbery or burglary, or for payment or in the expectation of gain as a result of death),

- (d) murder done with the intention of obstructing or interfering with the course of justice,
- (e) murder involving sexual or sadistic conduct,
- (f) murder of 2 or more persons,
- (g) murder which is racially or religiously aggravated,
- (h) murder which is aggravated by sexual orientation or disability, and
- (i) murder falling within section 2 committed by an offender who was aged under 21 when he committed the offence.

Starting point for sufficiently serious cases.

4. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 25 years if –

- (a) the case does not fall within section 2(1) or 3(1),
- (b) the offender was aged 18 or over when the offender committed the offence, and
- (c) the offence falls within subsection (2).

(2) The offence falls within this subsection if the offender took a knife or other weapon to the scene intending to –

- (a) commit any offence, or
- (b) have it available to use as a weapon,

and he used that knife or other weapon in committing the murder.

Starting point for other cases where offence committed while offender was an adult.

5. The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 15 years if –

- (a) the case does not fall within section 2(1), 3(1) or 4(1),
and
- (b) the offender was aged 18 or over when he committed the offence.

Starting point for other cases where offence committed while offender was a child.

6. The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 12 years if the offender was aged under 18 when he committed the offence to which the starting point relates.

Aggravating and mitigating factors.

7. (1) After having set a starting point in relation to an offender, the court shall take into account any aggravating or mitigating factors, to the extent that it

has not already allowed for those factors in fixing the starting point.

(2) Aggravating factors that may be relevant to the offence of murder include the following –

- (a) the factors mentioned in sections 2(2), 3(2) and 4(2),
- (b) a significant degree of planning or premeditation,
- (c) that the victim was particularly vulnerable because of age or disability,
- (d) mental or physical suffering inflicted on the victim before death,
- (e) the abuse of a position of trust,
- (f) the use of duress or threats against another person to facilitate the commission of the offence,
- (g) that the victim was providing a public service or performing a public duty, and
- (h) concealment, destruction or dismemberment of the body.

(3) Mitigating factors that may be relevant to the offence of murder include the following –

- (a) an intention to cause serious bodily harm rather than to kill,

- (b) lack of premeditation,
- (c) that the offender suffered from any mental disorder or abnormality of mind which, although not within section 2 of the Homicide and Suicide (Bailiwick of Guernsey) Law, 2006^b, lowered the degree of culpability of the offender,
- (d) that the offender was provoked (for example by prolonged stress) in a way not amounting to the defence of provocation,
- (e) that the offender acted to any extent in self-defence or in fear of violence,
- (f) a belief by the offender that the murder was an act of mercy, and
- (g) the age of the offender.

Court to set minimum term of imprisonment.

- 8.** (1) The court shall, after having –
- (a) set a starting point under section 1, and
 - (b) considered any aggravating or mitigating factors under section 7,

^b Order in Council No. XX of 2009.

set in relation to the offender a minimum term of imprisonment in respect of the offence.

- (2) If the court sets a minimum term of imprisonment –
 - (a) for the whole of the offender's life, early release provisions shall not apply in relation to him in respect of that offence at any time during the remainder of his life, or
 - (b) that is less than the whole of the offender's life, early release provisions shall, after the end of the term specified, apply in relation to the offender in respect of that offence.

Duration of minimum term of imprisonment.

9. (1) Subject to subsection (2), the court may set a minimum term of imprisonment of any length, including a term that is the whole of the offender's life, irrespective of the starting point fixed by the court.

(2) The court may only set a minimum term of imprisonment that is the whole of the offender's life if –

- (a) the offender was 21 or over when he committed the offence, and
- (b) the court is satisfied that early release provisions should not apply to the offender at any time because of the seriousness of –
 - (i) the offence, or

- (ii) the combination of the offence and any other offence committed by him which is associated with the offence.

(3) In determining the length of a minimum term of imprisonment in relation to an offender, the court may take into account any period that, before the offender was sentenced for the offence to which the minimum term of imprisonment relates, he spent on remand in relation to the offence.

Court must give reasons for minimum term.

10. After setting a minimum term under section 8(1) the court shall state in open court, in ordinary language, its reasons for setting that minimum term.

Power to amend Part by Ordinance.

11. The States may by Ordinance amend –

- (a) any age, or
- (b) any starting point,

contained in Part 1.

Meaning of "murder which is racially or religiously aggravated".

12. (1) For the purposes of section 3, a murder is racially or religiously aggravated if –

- (a) at the time of, or immediately before or after, committing the murder the offender demonstrates towards the victim of the offence hostility based on the victim's membership of (or presumed membership of),

or association with, a racial or religious group, or

- (b) the offence is motivated wholly or partly by hostility-
 - (i) towards members of a racial or religious group based on their membership of that group, or
 - (ii) towards persons who associate with a racial or religious group.

(2) For the purposes of subsection (1)(a) or (b), it is immaterial whether or not the offender's hostility is also based, to any extent, on –

- (a) the fact or presumption that any person or group of persons belongs to any racial or religious group, or
- (b) any other factor not mentioned in that subsection.

(3) In this section –

"presumed" means presumed by the offender,

"racial group" means a group of persons that may be defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, and

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

Meaning of "murder which is aggravated by sexual orientation or disability".

- 13.** (1) For the purposes of section 3, a murder is aggravated by sexual

orientation or disability if –

(a) at the time of, or immediately before or after, committing the murder, the offender demonstrates towards the victim of the offence hostility based on –

(i) the sexual orientation (or presumed sexual orientation) of the victim, or

(ii) a disability (or presumed disability) of the victim, or

(b) the offence is motivated wholly or partly –

(i) by hostility towards persons who are of a particular sexual orientation, or

(ii) by hostility towards persons who have a disability or a particular disability.

(2) In this section –

"disability" means any physical or mental impairment,

"presumed" means presumed by the offender, and

"sexual orientation" of a person includes whether the person engages in prostitution.

PART 2

MINIMUM TERMS FOR DISCRETIONARY SENTENCES OF LIFE

IMPRISONMENT

Court to order minimum term of imprisonment.

14. (1) Where a court sentences an offender to a discretionary sentence of life imprisonment for an offence, it shall set in relation to the offender a minimum term of imprisonment in respect of that offence.

(2) If the court sets a minimum term of imprisonment –

- (a) for the whole of the offender's life, early release provisions shall not apply in relation to him in respect of that offence at any time during the remainder of his life, or
- (b) that is less than the whole of the offender's life, early release provisions shall, after the end of the term specified, apply in relation to the offender in respect of that offence.

Duration of minimum term of imprisonment.

15. (1) Subject to subsection (2), the court may set a minimum term of imprisonment of any length, including a term that is the whole of the offender's life.

(2) The court may only set a minimum term of imprisonment that is the whole of the offender's life if –

- (a) the offender was 21 or over when he committed the offence, and
- (b) the court is satisfied that early release provisions should not apply to the offender at any time because of –

- (i) the seriousness of the offence, or
- (ii) the seriousness of the combination of the offence and any other offence committed by him which is associated with the offence.

(3) In determining the length of a minimum term of imprisonment in relation to an offender, the court may take into account –

- (a) the seriousness of the offence,
- (b) the seriousness of the combination of the offence and any other offence committed by him which is associated with the offence, and
- (c) any period that, before the offender was sentenced for the offence to which the minimum term of imprisonment relates, he spent on remand in relation to the offence.

Court must give reasons for minimum term.

16. After setting a minimum term under section 14(1) the court shall state in open court, in ordinary language, its reasons for setting that minimum term.

PART 3

MISCELLANEOUS PROVISIONS

Effect of release in another jurisdiction on sentence in the Bailiwick of Guernsey.

17. If a person who is sentenced by a court to a sentence of life imprisonment –

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

the person is not to be taken to be unlawfully at large in any part of the Bailiwick only because he has not served all of the sentence ordered by the court.

Transitional provisions – application to offences.

18. (1) Nothing is to be taken to prevent or limit the application of this Law to a person who commits an offence before this Law comes into force.

(2) The Home Department may by regulations make such transitional provisions as it deems appropriate and which, without prejudice to the generality of the foregoing, may –

- (a) permit a recommendation made by a court which sentenced an offender to a sentence of life imprisonment –
 - (i) on or after 18th December 2003, but
 - (ii) before the commencement of this Law,

to be deemed to be a minimum term of imprisonment as if it was made under section 8, and

- (b) where the sentencing court was the Royal Court, establish a right of appeal to the Court of Appeal

against such a deemed minimum term of imprisonment.

NOTES

In section 18, the words in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

Provisions relating to Ordinances and regulations.

- 19.** (1) An Ordinance or regulations made under this Law –
- (a) may be amended or repealed by a subsequent Ordinance or regulations hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.
- (2) Any power conferred by this Law to make an Ordinance or regulations may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Amendments.

20. The Schedule to this Law shall have effect.

Interpretation.

21. (1) In this Law, unless the context otherwise requires –

"the Bailiwick" means the Bailiwick of Guernsey,

"child" means a person who is aged under 18,

"enactment" means any Act of the Westminster Parliament, Law, Ordinance or subordinate legislation,

"minimum term of imprisonment" has the meaning given in sections 8 and 14,

"murder which is aggravated by sexual orientation or disability"

has the meaning given in section 13,

"murder which is racially or religiously aggravated" has the meaning given in section 12,

"prescribed" means prescribed by regulations made by the [Committee for Home Affairs],

"starting point", in relation to an offender, means a period calculated under section 2, 3, 4, 5 or 6 in relation to the offender,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

"youth detention" means a custodial sentence of youth detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^c.

(2) In this Law –

(a) a mandatory sentence of life imprisonment means a sentence of life imprisonment which a court must by law impose if it finds an offender guilty of the offence of murder,

(b) a discretionary sentence of life imprisonment means a

^c Ordres en Conseil Vol. XXXII, p. 106; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003). See also the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004 (No. IX of 2005).

sentence of life imprisonment which the court has imposed in respect of an offence, for which the maximum penalty is life imprisonment,

(c) a reference to a sentence of life imprisonment includes –

(i) a sentence of youth detention for life pursuant to section 1(1A) of the Homicide (Guernsey) Law, 1965, and

(ii) detention during Her Majesty's pleasure pursuant to section 1(2) of that Law,

(d) "**early release provisions**" means the prescribed provisions of any enactment of Guernsey, Alderney or Sark, or of any of the other British Islands, that are provisions in accordance with which an offender who is in prison, custody or detention under a sentence of life imprisonment may be released from the imprisonment, custody or detention before the completion of the sentence, and

(e) unless the context otherwise requires, references to the "**Royal Court**" shall include references to the Court of Appeal where that court sentences an offender to a sentence of life imprisonment for an offence.

(3) The provisions of the Interpretation (Guernsey) Law, 1948^d

^d Ordres en Conseil Vol. XIII, p. 355.

apply to the interpretation of this Law throughout the Bailiwick.

(4) Any reference in this Law to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification) extended or applied.

NOTES

In section 21, the words in square brackets in the definition of the expression "prescribed" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation.

22. This Law may be cited as the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011.

Commencement.

23. (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions of this Law and for different purposes.

NOTE

The Law was brought into force on 27th June, 2012 by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (Commencement) Ordinance, 2012, section 1.

SCHEDULE
AMENDMENTS

Section 20

The following Laws are amended in the manner indicated –

Homicide (Guernsey) Law, 1965.

1. In section 1(1), for "the next succeeding subsection" substitute "subsections (1A) and (2)".

2. Immediately after subsection (1), insert the following subsection –

" (1A) Where a person aged under 21 who is found guilty of murder appears to the Royal Court to have been aged eighteen years or over at the time that the offence was committed, such person shall not be sentenced to imprisonment for life under subsection (1) of this section but in lieu thereof the Royal Court shall sentence him to youth custody for life."

Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

3. After section 1(9), insert the following subsection –

" (10) Subject to any provision relating to custodial sentences for life, a sentence of youth detention for life made under section 1(1A) of the Homicide (Guernsey) Law, 1965 is a sentence of youth detention for the purposes of this Law."

Court of Appeal (Guernsey) Law, 1961^e.

4. For section 24, substitute the following section –

"Right of appeal.

^e Ordres en Conseil Vol. XVIII, p. 315, as amended.

24. (1) A person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court on or after such day as shall be appointed in that behalf by Ordinance of the States may appeal under this Part of this Law to the Court of Appeal –

- (a) against his conviction, on any ground of appeal which involves a question of law alone,
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who presided at his trial that it is a fit case for appeal against his conviction, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal, and
- (c) with the leave of the Court of Appeal –
 - (i) against the sentence passed on his conviction, unless the sentence is one fixed by law, and
 - (ii) against the minimum term of imprisonment, where he has been sentenced to life imprisonment.

(2) For the purposes of subsection (1)(c)(ii), "**life imprisonment**" shall include any sentence of youth detention for life and detention at Her Majesty's pleasure."

5. Immediately after section 25(3), insert the following subsection –

" (4) On an appeal against a minimum term of imprisonment, the Court of Appeal shall if it thinks that a different minimum term should have been set, quash the minimum term set at the trial, and set such other minimum term warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal."