



Code on the decision to prosecute

Simplified version

This is intended to help people understand how the prosecution decides whether a person will be charged with a crime.

The full version is The Code on the Decision to Prosecute and its additional Guidance and Appendix (which can be found here: [Code on the Decision to Prosecute](#)). The Full version of the Code is the official document.

Introduction

- 1) The decision to charge a person with a crime is serious. It is important that law and order are maintained and this includes fair and effective prosecution.
- 2) Even charges for minor crimes can have a serious effect on the person charged, and on victims and witnesses.
- 3) The official who charges a person is an Honorary Police officer called a Centenier. A Centenier can decide to charge a person by him or herself or can ask for the advice and help of a lawyer who works for the Attorney General.
- 4) At Court, a case can be dealt with by a Centenier or a lawyer working for the Attorney General. Both of these are Prosecutors.
- 5) Every case is different and the facts of each case must be considered before a decision can be made.
- 6) However, there are general factors that apply in all cases.

Duty of the Prosecutor

- 7) The duty of the Prosecutor is to make sure that the right person is prosecuted for the right crime, that all relevant facts are given to the Court so that the Defendant receives a fair trial.
- 8) Prosecutors must be fair, independent, and objective. They must not let their personal views of the ethnic or national origin, sex, religious beliefs, political views, or sexual orientation of the offender, victim or witness influence their decisions. They must not be affected by inappropriate pressure from anybody.

The two tests under the Code on the Decision to Prosecute

- 9) There are two stages in any decision to prosecute.
- 10) The first stage is called the evidential test. If the case does not pass the evidential test, it must not go ahead no matter how important or serious it may be. If the case does pass the evidential test the Prosecutor must consider the second part of the test.
- 11) The second stage is called the public interest test. The Prosecutor will only start or continue a prosecution if the case has passed both tests.

The Evidential test

- 12) Prosecutors must be sure that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. They must consider what the defence case may be.
- 13) A realistic prospect of conviction means that a Magistrate, a jury, or bench of Jurats who have been told about and are following the law that applies is more likely than not to convict the defendant of the charge.
- 14) When a Prosecutor is deciding whether there is enough evidence to prosecute, Prosecutors must consider whether the evidence can be used in Court and is reliable. Where Centeniers are not sure whether evidence can be used, they should ask for advice from a lawyer working for the Attorney General.

The public interest test

- 15) Prosecutors must balance factors for and against prosecution carefully and fairly.
- 16) Some common public interest factors in favour of prosecution
 - a) The crime is serious
 - b) The crime was violent or a weapon was used
 - c) The defendant was in a position of authority
 - d) The victim was vulnerable
 - e) The crime was carried out because of discrimination against the victim's ethnic or national origin, sex, religious beliefs, personal views, or sexual orientation
 - f) The defendant has been convicted of similar crimes before
 - g) This list does not include everything that might be relevant [refer to [main code for more](#)]

- 17) Some common public interest factors against prosecution
- a) The sentence is likely to be a very small fine or nominal penalty
 - b) The crime happened because of a mistake or misunderstanding
 - c) A prosecution is likely to have a very bad effect on the victim's physical or mental health
 - d) The defendant is elderly or has serious mental health problems
 - e) This list does not include everything that might be relevant [refer to [main code for more](#)]
- 18) Deciding what is in the public interest does not mean adding up the number of factors on each side. Prosecutors must decide how important each factor is and then decide what to do.

The relationship between the victim and the public interest

- 19) Prosecutors have to act in the public interest of everyone and not just one person.
- 20) Prosecutors must always think very carefully about the interests of the victim and what they want and what effect the offending has had on them.
- 21) The interests of the victim are important when deciding what is in the public interest.

Young offenders

- 22) When the defendant is a youth (which means a person under the age of 21 years old) Prosecutors must think about their interests when deciding if prosecution is in the public interest.
- 23) Having a conviction can cause very serious harm to a youth's future. Youths can be sent to a Parish Hall Enquiry instead of going to Court. The younger the youth is the less likely that prosecution will be in the public interest.
- 24) However, if the crime is serious or if the young person has a history of that sort of behaviour, it might be necessary for the case to go to Court. Young offenders should be sent to the Youth Court if possible.

Power of the Attorney General to overrule a Centenier's decision

- 25) Normally, if a Centenier decides whether or not a defendant is going to be charged that is the end of the matter. However, the Attorney General has the final say and can tell a Centenier that they must charge a person. The Attorney General can also tell a Centenier that a prosecution must not continue.

Conclusion

- 26) The Full Code is issued by the Attorney General and is available from all Parish Halls and the Law Officers' Department, Morier House, St Helier, Jersey JE1 1DD.
- 27) It is also available at the States of Jersey Police Headquarters and also on the website of the Law Officers' Department.
- 28) This is not the full Code on the Decision to Prosecute and the full version is the official document.
- 29) Further information and guidance about prosecutions can be found on the Law Officers' Department's website.