

Dangerous Prisoners (Sexual Offences) Amendment Bill 2007

Explanatory Notes

Objectives of the Bill

To amend the *Dangerous Prisoners (Sexual Offenders) Act 2003* to strengthen the response to a contravention of a supervision order to better protect the community and to act as a deterrent to contravening behaviour.

Reasons for the Bill

A released prisoner under the *Dangerous Prisoners (Sexual Offenders) Act 2003* is a person who has previously committed a serious sexual offence and the Supreme Court has determined is an unacceptable risk of committing a further serious sexual offence if released from custody without a supervision order being made.

Supervision orders must contain a number of mandatory conditions as provided in the *Dangerous Prisoners (Sexual Offenders) Act 2003* and any other conditions the court considers appropriate to ensure the adequate protection of the community. The conditions which attach to the supervision order aim to minimise the risk of the released prisoner re-offending. Clearly, a contravention of those conditions raises a real question as to the risk the released prisoner poses to the community.

Division 5 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* provides the relevant process when it is alleged a released prisoner has, is, or will contravene a condition of a Supreme Court supervision order. The provisions currently provide for the released prisoner to be brought back before the Supreme Court and are tailored towards the released prisoner remaining in the community pending the final determination of the Supreme Court as to whether the released prisoner should be continuously detained. In relation to that final determination, having already satisfied the Supreme Court on the original application that the prisoner is a serious danger to the community, the Attorney-General is again asked to satisfy that test, despite the released prisoner having contravened the supervision order.

Having regard to the object of ensuring the adequate protection of the community, where there is evidence of a breach, a released prisoner should be detained pending the final determination of the court as to whether the supervision order should be rescinded and a continuing detention order made. Further, upon the Supreme Court being satisfied that a released prisoner has contravened the order, the onus should rest with the released prisoner to satisfy the court that the adequate protection of the community can be ensured, despite the contravention, by the supervision order.

Achievement of the Objectives

The Bill amends the *Dangerous Prisoners (Sexual Offenders) Act 2003* to provide:

- for a magistrate to issue a warrant for the arrest of a released prisoner if satisfied that there are grounds for reasonably suspecting the released prisoner has, is, or is likely to, contravene a supervision order. The warrant brings the released prisoner before the Supreme Court;
- that upon the released prisoner being brought before the Supreme Court on the warrant, the court must order the released prisoner's interim detention pending the final determination of the court as to whether the supervision order should be rescinded and a continuing detention order made. However, the court may order the prisoner's release if the prisoner satisfies the court that exceptional circumstances exist;
- that upon the Supreme Court being satisfied as to the contravention, the court must make a continuing detention order (or interim detention order in the case of a interim supervision order) unless the released prisoner can satisfy the court that the adequate protection of the community can still be ensured by the supervision order or an amended supervision order;
- for the creation of a summary offence carrying a maximum penalty of two years imprisonment which will apply to a person who contravenes, without reasonable excuse, a condition of a supervision order.

Estimated Cost for Government Implementation

It is not anticipated that the proposed amendments will significantly impact on prisoner numbers or impact on the costs involved in the supervision of released prisoners.

Consistency with Fundamental Legislative Principles

There may be an argument that the amendments do not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*. Prisoners released on supervision orders under the DPSOA are prisoners the Court has determined pose a serious danger to the community if they are not subject to appropriate levels of supervision. It is therefore appropriate that the justice system can respond swiftly to temporarily detain a released prisoner who is alleged to have contravened a condition of supervision order. Further, given that the Attorney-General has previously satisfied the Supreme Court on the original application that the prisoner is a serious danger to the community in the absence of a supervision order, it is entirely appropriate that the released prisoner should bear the onus of satisfying the court that the adequate protection of the community can still be ensured by a supervision order.

Consultation

The Department of Premier and Cabinet and Queensland Corrective Services have been consulted on the policy objectives and on the drafting of the provisions.

Notes on Provisions

Clause 1 provides that the Act's short title is the Dangerous Prisoners (Sexual Offenders) Amendment Act 2007.

Clause 2 provides that the Act amends the Dangerous Prisoners (Sexual Offenders) Act 2003.

Clause 3 amends section 16 by inserting a new section 16(da) which provides that a released prisoner must comply with every reasonable direction of a corrective services officer.

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Clause 4 amends section 20 to omit the provisions allowing for the application for, and issuing of, a summons requiring a released prisoner to appear before the Supreme Court. Amended section 20 will provide that where a police officer or corrective services officer reasonably suspect a released prisoner is likely to contravene, is contravening, or has contravened, a condition of a supervision order or interim supervision order, the officer may, by a complaint to a magistrate, apply for a warrant for the arrest of the released prisoner to bring the released prisoner before the Supreme Court.

Subclause (3) and (4) have the effect of providing that a magistrate must issue the warrant if satisfied the grounds for issuing the warrant exist and if the complaint is under oath.

Subclause (7) omits section 20(7) and inserts a new subsection (7) which provides that if a warrant is issued, the commissioner of the police service or the chief executive must give a copy of the warrant to the Attorney-General within 24 hours after the warrant is issued.

Subclause (8) has the effect of providing that a section 20 warrant may be obtained by telephone, fax, radio, email or another similar facility.

Clause 5 omits section 21 and inserts a new section 21 which applies if a released prisoner is brought before the Supreme Court pursuant to the warrant issued under section 20. New section 21 provides that the court must order that the released prisoner be detained until the final determination under section 22, unless the released prisoner satisfies the court that his or her detention is not justified because exceptional circumstances exist. If the court is satisfied as to the existence of exceptional circumstances, the court may order the released prisoner's release. Such release must be subject to the existing supervision order or existing interim supervision order or subject to the existing order with amended conditions.

Clause 6 amends section 22 to provide that if the court is satisfied that the released prisoner has, is, or is likely to, contravene the supervision order or interim supervision order, the court must rescind the order and make a continuing detention order (or interim detention order in the case of an interim supervision order), unless the released prisoner satisfies the court that the adequate protection of the community can, despite the contravention, be ensured by the order (as it was or with amended conditions).

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Subclause (3) provides that for the purpose of deciding whether to make a continuing detention order, the court may act on any evidence before it or that was before the court when the supervision order was made, for example, an existing risk assessment. Further, the court may make any order necessary to enable evidence of a kind mentioned in section 13 (4) to be brought before it, including an order in the nature of a risk assessment.

Subclauses (4) and (5) clarify that the court may order further risk assessments if satisfied that the evidence otherwise available is not sufficient to make a decision under subsection (2). Further, if further risk assessments are ordered, the provisions of section 11 apply with necessary changes.

The amendment is required to clarify the court's discretion about the type of evidence that may be considered on making a determination about whether a released prisoner has satisfied the court that the adequate protection of the community can be ensured by the released prisoner being under a supervision or interim supervision order.

In some circumstances a released prisoner may contravene conditions of a supervision order a short time after release. In these circumstances recently completed risk assessments may be relied upon. A full risk assessment may not be necessary however an updated report on the affect of the contraventions may be required. In other circumstances a released prisoner may have been under a supervision order for a number of years before contravening conditions and it may be necessary for new risk assessment reports to be completed.

Clause 7 inserts a new section 22A which provides the Attorney-General with a right of appearance before the court hearing a matter under section 21 or 22. The Attorney-General may make submissions, call evidence and cross-examine witnesses.

Clause 8 amends section 25 to extend the Attorney-General's duty to disclose to a hearing of a matter under section 22. The Attorney-General must disclose evidence or things as soon as practicable after being given a copy of the warrant issued under section 20 and upon the warrant being executed.

Clause 9 inserts a new section 43B which creates a summary offence carrying a maximum penalty of two years imprisonment. The offence applies to a released prisoner who, without reasonable excuse, contravenes a condition of their supervision order (or interim supervision order).

Clause 10 makes consequential amendments to section 45.

Clause 11 makes consequential amendments to section 49.

Clause 12 inserts a new Part 7, which provides the transitional provisions of the Act. The amendments will apply to orders made before commencement of the amendments. Therefore the amendments will apply to existing released prisoners. However, any proceedings taken in relation to contraventions occurring before the commencement of the amendments will proceed pursuant to the old regime. New section 43B (breaching offence) is not effective to impose criminal liability retrospectively.

Clause 13 amends the Dictionary.