



Dangerous Prisoners (Sexual Offenders) Act 2003

Reprinted as in force on 8 December 2005

Reprint No. 1A

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 8 December 2005. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

Dangerous Prisoners (Sexual Offenders) Act 2003

Contents

		Page
Part 1	Preliminary	
1	Short title	5
2	Definitions	5
3	Objects of this Act	5
4	Relationship with Bail Act	6
Part 2	Continuing detention or supervision	
Division 1	Application for orders	
5	Attorney-General may apply for orders	6
6	Prisoner may file material in response	7
7	Contents of affidavit	7
8	Preliminary hearing	7
9	What a risk assessment order authorises	8
9A	Court may adjourn hearing for division 3 order	8
10	Discontinuing application for division 3 order	8
Division 2	Psychiatric examinations	
11	Preparation of psychiatric report	9
12	Psychiatric reports to be given to the Attorney-General and the prisoner	10
Division 3	Final orders	
13	Division 3 orders	10
Division 3A	Effect of particular orders	
14	Effect of continuing detention order or interim detention order	12
15	Effect of supervision order or interim supervision order	12
Division 3B	Supervised release to be subject to particular requirements	
16	Conditions for supervised release	13

Division 3C	Reasons for orders	
17	Court to give reasons	14
Division 4	Amendment of supervision orders or interim supervision orders	
18	Application for amendment	14
19	Amendment of conditions of supervision order or interim supervision order	15
Division 5	Contravention of supervision order or interim supervision order	
20	Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order	15
21	Contravention of supervision order or interim supervision order	16
22	Court may make further order	16
Division 6	Return to custody of released prisoner	
23	Application of division	17
24	Period in custody not counted	17
Division 7	Disclosure provisions	
25	Duty to disclose	18
Part 3	Annual reviews	
26	Purpose of this part	18
27	Review—periodic	18
28	Review—application by prisoner	19
29	Psychiatric reports to be prepared for review	19
30	Review hearing	20
Part 4	Appeals	
31	Appeals	20
32	Time for appeal	21
33	Starting appeal	21
34	Registrar to give respondent copies of particular documents	21
35	Abandoning applications for extensions	21
36	Abandoning appeal	22
37	Lawyer acting for prisoner	22
38	Lawyer withdrawing from acting for prisoner	23
39	Application for leave to be present	24
40	Prisoner detained in custody	24
41	Stay of operation of decision	24
42	Court's power to order re-arrest on appeal by Attorney-General	24
43	Court of Appeal's powers on appeal	25

Dangerous Prisoners (Sexual Offenders) Act 2003

Part 5	General	
43A	Persons who remain prisoners for particular purposes	26
44	Hearings on the papers	26
45	Other hearings	27
46	Court may give directions	28
47	Service on a prisoner	28
48	Service or filing by a prisoner	28
49	Appearance at hearings	28
50	Order for detention taken to be a warrant for Corrective Services Act	29
51	Post-prison community based release	29
52	Approved forms	29
53	Regulation-making power	29
Part 6	Transitional provisions for Justice and Other Legislation Amendment Act 2005	
54	Amendment does not affect existing orders	29
55	Transitional statements for particular provisions	30
55	Amendments not to affect status of persons who were prisoners for particular purposes	30
Schedule	Dictionary	32
Endnotes		
1	Index to endnotes	34
2	Date to which amendments incorporated	34
3	Key	34
4	Table of reprints	35
5	List of legislation	35
6	List of annotations	35
7	List of forms notified or published in the gazette	37

Dangerous Prisoners (Sexual Offenders) Act 2003

[as amended by all amendments that commenced on or before 8 December 2005]

An Act to provide for the continued detention of a particular class of prisoner for their control, care or treatment, or for their supervised release, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

2 Definitions

The dictionary in the schedule defines particular words used in this Act.

3 Objects of this Act

The objects of this Act are—

- (a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
- (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.

4 Relationship with Bail Act

The *Bail Act 1980* does not apply to a person detained under this Act.

Part 2 Continuing detention or supervision

Division 1 Application for orders

5 Attorney-General may apply for orders

- (1) The Attorney-General may apply to the court for an order or orders under section 8¹ and a division 3 order in relation to a prisoner.
- (2) The application must—
 - (a) state the orders sought; and
 - (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking an order or orders under section 8; and
 - (c) be made during the last 6 months of the prisoner's period of imprisonment.
- (3) On the filing of the application, the registrar must record a return date for the matter to come before the court for a hearing (*preliminary hearing*) to decide whether the court is satisfied that there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order.
- (4) The return date for the preliminary hearing must be within 28 business days after the filing.

1 Section 8 (Preliminary hearing)

(5) A copy of the application and any affidavit to be relied on by the Attorney-General must be given to the prisoner within 2 business days after the filing.

(6) In this section—

prisoner means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section.

6 Prisoner may file material in response

(1) The prisoner may file affidavits to be relied on by the prisoner for the preliminary hearing.

(2) The prisoner must give a copy of the affidavits to the Attorney-General at least 3 business days before the day set down for the preliminary hearing.

7 Contents of affidavit

(1) An affidavit must be confined to the evidence the person making it could give if giving evidence orally.

(2) However, an affidavit for use in a preliminary hearing may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

8 Preliminary hearing

(1) If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order, the court must set a date for the hearing of the application for a division 3 order.

(2) If the court is satisfied as required under subsection (1), it may make—

(a) an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports; and

- (b) if the court is satisfied the application may not be finally decided until after the prisoner's release day—
 - (i) an order that the prisoner's release from custody be supervised; or
 - (ii) an order that the prisoner be detained in custody for the period stated in the order.

Note—

If the court makes an order under subsection (2)(b)(i), the order must contain the requirements for the prisoner stated in section 16(1).

9 What a risk assessment order authorises

A risk assessment order authorises the examination of the prisoner by 2 psychiatrists, named in the risk assessment order, who must examine the prisoner and prepare a report as required under section 11.

9A Court may adjourn hearing for division 3 order

- (1) The court may, on application or on its own initiative, adjourn the hearing of an application for a division 3 order.
- (2) If the court adjourns the hearing of the application and is satisfied the application may not be finally decided until after the prisoner's release day, the court may make an order—
 - (a) that the prisoner's release from custody be supervised; or
 - (b) that the prisoner be detained in custody for the period stated in the order.

Note—

If the court makes an order under subsection (2)(a), the order must contain the requirements for the prisoner stated in section 16(1).

10 Discontinuing application for division 3 order

- (1) The Attorney-General, at any time after applying for a division 3 order, may discontinue the application by giving to the registrar and the prisoner a notice of discontinuance.

- (2) The application is taken to be dismissed by the court when the notice is given to the registrar.
- (3) If the prisoner has been ordered to be detained under an interim detention order or has been released from custody under an interim supervision order, the Attorney-General must apply immediately to the court for rescission of the order.

Division 2 Psychiatric examinations

11 Preparation of psychiatric report

- (1) Each psychiatrist examining the prisoner must prepare a report under this section.
- (2) The report must indicate—
 - (a) the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence—
 - (i) if released from custody; or
 - (ii) if released from custody without a supervision order being made; and
 - (b) the reasons for the psychiatrist's assessment.
- (3) For the purposes of preparing the report, the chief executive must give each psychiatrist any medical, psychiatric, prison or other relevant report or information in relation to the prisoner in the chief executive's possession or to which the chief executive has, or may be given, access.
- (4) A person in possession of a report or information mentioned in subsection (3) must give a copy of the report or the information to the chief executive if asked by the chief executive.
- (5) Subsection (4) authorises and requires the person to give the report or information despite any other law to the contrary or any duty of confidentiality attaching to the report.
- (6) If a person required to give a report or information under subsection (4) refuses to give the report or information, the chief executive may apply to the court for an order requiring

the person to give the report or information to the chief executive.

- (7) A person giving a report or information under subsection (4) or (6) is not liable, civilly, criminally or under an administrative process, for giving the report or information.
- (8) Each psychiatrist must have regard to each report or the information given to the psychiatrist under subsection (3).
- (9) Each psychiatrist must prepare a report even if the prisoner does not cooperate, or does not cooperate fully, in the examination.

12 Psychiatric reports to be given to the Attorney-General and the prisoner

- (1) Each psychiatrist must give a copy of the psychiatrist's report to the Attorney-General within 7 days after finalising the report.
- (2) The Attorney-General must give a copy of each report to the prisoner on the next business day after the Attorney-General receives the report.

Division 3 Final orders

13 Division 3 orders

- (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a *serious danger to the community*).
- (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—
 - (a) if the prisoner is released from custody; or
 - (b) if the prisoner is released from custody without a supervision order being made.

Dangerous Prisoners (Sexual Offenders) Act 2003

- (3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied—
- (a) by acceptable, cogent evidence; and
 - (b) to a high degree of probability;
- that the evidence is of sufficient weight to justify the decision.
- (4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—
- (a) the reports prepared by the psychiatrists under section 11² and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
 - (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
 - (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
 - (d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
 - (e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;
 - (f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;
 - (g) the prisoner's antecedents and criminal history;
 - (h) the risk that the prisoner will commit another serious sexual offence if released into the community;
 - (i) the need to protect members of the community from that risk;
 - (j) any other relevant matter.
- (5) If the court is satisfied as required under subsection (1), the court may order—

2 Section 11 (Preparation of psychiatric report)

- (a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or
 - (b) that the prisoner be released from custody subject to the conditions it considers appropriate that are stated in the order (***supervision order***).
- (6) In deciding whether to make an order under subsection (5)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.
- (7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1).

Division 3A Effect of particular orders

14 Effect of continuing detention order or interim detention order

- (1) A continuing detention order has effect in accordance with its terms—
- (a) on the order being made or at the end of the prisoner's period of imprisonment, whichever is the later; and
 - (b) until rescinded.
- (2) An interim detention order has effect in accordance with its terms—
- (a) on the order being made or at the end of the prisoner's period of imprisonment, whichever is the later; and
 - (b) for the period stated in the order, unless earlier rescinded.

15 Effect of supervision order or interim supervision order

A supervision order or interim supervision order has effect in accordance with its terms—

- (a) on the order being made or at the end of the prisoner's period of imprisonment, whichever is the later; and
- (b) for the period stated in the order.

Division 3B Supervised release to be subject to particular requirements

16 Conditions for supervised release

- (1) If a judicial authority orders that a prisoner's release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—
 - (a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and
 - (b) report to, and receive visits from, a corrective services officer as directed by the judicial authority; and
 - (c) notify a corrective services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and
 - (d) be under the supervision of a corrective services officer; and
 - (e) not leave or stay out of Queensland without the permission of a corrective services officer; and
 - (f) not commit an offence of a sexual nature during the period of the order.
- (2) The order may contain any other order the judicial authority considers appropriate—
 - (a) to ensure adequate protection of the community; or
 - Examples for paragraph (a)—*
 - 1 That the prisoner not knowingly reside with a convicted sex offender.

- 2 That the prisoner must not, without reasonable excuse, be within 200m of a school.
- (b) for the prisoner's rehabilitation or care or treatment.

Division 3C Reasons for orders

17 Court to give reasons

- (1) If a judicial authority makes any of the following orders, it must give detailed reasons for making the order—
 - (a) a continuing detention order;
 - (b) an interim detention order;
 - (c) a supervision order;
 - (d) an interim supervision order.
- (2) The reasons must be given at the time the order is made.

Division 4 Amendment of supervision orders or interim supervision orders

18 Application for amendment

- (1) An application under this division must be made by—
 - (a) a prisoner released under a supervision order or interim supervision order (*released prisoner*); or
 - (b) the chief executive with the Attorney-General's consent.
- (2) Notice of an application made by the released prisoner must be given by the released prisoner to the Attorney-General and the chief executive.
- (3) Notice of an application made by the chief executive must be given to the released prisoner.

19 Amendment of conditions of supervision order or interim supervision order

- (1) The court may, on application, amend the conditions of a supervision order or interim supervision order if the court is satisfied that—
 - (a) the released prisoner is not able to comply with the conditions of the order because of a change in the released prisoner's circumstances; or
 - (b) an amendment of the conditions is necessary or desirable for any other reason.
- (2) The court may amend the conditions if it is satisfied that—
 - (a) the conditions, as amended, are sufficient to ensure adequate protection of the community; and
 - (b) it is reasonable to make the amendment in all the circumstances.

Division 5 Contravention of supervision order or interim supervision order**20 Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order**

- (1) This section applies if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a condition of the released prisoner's supervision order or interim supervision order.
- (2) The officer may, by a complaint to a magistrate, apply for—
 - (a) a summons requiring the released prisoner to appear before the Supreme Court; or
 - (b) a warrant for the arrest of the released prisoner directed to all police officers and corrective services officers to arrest the released prisoner and bring the released prisoner before the Supreme Court to be dealt with according to law.

- (3) The magistrate must issue the summons or warrant, in the approved form, if the magistrate is satisfied the grounds for issuing the summons or warrant exist.
- (4) However, the warrant may be issued only if—
 - (a) the complaint is under oath; and
 - (b) the magistrate is satisfied the released prisoner would not appear in answer to a summons.
- (5) Further, the magistrate may refuse to issue the warrant if the magistrate considers it would be unjust to issue the warrant.
- (6) The summons or warrant may state the suspected contravention in general terms.

21 Contravention of supervision order or interim supervision order

- (1) This section applies if a released prisoner is brought before the court under a summons or warrant issued under section 20.³
- (2) The Attorney-General may apply to the court for a further order under section 22.
- (3) The application must state the order sought.

22 Court may make further order

- (1) If the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, the supervision order or interim supervision order, the court may—
 - (a) amend the conditions of the supervision order or interim supervision order; or
 - (b) if the order is a supervision order and the court is satisfied as required under section 13(1), rescind the order and make a continuing detention order; or

³ Section 20 (Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order)

- (c) if the order is an interim supervision order, rescind the order and make an order that the released prisoner be detained in custody for the period stated in the order; or
- (d) make any other order the court considers appropriate—
 - (i) to achieve compliance with the supervision order or interim supervision order; or
 - (ii) to ensure adequate protection of the community.
- (2) Subject to subsection (3), for the purpose of subsection (1)(b), section 13 applies as if the application under this section were an application for a division 3 order under that section.
- (3) For the purpose of deciding whether to make a continuing detention order under subsection (1)(b), the court may—
 - (a) act on any evidence before it; or
 - (b) make any order necessary to enable evidence of a kind needed to support an application for a division 3 order to be brought before it, including an order in the nature of a risk assessment order.

Division 6 Return to custody of released prisoner

23 Application of division

This division applies if, after being released from custody under a supervision order or interim supervision order, a released prisoner is sentenced to a term or period of imprisonment for any offence, other than an offence of a sexual nature.

24 Period in custody not counted

- (1) The released prisoner's supervision order or interim supervision order is suspended for any period the released prisoner is detained in custody on remand or serving the term of imprisonment.
- (2) The period for which the released prisoner's supervision order or interim supervision order has effect as stated in the order is

extended by any period the released prisoner is detained in custody.

Division 7 Disclosure provisions

25 Duty to disclose

- (1) This section applies to an application for a division 3 order.
- (2) The Attorney-General's duty to disclose evidence or things in the Attorney-General's possession is the same duty to disclose the prosecution has in a criminal proceeding.
- (3) The Attorney-General must disclose the evidence or things at least 7 days before the application is heard.
- (4) If the Attorney-General can not comply with the time requirement because the thing to be disclosed was not in the Attorney-General's possession in sufficient time, including, for example, because the thing did not exist at the time, the Attorney-General must disclose the thing as soon as practicable after it comes into the Attorney-General's possession.

Part 3 Annual reviews

26 Purpose of this part

The purpose of this part is to ensure that a prisoner's continued detention under a continuing detention order is subject to regular review.

27 Review—periodic

- (1) If the court makes a continuing detention order, the court must review the order at the end of 1 year after the order first has effect and afterwards at intervals of not more than 1 year after the last review was made while the prisoner continues to be subject to the order.

- (2) The Attorney-General must make any application that is required to be made to cause the reviews mentioned in subsection (1) to be carried out.

28 Review—application by prisoner

- (1) The prisoner may apply to the court for the prisoner's continuing detention order to be reviewed at any time after the court makes its first review under section 27(1) if the court gives leave to apply on the ground that there are exceptional circumstances that relate to the prisoner.
- (2) The registrar must immediately forward a copy of the application to the Attorney-General.
- (3) As soon as practicable after the making of the application, the court must give directions to enable the application to be heard.
- (4) Subject to any directions given by the court, the application must be heard as soon as practicable after the application is made.

29 Psychiatric reports to be prepared for review

- (1) Unless the court otherwise orders at the hearing of any application under this Act, for the purposes of a review under section 27 or 28, the chief executive must arrange for the prisoner to be examined by 2 psychiatrists.
- (2) For subsection (1) and the purposes of a review, sections 11 and 12⁴ apply with necessary changes.
- (3) Subsection (1) authorises examinations of the prisoner by the 2 psychiatrists.

⁴ Sections 11 (Preparation of psychiatric report) and 12 (Psychiatric reports to be given to Attorney-General and the prisoner)

30 Review hearing

- (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the matters mentioned in section 13(4),⁵ the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
- (2) On the hearing of the review, the court may affirm the decision only if it is satisfied—
 - (a) by acceptable, cogent evidence; and
 - (b) to a high degree of probability;that the evidence is of sufficient weight to affirm the decision.
- (3) If the court affirms the decision, the court may order that the prisoner—
 - (a) continue to be subject to the continuing detention order; or
 - (b) be released from custody subject to a supervision order.
- (4) In deciding whether to make an order under subsection (3)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.
- (5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.

Part 4 Appeals**31 Appeals**

The Attorney-General or a prisoner in relation to whom a decision under this Act has been made may appeal against the decision.

⁵ Section 13 (Division 3 orders)

32 Time for appeal

- (1) An appeal must be started within 1 month after the decision is made (the *appeal period*).
- (2) On application, the Court of Appeal may extend the appeal period.

33 Starting appeal

- (1) A person starts an appeal by filing a notice of appeal with the registrar.
- (2) The notice must—
 - (a) be signed by the person or the person's lawyer; and
 - (b) state, briefly and precisely, the grounds of the appeal.
- (3) If the notice is not filed in the appeal period, the person must also file with the registrar a notice of application for extension of time for filing the notice.

34 Registrar to give respondent copies of particular documents

The registrar must give to the respondent to an appeal copies of any of the following documents filed with the registrar for the appeal—

- (a) the notice of appeal;
- (b) a notice of application for extension of time for filing a notice mentioned in paragraph (a).

35 Abandoning applications for extensions

- (1) This section applies to an applicant for extension of time within which to appeal.
- (2) The applicant, at any time after filing the application, may abandon it by giving to the registrar a notice of abandonment of application.
- (3) The application is taken to be refused by the Court of Appeal when the notice of abandonment is given to the registrar.

- (4) However, if the court considers it necessary in the interests of justice, the Court of Appeal may set aside the abandonment and reinstate the application.

36 Abandoning appeal

- (1) An appellant, at any time after starting an appeal, may abandon it by giving to the registrar a notice of abandonment of appeal.
- (2) The appeal is taken to be dismissed by the Court of Appeal when the notice is given to the registrar.
- (3) However, if the Court of Appeal considers it necessary in the interests of justice, the Court of Appeal may set aside the abandonment and reinstate the appeal.

37 Lawyer acting for prisoner

- (1) A lawyer acting for a prisoner in an appeal must—
 - (a) give written notice that the lawyer acts for the prisoner to the registrar; and
 - (b) give a copy of the notice to the other party to the appeal.
- (2) The notice must state the lawyer's—
 - (a) address for service; and
 - (b) telephone and facsimile number; and
 - (c) email address, if any.
- (3) The lawyer must comply with subsection (1)—
 - (a) no later than 14 days before the day the appeal is set down for hearing (the *hearing day*); or
 - (b) if the hearing day is sooner than the 14 days, as soon as possible.
- (4) A lawyer acting for a prisoner who files a notice of appeal is taken to continue acting for the prisoner until the earliest of the following happens—
 - (a) the lawyer gives a notice to the registrar under section 38(1);

- (b) the lawyer is given the Court of Appeal's leave to withdraw from acting for the prisoner under section 38(2).

38 Lawyer withdrawing from acting for prisoner

- (1) A lawyer who is no longer instructed to act for a prisoner in an appeal may withdraw from acting for the prisoner in the appeal by—
 - (a) as soon as possible after becoming aware that the lawyer is no longer instructed to act, giving the registrar written notice that the lawyer no longer acts for the prisoner; and
 - (b) at the same time, giving a copy of the notice to each of the following persons at the person's address that is last known to the lawyer—
 - (i) the other party to the appeal;
 - (ii) the prisoner.
- (2) A lawyer who wants to withdraw from acting for a prisoner in an appeal, other than because the lawyer is no longer instructed to act for the prisoner, may withdraw by—
 - (a) giving written notice to the registrar that the lawyer intends seeking the Court of Appeal's leave to withdraw from acting for the prisoner in the appeal; and
 - (b) giving a copy of the notice to—
 - (i) the other party to the appeal; and
 - (ii) the prisoner; and
 - (c) obtaining the Court of Appeal's leave to withdraw from acting for the prisoner in the proceeding.
- (3) The lawyer must give the notice or copy mentioned in subsection (2)—
 - (a) no later than 14 days before the hearing day; or
 - (b) if the hearing day is sooner than the 14 days, as soon as possible.

39 Application for leave to be present

If a prisoner indicates on the notice of appeal that the prisoner wants to be present at the hearing of the appeal, the notice is taken also to be an application for leave to be present at the appeal.

40 Prisoner detained in custody

- (1) This section applies to an appeal if the prisoner is not legally represented and is detained in custody.
- (2) The person in charge of the place where the prisoner is detained in custody must give to the registrar written notice that the prisoner is detained in custody at that place.
- (3) The registrar may ask the Court of Appeal for directions about the appeal, including, for example, about the prisoner's attendance at the appeal.

41 Stay of operation of decision

- (1) An appeal does not stay the operation of the decision.
- (2) However, if the judicial authority hearing an appeal is satisfied the appeal may not be finally decided until after the prisoner's release day, the judicial authority may make an order—
 - (a) that the prisoner's release from custody be supervised; or
 - (b) that the prisoner be detained in custody for the period stated in the order.

Note—

If a judicial authority makes an order under subsection (2)(a), the order must contain the requirements for the prisoner stated in section 16(1).

42 Court's power to order re-arrest on appeal by Attorney-General

- (1) This section applies if an order is made under section 41(2)(b) for the detention of a prisoner.

- (2) The Court of Appeal, the judge of appeal or the court may, when the order is made or afterwards, issue a warrant for the prisoner's apprehension and committal into custody.

43 Court of Appeal's powers on appeal

- (1) An appeal is by way of rehearing.
- (2) The Court of Appeal—
- (a) has all the powers and duties of the court that made the decision appealed from; and
 - (b) may draw inferences of fact, not inconsistent with the findings of the court; and
 - (c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit or in another way; and
 - (d) may order that the matter be remitted to the court for rehearing.
- (3) Subsection (2)(a) does not limit the powers that the Court of Appeal has in its civil jurisdiction.
- (4) If the Court of Appeal orders that the matter be remitted to the court for rehearing and is satisfied the matter may not be reheard until after the prisoner's release day, the Court of Appeal may make an order—
- (a) that the prisoner's release from custody be supervised;
or
 - (b) that the prisoner be detained in custody for the period stated in the order.

Note—

If the Court of Appeal makes an order under subsection (4)(a), the order must contain the requirements for the prisoner stated in section 16(1).

Part 5 General

43A Persons who remain prisoners for particular purposes

- (1) This section provides for the application of this Act to a person.
- (2) A person who is subject to a continuing detention order or interim detention order remains a prisoner.
- (3) A person who is subject to an interim supervision order remains a prisoner for the purposes of any relevant application, appeal or rehearing.
- (4) A person who is released from custody, without an interim supervision order having being made, after the court sets a date for the hearing of an application for a division 3 order relating to the person remains a prisoner for the purposes of the application.
- (5) A person who is released from custody, without an interim supervision order having being made, after the Court of Appeal makes an order under section 43(2)(d) relating to the person remains a prisoner for the purposes of the rehearing.
- (6) A person who is released from custody after the hearing of any application under this Act, without an interim supervision order having being made, remains a prisoner for the purposes of any appeal against the decision and for any subsequent appeal.

44 Hearings on the papers

- (1) The court may decide whether it is satisfied as required under section 8(1) or 18⁶ entirely or partly from a consideration of the documents filed, without the prisoner or witnesses appearing or the prisoner consenting to, or being heard on, the matter being decided in that way.
- (2) In making its decision, the court may receive in evidence the following documents—
 - (a) the prisoner's antecedents and criminal history;

⁶ Section 8 (Preliminary hearing) or 18 (Application for amendment)

- (b) anything relevant to the issue contained in the certified transcription of, or any medical, psychiatric, psychological or other report tendered in, any proceeding against the prisoner for a serious sexual offence.
- (3) Subsection (1) is subject to section 49.

45 Other hearings

- (1) This section applies to the following applications—
 - (a) an application for a division 3 order;
 - (b) an application for review under section 27 or 28;⁷
 - (c) an application for a further order under section 22.⁸
- (2) Subject to the admissibility of the evidence, before the court makes a decision or order on the hearing of an application it must—
 - (a) hear evidence called by the Attorney-General; and
 - (b) hear evidence given or called by the prisoner, if the prisoner elects to give or call evidence.
- (3) Subject to subsection (4), ordinary rules of evidence apply to evidence given or called under subsection (2).
- (4) In making its decision, the court may receive in evidence the following documents—
 - (a) the prisoner's antecedents and criminal history;
 - (b) anything relevant to the issue contained in the certified transcription of, or any medical, psychiatric, psychological or other report tendered in, any proceeding against the prisoner for a serious sexual offence.

7 Section 27 (Review—periodic) or 28 (Review—application by prisoner)

8 Section 22 (Court may make further order)

46 Court may give directions

The court may give directions in relation to the conduct of a proceeding under this Act on its own initiative or on an application.

47 Service on a prisoner

- (1) If a document is required under this Act to be given to a prisoner detained in custody, the document is taken to have been given to the prisoner if the document is given to the person in charge of the place where the prisoner is detained in custody.
- (2) If, under subsection (1), a document is given to the person in charge, the person in charge must give the document to the prisoner without undue delay.

48 Service or filing by a prisoner

- (1) If a prisoner detained in custody is unrepresented and is required under this Act to give or file a document, the prisoner may give the document to the person in charge of the place where the prisoner is detained in custody.
- (2) The person in charge must give or file the document without undue delay.

49 Appearance at hearings

- (1) The prisoner is entitled to appear at a preliminary hearing under section 8 or at a hearing under section 13, 18, 21, 27 or 28.⁹
- (2) Subsection (1) does not limit the court's power under section 44 to deal with an application under section 8 or 18 if the prisoner does not appear at the hearing of the application.

⁹ Section 13 (Division 3 orders), 18 (Application for amendment), 21 (Contravention of supervision order or interim supervision order), 27 (Review—periodic) or 28 (Review—application by prisoner)

50 Order for detention taken to be a warrant for Corrective Services Act

An order of the court or the Court of Appeal under this Act that a prisoner be detained in custody for the period stated in the order is taken to be a warrant committing the prisoner into custody for the *Corrective Services Act 2000*.

51 Post-prison community based release

A prisoner subject to a continuing detention order or interim detention order is not eligible for post-prison community based release under the *Corrective Services Act 2000*, chapter 5.

52 Approved forms

The chief executive of the department within which this Act is administered may approve forms for use under this Act.

53 Regulation-making power

The Governor in Council may make regulations under this Act.

**Part 6 Transitional provisions for
Justice and Other Legislation
Amendment Act 2005****54 Amendment does not affect existing orders**

- (1) The amendment of this Act by the *Justice and Other Legislation Amendment Act 2005*, part 11 does not affect any order made under the Act and in force immediately before the commencement.
- (2) An order mentioned in subsection (1) continues to have effect according to its terms after the commencement.

- (3) In this section—

commencement means the commencement of this section.

55 Transitional statements for particular provisions

- (1) A court may make an order under section 8(2)(b)(i) even if the application to which the order relates was made before the commencement if the application has not been decided on the commencement.
- (2) A court may make an order under section 9A(2) even if the application to which the order relates was made before the commencement if the application has not been decided on the commencement.
- (3) A judicial authority may make an order under section 41(2) even if the appeal to which the order relates was started before the commencement.
- (4) The Court of Appeal may make an order under section 43(2)(d) or (4) even if the appeal to which the order relates was started before the commencement.
- (5) Section 44(1) as in force immediately after the commencement applies even if the application to which the decision relates was started before the commencement.
- (6) In this section—

commencement means the commencement of this section.

56 Amendments not to affect status of persons who were prisoners for particular purposes

- (1) Without limiting section 43A, if, immediately before the commencement of this section, a person was or remained a prisoner for a purpose under the pre-amended Act, the person is or remains a prisoner for the purpose under the amended Act.
- (2) In this section—

amended Act means this Act as amended by the *Justice and Other Legislation Amendment Act 2005*, part 11.

Dangerous Prisoners (Sexual Offenders) Act 2003

pre-amended Act means this Act as in force immediately before the commencement of this section.

Schedule Dictionary

section 2

appeal period see section 32(1).

certified transcription means a certified transcription under the *Recording of Evidence Act 1962*, section 10(2).

chief executive means the chief executive (corrective services).

continuing detention order see section 13(5)(a).

corrective services officer see the *Corrective Services Act 2000*, schedule 3.

court means the trial division of the Supreme Court.

criminal history means criminal history prepared by the commissioner of the police service.

division 3 order means—

- (a) a continuing detention order; or
- (b) a supervision order.

hearing day see section 37(3)(a).

interim detention order means an order detaining a person in custody made under section 8(2)(b)(ii), 9A(2)(b), 22(1)(c), 41(2)(b) or 43(4)(b).

interim supervision order means an order made under section 8(2)(b)(i), 9A(2)(a), 41(2)(a) or 43(4)(a).

judicial authority means—

- (a) the court; or
- (b) if the court's decision on a matter is appealed—a court with jurisdiction to hear the appeal or any further appeal.

period of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

preliminary hearing see section 5(3).

Schedule (continued)

prisoner means a prisoner within the meaning of the *Corrective Services Act 2000*.

Note—

Also see section 43A.

psychiatrist means a person registered as a specialist registrant under the *Medical Practitioners Registration Act 2001* in the specialty of psychiatry.

reasonably suspects means suspects on grounds that are reasonable in all the circumstances of the case.

registrar means the registrar of the court.

release day, in relation to a prisoner, means the day on which the prisoner is due to be unconditionally released from lawful custody under the *Corrective Services Act 2000*.

released prisoner see section 18(1)(a).

risk assessment order means an order made under section 8(2)(a).

serious danger to the community see section 13(1).

serious sexual offence means an offence of a sexual nature, whether committed in Queensland or outside Queensland—

- (a) involving violence; or
- (b) against children.

supervised release means release from custody under a supervision order or interim supervision order.

supervision order see section 13(5)(b).

term of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

violence includes the following—

- (a) intimidation;
- (b) threats.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	34
3 Key	34
4 Table of reprints	35
5 List of legislation	35
6 List of annotations	35
7 List of forms notified or published in the gazette	37

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 December 2005. Future amendments of the Dangerous Prisoners (Sexual Offenders) Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	6 June 2003	
1A	2005 Act No. 70	8 December 2005	

5 List of legislation

Dangerous Prisoners (Sexual Offenders) Act 2003 No. 40

date of assent 6 June 2003
 commenced on date of assent
 amending legislation—

Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 11

date of assent 8 December 2005
 commenced on date of assent

6 List of annotations

Attorney-General may apply for orders

s 5 amd 2005 No. 70 s 62

Preliminary hearing

s 8 amd 2005 No. 70 s 63

Court may adjourn hearing for division 3 order

s 9A ins 2005 No. 70 s 64

Discontinuing application for division 3 order

s 10 amd 2005 No. 70 s 65

Division 3—Final orders

div hdg sub 2005 No. 70 s 66

Division 3A—Effect of particular orders

div hdg ins 2005 No. 70 s 67

Effect of continuing detention order or interim detention order

prov hdg amd 2005 No. 70 s 68(1)
 s 14 amd 2005 No. 70 s 68(2)–(3)

Effect of supervision order or interim supervision order

prov hdg amd 2005 No. 70 s 69
 s 15 amd 2005 No. 70 s 69

Division 3B—Supervised release to be subject to particular requirements**div hdg** ins 2005 No. 70 s 70**Conditions for supervised release****s 16** amd 2005 No. 70 s 71**Division 3C—Reasons for orders****div hdg** ins 2005 No. 70 s 72**Court to give reasons****s 17** amd 2005 No. 70 s 73**Division 4—Amendment of supervision orders or interim supervision orders****div hdg** amd 2005 No. 70 s 74**Application for amendment****s 18** amd 2005 No. 70 s 75**Amendment of conditions of supervision order or interim supervision order****prov hdg** amd 2005 No. 70 s 76**s 19** amd 2005 No. 70 s 76**Division 5—Contravention of supervision order or interim supervision order****div hdg** amd 2005 No. 70 s 77**Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order****prov hdg** amd 2005 No. 70 s 78(1)**s 20** amd 2005 No. 70 s 78(2)**Contravention of supervision order or interim supervision order****s 21 prov hdg** amd 2005 No. 70 s 79**Court may make further order****s 22** amd 2005 No. 70 s 80**Application of division****s 23** amd 2005 No. 70 s 81**Period in custody not counted****s 24** amd 2005 No. 70 s 82**Stay of operation of decision****s 41** amd 2005 No. 70 s 83**Court's power to order re-arrest on appeal by Attorney-General****s 42** amd 2005 No. 70 s 84**Court of Appeal's powers on appeal****s 43** amd 2005 No. 70 s 85**Persons who remain prisoners for particular purposes****s 43A** ins 2005 No. 70 s 86**Hearings on the papers****s 44** amd 2005 No. 70 s 87

Appearance at hearings

s 49 amd 2005 No. 70 s 88

Post-prison community based release

s 51 amd 2005 No. 70 s 89

**PART 6—TRANSITIONAL PROVISIONS FOR JUSTICE AND OTHER
LEGISLATION AMENDMENT ACT 2005**pt hdg prev pt hdg om R1 (see RA s 7(1)(k))
pres pt hdg ins 2005 No. 70 s 90**Amendment does not affect existing orders**s 54 prev s 54 om R1 (see RA s 40)
pres s 54 ins 2005 No. 70 s 90**Transitional statements for particular provisions**s 55 prev s 55 om R1 (see RA s 40)
pres s 55 ins 2005 No. 70 s 90**Amendments not to affect status of persons who were prisoners for particular
purposes**s 56 prev s 56 om R1 (see RA s 40)
pres s 56 ins 2005 No. 70 s 90**SCHEDULE—DICTIONARY**

def “interim detention order” sub 2005 No. 70 s 91(1)–(2)

def “interim supervision order” ins 2005 No. 70 s 91(2)

def “judicial authority” ins 2005 No. 70 s 91(2)

def “prisoner” amd 2005 No. 70 s 91(3)

def “release day” ins 2005 No. 70 s 91(2)

def “risk assessment order” sub 2005 No. 70 s 91(1)–(2)

def “supervised released” amd 2005 No. 70 s 91(4)

**7 List of forms notified or published in the
gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

Form 1 Version 1—Complaint—Sworn, and Summons

pubd gaz 16 January 2004 p 137

Form 2 Version 1—Complaint—Sworn, and Arrest Warrant

pubd gaz 16 January 2004 p 137