



Dangerous Prisoners (Sexual Offenders) Act 2003

Reprinted as in force on 1 July 2010

Reprint No. 2B

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Queensland

Dangerous Prisoners (Sexual Offenders) Act 2003

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Dangerous Prisoners (Sexual Offenders) Act 2003

[as amended by all amendments that commenced on or before 1 July 2010]

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.

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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 8 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.
- (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

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- (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.

9AA Victim's submission relating to division 3 order

- (1) As soon as practicable after the court sets a date for the hearing of an application for a division 3 order, the Attorney-General must give written notice of the application and hearing date to the following eligible person—
 - (a) subject to paragraph (b), the actual victim of the serious sexual offence for which the prisoner is serving a term or period of imprisonment;
 - (b) if the victim is under 18 years or has a legal incapacity, the victim's parent or guardian.
- (2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
 - (a) the person's views about any division 3 order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed under a regulation.

- (3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at the eligible person's last-known address recorded in the eligible persons register.
- (4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- (5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person's identity and contact details recorded in the eligible persons register.

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.

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- (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.
- (4) If the Attorney-General received a submission from an eligible person in response to a notice given to the person under section 9AA, the Attorney-General must give the person written notice of the discontinuance of the application.

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.

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- (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*).

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- (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.
- (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 11 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;

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- (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—
- (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 requirements 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

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- (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 Requirements 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
 - (da) comply with a curfew direction or monitoring direction; and
 - (db) comply with every reasonable direction of a corrective services officer; and

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- (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 requirement the judicial authority considers appropriate—
- (a) to ensure adequate protection of the community; or
- Examples for paragraph (a)—*
- a requirement that the prisoner must not knowingly reside with a convicted sexual offender
 - a requirement that the prisoner must not, without reasonable excuse, be within 200m of a school
 - a requirement that the prisoner must wear a device for monitoring the prisoner's location
- (b) for the prisoner's rehabilitation or care or treatment.

16A Curfew and monitoring directions

- (1) The purpose of this section is to enable the movements of a released prisoner to be restricted and to enable the location of the released prisoner to be monitored.
- (2) A corrective services officer may give 1 or both of the following directions to the released prisoner—
- (a) a direction to remain at a stated place for stated periods (*curfew direction*);
- Example—*
- a direction to remain at the released prisoner's place of residence from 2.30p.m. to 7.00p.m. on school days, if the prisoner is not required to be at a place of employment during these hours
- (b) a direction to do 1 or both of the following (*monitoring direction*)—
- (i) wear a stated device;
 - (ii) permit the installation of any device or equipment at the place where the released prisoner resides.

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- (3) A corrective services officer may give any reasonable directions to a released prisoner that are necessary for the proper administration of a curfew direction or monitoring direction.
- (4) This section and section 16(1)(da) do not limit section 16(1)(db).

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 requirements of supervision order or interim supervision order

- (1) The court may, on application, amend the requirements 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 requirements of the order because of a change in the released prisoner's circumstances; or
 - (b) an amendment of the requirements is necessary or desirable for any other reason.
- (2) The court may amend the requirements if it is satisfied that—
 - (a) the requirements, as amended, are sufficient to ensure adequate protection of the community; and
 - (b) it is reasonable to make the amendment in all the circumstances.
- (3) If the court amends the requirements on an application made by the chief executive, the court must also amend the supervision order or interim supervision order to include the requirements mentioned in section 16(1)(da) and (db), if the order does not already include the requirements.
- (4) To the extent the supervision order or interim supervision order includes a requirement mentioned in section 16(1), the order can not be amended under this section in relation to the requirement.

19A Removal or reinstatement of requirement to comply with curfew direction or monitoring direction

- (1) This section applies to a requirement of a supervision order or interim supervision order that a released prisoner comply with a curfew direction or monitoring direction.
- (2) The court may, on application by the released prisoner, remove the requirement if the released prisoner satisfies the court on the balance of probabilities that the adequate protection of the community can be ensured without the requirement.

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- (3) The magistrate must issue the warrant, in the approved form, if the magistrate is satisfied the grounds for issuing the warrant exist.
 - (4) However, the warrant may be issued only if the complaint is under oath.
 - (6) The warrant may state the suspected contravention in general terms.
 - (7) If the magistrate issues a warrant under subsection (3), 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.
 - (8) The *Police Powers and Responsibilities Act 2000*, sections 800 to 802, apply to the application for the warrant—
 - (a) as if the warrant were a prescribed authority, within the meaning of section 800 of that Act, that could be obtained under that Act; and
 - (b) if the application is made by a corrective services officer, as if the corrective services officer were a police officer.

Note—

The *Police Powers and Responsibilities Act 2000*, sections 800 to 802 provide for obtaining prescribed authorities by phone, fax, radio, email or another similar facility.

- (9) To remove any doubt, it is declared that a failure by the commissioner of the police service or the chief executive to comply with subsection (7) does not affect the court's ability to make a further order under section 22.

21 Interim order concerning custody generally

- (1) This section applies if a released prisoner is brought before the court under a warrant issued under section 20.
- (2) The court must—
 - (a) order that the released prisoner be detained in custody until the final decision of the court under section 22; or

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- (b) release the prisoner under subsection (4).
- (3) The released prisoner may, when the issue of his or her custody is raised under subsection (2), or at any time after the court makes an order under that subsection detaining the prisoner, apply to the court to be released pending the final decision.
- (4) The court may order the release of the released prisoner only if the prisoner satisfies the court, on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist.
- (5) If the court adjourns an application under subsection (3), the court must order that the released prisoner remain in custody pending the decision on the application.
- (6) If the court orders the released prisoner's release, the court must order that the prisoner be released subject to the existing supervision order or existing interim supervision order (each the *existing order*) as amended under subsection (7).
- (7) For subsection (6), the court—
 - (a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if the existing order does not already include the requirements; and
 - (b) may amend the existing order to include any other requirements the court considers appropriate to ensure adequate protection of the community.

21A Victim's submission relating to further order

- (1) As soon as practicable after the court sets a date for the hearing for making its final decision under section 22 in relation to the prisoner, the Attorney-General must give written notice of the issue of the warrant and hearing date to the following eligible person—
 - (a) subject to paragraph (b), the person mentioned in section 9AA(1)(a) as the actual victim of the serious

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- sexual offence for which the prisoner was serving a term or period of imprisonment;
- (b) if the victim is under 18 years or has a legal incapacity, the victim's parent or guardian.
- (2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
- (a) the person's views about any further order or conditions of release to which the prisoner should be subject; and
- (b) any other matters prescribed under a regulation.
- (3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at the eligible person's last-known address recorded in the eligible persons register.
- (4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- (5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person's identity and contact details recorded in the eligible persons register.

22 Court may make further order

- (1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the *existing order*).
- (2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—

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- (a) if the existing order is a supervision order, rescind it and make a continuing detention order; or
 - (b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.
- (3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—
 - (a) act on any evidence before it or that was before the court when the existing order was made;
 - (b) 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 order.
- (4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).
- (5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.
- (6) For applying section 11 to the preparation of the report—
 - (a) section 11(2) applies with the necessary changes; and
 - (b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.
- (7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—
 - (a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if

the existing order does not already include the requirements; and

- (b) may otherwise amend the existing order in a way the court considers appropriate—
 - (i) to ensure adequate protection of the community; or
 - (ii) for the prisoner's rehabilitation or care or treatment.
- (8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1).

22A Appearance by Attorney-General

The Attorney-General has a right of appearance before the court hearing a matter under section 21 or 22 and may do any or all of the following—

- (a) make submissions;
- (b) call evidence;
- (c) test the evidence before the court.

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

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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 and for the hearing of a matter under section 22.
- (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—
 - (a) for an application for a division 3 order—at least 7 days before the application is heard; or
 - (b) for the hearing of a matter under section 22—as soon as practicable after—
 - (i) the Attorney-General is given a copy of the warrant issued under section 20 for the prisoner to whom the matter relates; and
 - (ii) the warrant is executed.
- (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.

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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 12 apply with necessary changes.
- (3) Subsection (1) authorises examinations of the prisoner by the 2 psychiatrists.

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), 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.
- (4A) If the court makes the order under subsection (3)(b), the supervision order must include the requirements mentioned in section 16(1)(da) and (db).

- (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 of the court under this Act has been made may appeal against the decision.

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.

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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—

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- (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 chief executive must give the registrar written notice that the prisoner is detained in custody.

-
- (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

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.

43B Offence of contravening supervision order or interim supervision order

- (1) A person subject to a supervision order or interim supervision order who, without reasonable excuse, contravenes a requirement of the order commits an offence.

Maximum penalty—2 years imprisonment.

- (2) A proceeding for an offence against subsection (1) is to be taken in a summary way under the *Justices Act 1886*.

44 Hearings on the papers

- (1) The court may decide whether it is satisfied as required under section 8(1) or 18 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;
 - (b) anything relevant to the issue contained in the certified transcription of, or any medical, psychiatric, psychological or other report tendered in, any

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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 matters—
- (a) an application for a division 3 order;
 - (b) an application for review under section 27 or 28;
 - (c) a proceeding for a further order under section 22.
- (2) Subject to the admissibility of the evidence, before the court makes a decision or order on the hearing of the matter 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.

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 chief executive.
- (2) If, under subsection (1), a document is given to the chief executive, the chief executive 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 chief executive.
- (2) The chief executive 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, 22, 27 or 28.
- (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.

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 2006*.

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51 Parole

A prisoner subject to a continuing detention order or interim detention order is not eligible for parole under the *Corrective Services Act 2006*, 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.

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

Part 7 **Transitional provisions for Dangerous Prisoners (Sexual Offenders) Amendment Act 2007**

57 **Application of amended Act to previous orders**

- (1) Subject to this section, this Act as amended applies in relation to any previous order.
- (2) This Act as amended applies to any contravention of a previous order that happens after the commencement.
- (3) This Act as in force immediately before the amendment applies, or continues to apply, in relation to any contravention of a previous order that happened before the commencement.
- (4) In this section—

amended means amended by the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*.

amendment means the amendment of this Act by the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*.

commencement means the commencement of this section.

previous order means a supervision order or an interim supervision order made before the commencement.

58 **Transitional statements for particular provisions**

- (1) Section 16(1)(da) and (db) do not apply to a supervision order or interim supervision order that is in force at the commencement (the *existing order*), unless the court amends the requirements of the existing order to include the requirements stated in the paragraphs.
- (1A) Without limiting the *Acts Interpretation Act 1954*, section 20, the repeal and re-enactment of section 22 does not affect any order made under section 22 before its repeal.

- (2) Section 43B is not effective to impose criminal liability retrospectively.
- (3) In this section—
commencement means 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 2006*, schedule 4.

court means the trial division of the Supreme Court.

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

curfew direction see section 16A(2)(a).

division 3 order means—

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

eligible person means a person registered as an eligible person in relation to the prisoner on the eligible persons register.

eligible persons register means the eligible persons register kept under the *Corrective Services Act 2006*.

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), 21(2)(a) or 22(2)(b), 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.

monitoring direction see section 16A(2)(b).

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

preliminary hearing see section 5(3).

prisoner means a prisoner within the meaning of the *Corrective Services Act 2006*.

Note—

Also see section 43A.

psychiatrist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

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 2006*.

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

requirement, of an order, includes—

- (a) a condition, including a condition of an order made before the commencement of the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*; and
- (b) a provision of an order made before the commencement of that Act under section 16(2) or 22(1) as in force at any time before the commencement of that Act.

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

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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 1 July 2010. 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

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	
1B	2006 Act No. 24	29 May 2006	
1C	2006 Act No. 29	28 August 2006	
1D	2006 Act No. 45	2 February 2007	
2	2007 Act No. 35	29 August 2007	
2A	2007 Act No. 37	28 September 2007	
2B	2010 Act No. 14	1 July 2010	

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

Personal Injuries Proceedings (Legal Advertising) and Other Acts Amendment Act 2006 No. 24 pts 1, 4

date of assent 29 May 2006
commenced on date of assent

Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3

date of assent 1 June 2006
ss 1–2 commenced on date of assent
remaining provisions commenced 28 August 2006 (2006 SL No. 213)

Criminal Code (Drink Spiking) and Other Acts Amendment Act 2006 No. 45 pts 1, 4

date of assent 10 November 2006
ss 1–2 commenced on date of assent
remaining provisions commenced 2 February 2007 (2007 SL No. 6)

Dangerous Prisoners (Sexual Offenders) Amendment Act 2007 No. 35

date of assent 29 August 2007
commenced on date of assent

Justice and Other Legislation Amendment Act 2007 No. 37 ss 1, 162 sch

date of assent 29 August 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 28 September 2007 (2007 SL No. 241)

Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010 No. 14 ss 1, 124 sch

date of assent 21 April 2010
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2010 (see s 2)

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

Victim's submission relating to division 3 order

s 9AA ins 2007 No. 35 s 2A

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; 2007 No. 35 s 2B

Division 3—Final orders

div hdg sub 2005 No. 70 s 66

Division 3 orders

s 13 amd 2007 No. 35 s 2C

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

Requirements for supervised release

prov hdg amd 2007 No. 35 s 3(1)

s 16 amd 2005 No. 70 s 71; 2006 No. 45 s 10; 2007 No. 35 s 3(2)–(4)

Curfew and monitoring directions

s 16A ins 2007 No. 35 s 3A

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 requirements of supervision order or interim supervision order

prov hdg amd 2005 No. 70 s 76; 2007 No. 35 s 3B(1)

s 19 amd 2005 No. 70 s 76; 2007 No. 35 s 3B(1)–(2)

Removal or reinstatement of requirement to comply with curfew direction or monitoring direction

s 19A ins 2007 No. 35 s 3C

Division 5—Contravention of supervision order or interim supervision order**div hdg** amd 2005 No. 70 s 77**Warrant for released prisoner suspected of contravening a supervision order or interim supervision order****prov hdg** amd 2005 No. 70 s 78(1); 2007 No. 35 s 4(1)**s 20** amd 2005 No. 70 s 78(2); 2006 No. 24 s 27; 2007 No. 35 s 4(1A)–(8)**Interim order concerning custody generally****prov hdg** amd 2005 No. 70 s 79**s 21** sub 2007 No. 35 s 5**Victim's submission relating to further order****s 21A** ins 2007 No. 35 s 5A**Court may make further order****s 22** amd 2005 No. 70 s 80; 2006 No. 24 s 28

sub 2007 No. 35 s 6

Appearance by Attorney-General**s 22A** ins 2007 No. 35 s 7**Application of division****s 23** amd 2005 No. 70 s 81**Period in custody not counted****s 24** amd 2005 No. 70 s 82**Duty to disclose****s 25** amd 2007 No. 35 s 8**Review hearing****s 30** amd 2007 No. 35 s 8A**Appeals****s 31** amd 2007 No. 35 s 8B**Prisoner detained in custody****s 40** amd 2006 No. 29 s 518 sch 3; 2007 No. 37 s 162 sch**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

amd 2006 No. 24 s 29

Offence of contravening supervision order or interim supervision order**s 43B** ins 2007 No. 35 s 9

Endnotes

Hearings on the papers

s 44 amd 2005 No. 70 s 87

Other hearings

s 45 amd 2007 No. 35 s 10

Service on a prisoner

s 47 amd 2006 No. 29 s 518 sch 3; 2007 No. 37 s 162 sch

Service or filing by a prisoner

s 48 amd 2007 No. 37 s 162 sch

Appearance at hearings

s 49 amd 2005 No. 70 s 88; 2007 No. 35 s 11

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

s 50 amd 2006 No. 29 s 518 sch 3

Parole

s 51 amd 2005 No. 70 s 89
sub 2006 No. 29 s 518 sch 3

**PART 6—TRANSITIONAL PROVISIONS FOR JUSTICE AND OTHER
LEGISLATION AMENDMENT ACT 2005**

pt hdg prev pt 6 hdg om R1 (see RA s 7(1)(k))
pres pt 6 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

**PART 7—TRANSITIONAL PROVISIONS FOR DANGEROUS PRISONERS
(SEXUAL OFFENDERS) AMENDMENT ACT 2007**

pt 7 (ss 57–58) ins 2007 No. 35 s 12

SCHEDULE—DICTIONARY

def “corrective services officer” amd 2006 No. 29 s 518 sch 3
def “curfew direction” ins 2007 No. 35 s 13(1)
def “eligible person” ins 2007 No. 35 s 13(1)
def “eligible persons register” ins 2007 No. 35 s 13(1)
def “interim detention order” sub 2005 No. 70 s 91(1)–(2)
amd 2006 No. 24 s 30; 2007 No. 35 s 13(2)
def “interim supervision order” ins 2005 No. 70 s 91(2)
def “judicial authority” ins 2005 No. 70 s 91(2)
def “monitoring direction” ins 2007 No. 35 s 13(1)

def “**prisoner**” amd 2005 No. 70 s 91(3); 2006 No. 29 s 518 sch 3
def “**psychiatrist**” sub 2010 No. 14 s 124 sch
def “**release day**” ins 2005 No. 70 s 91(2)
 amd 2006 No. 29 s 518 sch 3
def “**requirement**” ins 2007 No. 35 s 13(1)
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 and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

Form 1 Version 1—Complaint—Sworn, and Summons

pubd gaz 16 January 2004 p 137

Form 2 Version 3—Complaint – Sworn, and Arrest Warrant

pubd gaz 15 February 2008 p 724

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