

Dangerous Sexual Offenders Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Dangerous Sexual Offenders Bill 2005

A Bill for

An Act to provide for the detention in custody of persons of a particular class, or for their supervision, and for other purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Dangerous Sexual Offenders Act 2005*.

2. Commencement

5 This Act comes into operation on a day fixed by proclamation.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

10 **“chief executive officer”** means the chief executive officer of the department of the Public Service principally assisting the Minister with the administration of this Act;

“community corrections officer” has the meaning given to that term in the *Sentence Administration Act 2003* section 4(2);

15 **“continuing detention order”** means a Division 2 continuing detention order or a Division 4 continuing detention order;

“criminal record” means the criminal record kept by the Commissioner of Police;

“Division 2 continuing detention order” means an order under section 17(1)(a);

20 **“Division 2 order”** means —

(a) Division 2 continuing detention order; or

(b) a supervision order under section 17(1)(b);

“Division 4 continuing detention order” means an order under section 23(b);

25 **“DPP”** means the holder of the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

“offender” has the meaning given to that term in section 8(1);

“**preliminary hearing**” means a preliminary hearing referred to in section 11(1);

“**psychiatrist**” has the meaning given to that term in the *Mental Health Act 1996* section 3;

5 “**serious danger to the community**” has the meaning given to that term in section 7;

“**serious sexual offence**” has the meaning given to that term in the *Evidence Act 1906* section 106A;

10 “**supervision order**” means an order under section 17(1)(b) or 33(2)(b);

“**under sentence of imprisonment**” has a meaning that is consistent with the *Sentence Administration Act 2003* section 66.

4. Objects of this Act

15 The objects of this Act are —

- (a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community; and
 - (b) to provide for continuing control, care, or treatment, of persons of a particular class.
- 20

5. Relationship with *Bail Act 1982*

The *Bail Act 1982* does not apply to a person detained under this Act.

6. Attorney General may perform functions of DPP

25 (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

(2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

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7. Serious danger to the community

- 5 (1) Before the court dealing with an application under this Act may find that a person is a serious danger to the community, the court has to be satisfied that there is an unacceptable risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence.
- 10 (2) The DPP has the onus of satisfying the court as described in subsection (1) and the court has to be satisfied —
- (a) by acceptable and cogent evidence; and
 - (b) to a high degree of probability.
- 15 (3) In deciding whether to find that a person is a serious danger to the community, the court must have regard to —
- (a) any report that a psychiatrist prepares as required by section 37 for the hearing of the application and the extent to which the person cooperated when the psychiatrist examined the person;
 - (b) any other medical, psychiatric, psychological, or other assessment relating to the person;

20 (c) information indicating whether or not the person has a propensity to commit serious sexual offences in the future;

 - (d) whether or not there is any pattern of offending behaviour on the part of the person;

25 (e) any efforts by the person to address the cause or causes of the person's offending behaviour, including whether the person has participated in any rehabilitation program;

 - (f) whether or not the person's participation in any

30 rehabilitation program has had a positive effect on the person;

 - (g) the person's antecedents and criminal record;

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- (h) the risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence;
- (i) the need to protect members of the community from that risk; and
- (j) any other relevant matter.

Part 2 — Continuing detention or supervision

Division 1 — Application for orders

8. DPP may apply for orders

- 5 (1) The DPP may file with the Supreme Court an application for orders under section 14 and section 17(1) in relation to a person (the “**offender**”) who is under sentence of imprisonment wholly or in part for a serious sexual offence.
- (2) Subsection (1) applies whether the sentence was imposed before or after the commencement of this Act and whether or not the person under sentence of imprisonment is in custody.
- 10 (3) If the person under sentence of imprisonment is in custody, the application cannot be filed unless there is a possibility that the person might be released from custody within the period of 6 months after the application is made.
- 15 (4) The application filed with the court must —
- (a) state the orders sought; and
 - (b) be accompanied by any affidavits to be relied on by the DPP for the purpose of seeking an order or orders under section 14.
- 20 (5) The DPP has to cause the offender to be given, within 2 days after the application is filed, a copy of the application and any affidavit to be relied on by the DPP.

9. Duty to disclose

- (1) This section applies to an application for a Division 2 order.
- 25 (2) The DPP has the same duty to disclose evidence or things in the DPP’s possession as if the DPP were prosecuting in a criminal proceeding.
- (3) The DPP must disclose the evidence or things before the application is heard and as early as is practicable.

10. Application may proceed even if offender discharged

5 Even if, after an application is filed under section 8, the offender is discharged from the sentence of imprisonment, the application may proceed and the offender may be dealt with in accordance with this Act.

11. Fixing day for preliminary hearing

- (1) After an application is filed under section 8, the proper officer of the court must fix a day for the matter to come before the court for a preliminary hearing.
- 10 (2) The day fixed has to be within 14 days after the application is filed.
- (3) The main purpose of the preliminary hearing is to decide whether the court is satisfied that there are reasonable grounds for believing that the court might, under section 7(1), find that
- 15 the offender is a serious danger to the community.

12. Offender may file affidavits in response

- (1) The offender may file affidavits to be relied on by the offender for the preliminary hearing.
- 20 (2) The offender must give a copy of the affidavits to the DPP at least 3 days before the day fixed for the preliminary hearing.

13. Contents of affidavit

25 An affidavit for use in a preliminary hearing must be confined to the evidence the person making it could give orally except that it may contain statements based on information and belief if the person making the affidavit states the source of the information and the grounds for the belief.

14. Preliminary hearing

- (1) At a preliminary hearing, if the court is satisfied that there are reasonable grounds for believing that the court might, under

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Part 2 Continuing detention or supervision

Division 1 Application for orders

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section 7(1), find that the offender is a serious danger to the community, the proper officer of the court must fix a day for the hearing of the application for a Division 2 order.

(2) If the court is satisfied as described in subsection (1) —

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(a) the court must order that the offender undergo examinations by 2 psychiatrists named by the court for the purposes of preparing the reports required by section 37 that are to be used on the hearing of the application; and

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(b) the court may —

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(i) if the offender is in custody and might otherwise be released from custody before the application is finally decided, order that the offender be detained in custody for the period stated in the order;

(ii) if the offender is not in custody, order that the offender be detained in custody for the period stated in the order.

15. Authority for psychiatrist to examine offender

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An order under section 14(2)(a) authorises each of the 2 psychiatrists named in the order to examine the offender and report in accordance with Part 5.

16. Discontinuing application for Division 2 order

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(1) The DPP may, at any time, discontinue an application for a Division 2 order by giving to each of the proper officer of the court and the offender a notice of discontinuance.

(2) The application is to be taken to be dismissed by the court when the notice is given to the proper officer of the court.

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(3) If the offender is subject to an order under section 14(2) to be detained in custody, the DPP must apply immediately to the court for rescission of the order.

Division 2 — Orders

17. Division 2 orders

- 5 (1) If the court hearing an application for a Division 2 order finds that the offender is a serious danger to the community, the court may —
- (a) order that the offender be detained in custody for an indefinite term for control, care, or treatment; or
 - (b) order that at all times during the period stated in the order when the offender is not in custody the offender be
- 10 subject to conditions that the court considers appropriate and states in the order.
- (2) In deciding whether to make an order under subsection (1)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.

15 **18. Conditions of supervision order**

- (1) If the court makes a supervision order against a person, the order must require that the person —
- (a) report to a community corrections officer at the place, and within the time, stated in the order and advise the
- 20 officer of the person's current name and address;
- (b) report to, and receive visits from, a community corrections officer as directed by the court;
 - (c) notify a community corrections officer of every change
- 25 of the person's name, place of residence, or place of employment at least 2 days before the change happens;
- (d) be under the supervision of a community corrections officer;
 - (e) not leave, or stay out of, the State of Western Australia
- 30 without the permission of a community corrections officer; and

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Part 2 Continuing detention or supervision

Division 3 Amendment of supervision order

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(f) not commit a sexual offence as defined in the *Evidence Act 1906* section 36A during the period of the order.

(2) The supervision order may contain any other terms that the court thinks appropriate —

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(a) to ensure adequate protection of the community; or

(b) for the rehabilitation or care or treatment of the person subject to the order.

Division 3 — Amendment of supervision order

19. Application to amend conditions of supervision order

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(1) An application to the Supreme Court for it to amend the conditions of a supervision order may be made —

(a) by the person who is subject to the supervision order; or

(b) with the DPP's consent, by the chief executive officer.

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(2) If the person who is subject to the order makes the application, the person has to give notice of the application to the DPP and to the chief executive officer.

(3) If the chief executive officer makes the application, the chief executive officer has to give notice of the application to the person who is subject to the order.

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20. Amendment of conditions of supervision order

(1) The court may, on an application under section 19, amend the conditions of a supervision order if the court is satisfied that —

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(a) the person who is subject to the order is not able to comply with the conditions of the order because of a change in the person's circumstances; or

(b) the amendment is necessary or desirable for any other reason.

- (2) Before amending the conditions the court has to be satisfied that —
- (a) the conditions, as amended, would be sufficient to ensure adequate protection of the community; and
 - (b) it is reasonable to make the amendment in all the circumstances.

Division 4 — Contravention of supervision order

21. Summons or warrant because of contravention

- (1) A member of the police force or community corrections officer who reasonably suspects that a person who is subject to a supervision order is likely to contravene, is contravening, or has contravened, a condition of the order may apply to a magistrate for the issue of a summons or warrant under subsection (2).
- (2) If the magistrate is satisfied that there are reasonable grounds for the suspicion described in subsection (1), the magistrate has to issue, in the form approved by the chief executive officer —
- (a) a summons requiring the person who is subject to the supervision order to appear before the Supreme Court for it to consider the suspected or anticipated contravention; or
 - (b) a warrant directed to all members of the police force for the person who is subject to the supervision order to be arrested and brought before the Supreme Court for it to consider the suspected or anticipated contravention.
- (3) The summons or warrant may state the suspected or anticipated contravention in general terms.
- (4) A magistrate cannot issue a warrant under subsection (2) unless —
- (a) the application is supported by evidence on oath; and
 - (b) the magistrate is satisfied that the person against whom it is issued would not appear in answer to a summons.

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Part 2 Continuing detention or supervision

Division 5 Supervision order extended due to imprisonment

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- (5) Even if subsection (4) does not prevent a warrant from being issued, a magistrate may refuse to issue a warrant if the magistrate considers that it would be unjust to issue it.

22. DPP may seek order

- 5 (1) If a person appears before the Supreme Court under a summons or warrant issued under section 21, the DPP may apply to the court for an order under section 23.
- (2) The application must state the order sought.

23. Court may make order

10 If the court is satisfied, on the balance of probabilities, that the person who is subject to the supervision order is likely to contravene, is contravening, or has contravened, a condition of the supervision order, the court may —

- 15 (a) make an order amending the conditions of the supervision order and, if the court considers it appropriate in order to achieve compliance with the supervision order or necessary in order to ensure adequate protection of the community, make any other order; or
- 20 (b) if the court is also satisfied that there is an unacceptable risk that, if an order under this paragraph were not made, the person would commit a serious sexual offence, order that the person be detained in custody for an indefinite term for control, care, or treatment.

25 **Division 5 — Supervision order extended due to imprisonment**

24. Extension of supervision order

- 30 (1) This section applies if a person who is subject to a supervision order is sentenced to a term or period of imprisonment for any offence, other than a sexual offence as defined in the *Evidence Act 1906* section 36A, whether committed before or after the supervision order was made.

- (2) The period for which the supervision order applies is extended by any period after the order is made during which the person is in custody serving the sentence of imprisonment.

Division 6 — General provisions for Part 2

5 **25. Effect of continuing detention order**

A continuing detention order has effect in accordance with its terms from the time the order is made until rescinded by a further order of the Supreme Court.

26. Effect of supervision order

10 A supervision order has effect in accordance with its terms.

27. Court to give reasons

- (1) If a court makes a continuing detention order or a supervision order, it must give detailed reasons for making the order.
- (2) The reasons must be given at the time the order is made.

Part 3 — Annual reviews of detention

28. Purpose of this Part

The purpose of this Part is to ensure that a person's detention under a continuing detention order is regularly reviewed.

5 **29. Review — periodic**

(1) While a person is subject to a continuing detention order, the DPP must apply to the Supreme Court for the person's detention under the order to be reviewed as specified in subsection (2).

(2) Reviews have to be carried out —

10 (a) as soon as practicable after the end of a period of 1 year commencing when the person is first in custody on a day on which the person would not have been in custody had the order not been made; and

15 (b) as soon as practicable after the end of the period of 1 year commencing when the detention was most recently reviewed under this section or section 30.

30. Review — application by person subject to order

20 (1) A person who is subject to a continuing detention order may, with the leave of the court, apply to the Supreme Court for the person's detention under the order to be reviewed.

(2) Before granting leave the court must be satisfied that there are exceptional circumstances that relate to the person.

25 (3) An application cannot be made under this section for a person's detention to be reviewed until after the detention has been reviewed under section 29(2)(a).

(4) When a person applies under this section for the person's detention to be reviewed or applies for leave to make an application of that kind, the proper officer of the court must immediately give a copy of the application to the DPP.

31. Dealing with the application

- (1) As soon as practicable after an application is made under section 29 or 30, the court has to give directions for the hearing of the application.
- 5 (2) The application must be heard, and the review must be carried out, as soon as it is practicable to do so in accordance with any directions given by the court.

32. Psychiatrists' reports to be prepared for review

- 10 (1) Unless the court otherwise orders, the chief executive officer must arrange for a person to be examined by 2 psychiatrists for the purposes of preparing the reports required by section 37 that are to be used on a review under this Part.
- (2) This section authorises each of the 2 psychiatrists to examine the person and report in accordance with Part 5.

15 **33. The review**

- (1) When the court, on an application made under section 29 or 30, reviews a person's detention under a continuing detention order, the court must rescind the order if it does not find that the person subject to the order remains a serious danger to the community.
- 20 (2) The court may, if it finds that the person subject to the order remains a serious danger to the community, either —
- (a) expressly decline to rescind the order; or
- 25 (b) rescind the order and make an order that at all times during the period stated in the order when the person is not in custody the person be subject to conditions that the court considers appropriate and states in the order.
- (3) In making a decision under subsection (2), the paramount consideration is to be the need to ensure adequate protection of the community.
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Part 4 — Appeals

34. Appeals

5 The DPP or a person in relation to whom the court makes a decision under this Act, other than this Part, may appeal to the Court of Appeal against the decision.

35. Appeal does not stay decision

- (1) An appeal against a decision does not stay the operation of the decision unless the Court of Appeal orders otherwise.
- 10 (2) However, if the Court of Appeal might, in finally determining the appeal, order that a party to the appeal be detained in custody, the court may order that the party be detained in custody until the determination of the appeal.

36. Dealing with appeal

- (1) An appeal is by way of rehearing.
- 15 (2) The Court of Appeal —
- (a) has all the powers and duties of the court making the decision against which the appeal is made;
 - (b) may draw inferences of fact, not inconsistent with the findings of the court making the decision against which the appeal is made; and
 - 20 (c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit, or in another way.

Part 5 — Examination by psychiatrist

37. Preparation of psychiatric report

- 5 (1) Each psychiatrist named in an order under section 14(2)(a) or with whom the chief executive officer makes an arrangement under section 32(1) must examine the person to whom the order or arrangement relates and prepare an independent report.
- (2) The report has to indicate —
- 10 (a) the psychiatrist’s assessment of the level of risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence; and
- (b) the reasons for the psychiatrist’s assessment.
- (3) The psychiatrist must have regard to any report or information that the chief executive officer gives to the psychiatrist under
- 15 section 38(1).
- (4) The obligation under subsection (1) to prepare a report applies even if the person to be examined does not cooperate, or does not cooperate fully, in the examination.

38. Providing information for psychiatrist

- 20 (1) The chief executive officer must give to each psychiatrist, for the purpose of preparing the report, any medical, psychiatric, prison, or other relevant report or information relating to the person to be examined that is in the chief executive officer’s possession or to which the chief executive officer has, or may
- 25 be given, access.
- (2) The chief executive officer must give to the DPP a copy of anything that the chief executive officer gives to a psychiatrist under subsection (1).
- (3) A person in possession of any medical, psychiatric, prison, or
- 30 other relevant report or information relating to the person to be examined must give a copy of the report or the information to

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the chief executive officer if asked by the chief executive officer to do so.

(4) Subsection (3) applies despite any other law or any duty of confidentiality.

5 (5) If a person asked under subsection (3) to give a copy of any report or information to the chief executive officer refuses to do so, the chief executive officer may apply to the court for an order requiring the person to give the report or information to the chief executive officer.

10 (6) A person asked under subsection (3) or ordered under subsection (5) to give a report or information to the chief executive officer is not liable, civilly, criminally, or under an administrative process, for doing so.

39. Copies of report to DPP and person examined

15 (1) A psychiatrist who prepares a report as required by section 37(1) must give a copy of the report to the DPP within 7 days after finalising the report.

20 (2) The DPP must give a copy of the report to the person examined before the end of the day after the DPP receives the report and at the same time give to the person a copy of anything that the chief executive officer gives to the DPP under section 38(2).

Part 6 — General

40. Proceedings to be criminal proceedings

Proceedings under this Act or on an appeal under this Act, are to be taken to be criminal proceedings for all purposes.

41. Deciding certain matters on the papers

(1) This section applies to how the court may decide —

(a) whether it is satisfied, as required by section 14(1), that there are reasonable grounds for the belief described in that subsection; or

10 (b) whether it is satisfied as required by section 20.

(2) The court may decide entirely or partly from a consideration of the documents filed, without the offender or person subject to the order or witnesses appearing and without the offender or person subject to the order consenting to, or being heard on, the making of the decision.

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(3) In making its decision, the court may receive in evidence —

(a) any document relevant to the antecedents or criminal record of the offender or person subject to the order;

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(b) anything relevant contained in the official transcript of any judicial proceeding against the offender or person subject to the order for a serious sexual offence, or contained in any medical, psychiatric, psychological or other report tendered in a proceeding of that kind.

42. Evidence in certain hearings

25 (1) This section applies to —

(a) an application for a Division 2 order;

(b) an application under section 29 or 30 for a review; and

(c) an application for an order under section 23.

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- (2) Before the court makes a decision or order on the hearing of an application it must, if the evidence is admissible —
- (a) hear evidence called by the DPP; and
 - (b) hear evidence given or called by the offender or person subject to the order, if that person elects to give or call evidence.
- (3) Except as modified by 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 —
- (a) any document relevant to a person's antecedents or criminal record;
 - (b) anything relevant contained in the official transcript of any proceeding against a person for a serious sexual offence, or contained in any medical, psychiatric, psychological or other report tendered in a proceeding of that kind.

43. Court may give directions

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

44. Appearance at hearings

- (1) A person is entitled to appear at the hearing of an application for a Division 2 order against that person.
- (2) A person is entitled to appear at the hearing of an application under section 29 or 30 for the review of the person's detention under a continuing detention order.

45. Warrant of commitment upon order for detention

If a court orders under this Act that a person be detained in custody, it must issue a warrant for the person's apprehension, if necessary, and detention in a prison under the *Prisons Act 1981*.

46. Approved forms

The chief executive officer may approve forms for use under this Act.

47. Regulations

5 The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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