

**Chapter 15**  
*Dangerous Prisoners*  
*(Sexual Offenders)*  
*Act 2003 (Qld)*

# Chapter 15—*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*

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## A. Introduction

### 15-1 *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*

This chapter relates to the [Dangerous Prisoners \(Sexual Offenders\) Act 2003](#) (Qld). Any section that is cited without reference to an Act is referring to this Act.

The Dangerous Prisoners (Sexual Offenders) Act was introduced in 2003. Under s 3, ‘[t]he objects of the Act are—

- 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
- to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation’.

Under s 8, the making of a Division 3 order can achieve these objects.

### 15-2 Applications under the Dangerous Prisoners (Sexual Offenders) Act

Division 3 applications are brought by the attorney-general and heard in the Supreme Court of Queensland.

For such an application to be successful, the court must believe that, without a Division 3 order, the prisoner would be a ‘serious danger to the community’ (s 13(1)).

The court will consider a prisoner a serious danger to the community ‘if there is an unacceptable risk that the prisoner will commit a serious sexual offence—

- if the prisoner is released from custody; or
- if the prisoner is released from custody without a supervision order being made’ (s 13 (2)).

Note: The Schedule defines ‘serious sexual offence’ as ‘an offence of a sexual nature, whether committed in Queensland or outside Queensland—

- involving violence; or
- against children’.

Section 13(3) makes it clear that the court can be satisfied as required under s 13(2) ‘only if it is satisfied—

- by acceptable, cogent evidence; and
  - to a high degree of probability;
- that the evidence is of sufficient weight to justify the decision’.

### 15-3 Types of orders under the Dangerous Prisoners (Sexual Offenders) Act

Once the court is satisfied as described under s 13(3), the court must then decide whether to make a continuing detention order under s 13(5)(a) or a supervision order under s 13(5)(b).

The names given to the orders in the legislation are relatively self-explanatory; however, for completeness, it should be noted that a continuing detention order requires a prisoner to remain detained in custody for control, care or treatment. These orders are subject to review two years after the first order and annually thereafter.

A supervision order allows the conditional release of the prisoner from custody.

Under s 13(6), in determining the appropriate order:

- ‘(a) the paramount consideration is to be the need to ensure adequate protection of the community; and
- (b) the court must consider whether—
  - (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
  - (ii) requirements under section 16 of the Act can be reasonably and practicably managed by corrective services officers’.

Section 16 establishes the requirements and minimum conditions for supervised release.

## 15-4 Contravention proceedings

Contravention proceedings are brought under Division 5 of the Dangerous Prisoners (Sexual Offenders) Act.

Under s 20(1) and (2), ‘if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner’s supervision order or interim supervision order’, the officer may make complaint to a magistrate. A magistrate can then issue a warrant for the released prisoner to be brought before the Supreme Court to be dealt with according to law.

If contravention proceedings are also underway, the client will need to go before the Supreme Court to answer to the warrant.

It is very rare for a prisoner to be released pending the final decision in a contravention proceeding. Section 21(4) contains the test for release. In summary, the prisoner must show, ‘on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist’.

The reference to a final decision means a decision under s 22 of the Act. In summary, this is a decision made in light of the order contravention to order:

- continuing detention
- release onto an order containing the same conditions as previously, or
- release onto an amended order.

## 15-5 Contravention charges

Under s 43AA, it is a separate offence for individuals subject to a Dangerous Prisoners (Sexual Offenders) Act order to contravene the conditions of their order.

Contraventions are charged under Part 4A of this Act. The most common charge is brought under s 43AA, which states that ‘[a] released prisoner must not contravene the relevant order without reasonable excuse’. The maximum penalty for this offence is two years’ imprisonment.

A specific offence has also been created in relation to applying for a change of name without permission (s 43AB). In effect, before a released prisoner to whom this Act applies can apply to change their name, they must seek written permission from the chief executive. The maximum penalty for this offence is six months’ imprisonment.

Section 43AC clarifies that proceedings for offences against the Dangerous Prisoners (Sexual Offenders) Act are to be taken summarily.

## B. The duty lawyer's role

### 15-6 When the Act impacts on a duty lawyer session

In only two circumstances should the Act impact on the conduct of a duty lawyer session—when a client:

- subject to a Division 3 order, faces fresh offences before the magistrates court
- is charged with a contravention offence under s 43AA.

### 15-7 When a client, subject to an order, faces fresh offences before the magistrates court

In these circumstances, you must establish whether the client is also subject to contravention proceedings under s 20.

If no contravention proceedings are underway, the matter can progress as if the individual was not on an order. After taking appropriate instructions, you can apply for bail, conduct a plea of guilty or have the matter remanded to a later date without a bail application.

If s 20 contravention proceedings are under way, you have more to consider, as, in many cases, the client is extremely unlikely to be granted exceptional circumstances release pending the finalising of the s 20 contravention proceedings.

In these circumstances, you should adjourn the fresh charges pending any application for exceptional circumstances release under s 21(4). The issue of bail on any fresh charges will be considered, more appropriately, after a decision on exceptional circumstances release has been made.

The reasons for this are that:

- any decision to release a prisoner in the Supreme Court due to exceptional circumstances will be particularly persuasive in a subsequent application for magistrates court bail
- a Dangerous Prisoners (Sexual Offenders) Act order contravention will almost always attract legal aid funding for representation relating to the contravention proceedings, and the consideration and preparation of an exceptional circumstances release application. The material and information identified and required for any exceptional circumstances release application will be invaluable in a subsequent magistrates court bail application.

### 15-8 When a client is charged with a contravention offence under s 43AA

In these circumstances, you must decide on a case-by-case basis whether to apply for bail and advise the client to seek further legal advice or enter a plea of guilty to the offence.

In relation to bail, the same considerations will apply as discussed in [15-7](#), i.e. if s 20 contravention proceedings are underway, you would usually delay a bail application until the Supreme Court considers the issue of exceptional circumstances release.

The penalty for an offence will depend on the nature of the conduct alleged to constitute the breach and whether the client has breached the order previously.

## C. Availability of legal aid funding

### 15-9 When a client is eligible for legal aid funding

If the client meets the relevant means test criteria, they will be eligible for legal aid funding in relation to an alleged contravention of their dangerous prisoner order, which has resulted in the application under s 20.

Contravention offences charged under s 43AA are subject to the standard legal aid merit and means tests that apply to aid grant applications for either a summary plea or summary trial, depending how the individual case is to proceed.