



Queensland

Offenders (Serious Sexual Offences) Minimum Imprisonment and Rehabilitation Bill 2006



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2006

A Bill

for

An Act to provide for a minimum term of imprisonment and for rehabilitation of persons convicted of committing serious sexual offences, and for other purposes

*Offenders (Serious Sexual Offences) Minimum
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The Parliament of Queensland enacts—

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Part 1 Preliminary

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1 Short title

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This Act may be cited as the *Offenders (Serious Sexual Offences) Minimum Imprisonment and Rehabilitation Act 2006*.

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2 Definitions

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The dictionary in schedule 2 defines particular words used in this Act.

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Part 2 Minimum terms of imprisonment

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3 Imprisonment for serious sexual offence

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(1) Subject to section 4, a court that convicts a person of a serious sexual offence committed after the commencement of this Act must make both of the following—

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(a) a declaration that the person is a person to whom this Act applies (an *application declaration*);

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(b) an order sentencing the person to a period of imprisonment for the offence that includes a period of detention in custody.

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(2) In setting the period of imprisonment and the period of detention in custody, the court must have regard to any submission about what are reasonable periods for the purposes of part 3 to operate effectively in relation to the person as a prisoner.

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- (3) However, this Act does not apply if the court imposes an indefinite sentence on a person under the *Penalties and Sentences Act 1992*, part 10.¹
- (4) Subsections (1) and (2) apply despite any Act mentioned in schedule 1 and the *Penalties and Sentences Act 1992*.
- 4 Exception to minimum imprisonment for young offender in particular circumstances**
- (1) This section applies to a court that convicts a person (the *offender*) of an offence against the Criminal Code, section 215 if—
- (a) at the time the offender had or attempted to have unlawful carnal knowledge with or of a child under the age of 16 years—
- (i) the offender was under 19 years of age; and
- (ii) the child was 14 or 15 years of age; and
- (b) the offender would not have committed any other serious sexual offence by having or attempting to have carnal knowledge with or of the child if the child had been 16 years of age.
- (2) The court may make a declaration that the offender is not a person to whom this Act applies.
- (3) To remove any doubt it is declared that the court may, but need not, make an order sentencing the offender to a period of imprisonment.
- 5 General matters to be taken into account when deciding period of imprisonment**
- (1) This section applies to a court in setting the period of imprisonment and the period of detention in custody of a person as mentioned in section 3(1)(b).
- (2) Without limiting the matters to which the court must have regard, the court must have regard to each of the following—

¹ *Penalties and Sentences Act 1992*, part 10 (Indefinite sentences)

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(a)	the maximum and any minimum penalty prescribed for the serious sexual offence;	1 2
(b)	the nature of the serious sexual offence and how serious the offence was, including any physical or emotional harm done to a victim;	3 4 5
(c)	any damage, injury or loss caused by the person;	6
(d)	the presence of any aggravating or mitigating factor concerning the person;	7 8
(e)	sentences imposed on, and served by, the person in another State for an offence committed at or about the same time as the offence with which the court is dealing.	9 10 11
6	Other matters to be taken into account when deciding period of imprisonment if victim was a child	12 13
(1)	This section also applies to a court in setting the period of imprisonment and the period of detention in custody as mentioned in section 3(1)(b) if the relevant serious sexual offence was committed in relation to a person who, at the time of the offence, was a child (the <i>relevant child</i>).	14 15 16 17 18
(2)	The court must have regard primarily to the following in addition to the matters mentioned in section 5—	19 20
(a)	the effect of the offence on the relevant child;	21
(b)	the age of the relevant child;	22
(c)	the nature of the offence, including, for example, any physical harm or threat of physical harm to the relevant child or any other person;	23 24 25
(d)	the need to protect the relevant child, or any other child, from the risk of the person reoffending;	26 27
(e)	the need to protect children by deterring similar behaviour by other persons;	28 29
(f)	any remorse or lack of remorse of the person;	30
(g)	anything else about the safety of children the court considers relevant.	31 32

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- (3) In this section— 1
child means a person under 16 years of age. 2

Part 3 **Mandatory rehabilitation and** 3
relevant rehabilitation 4
programs 5

Division 1 **Prisoner must successfully** 6
complete programs before release 7

- 7** **Rehabilitation program to be successfully completed** 8
before release 9
- (1) It is a condition of release of a prisoner that, before the 10
completion of the prisoner's period of detention in custody, 11
the prisoner must have successfully completed each relevant 12
rehabilitation program for the prisoner. 13
- (2) For subsection (1), a regulation may provide how a relevant 14
rehabilitation program is successfully completed. 15

Division 2 **Relevant rehabilitation programs** 16

- 8** **Chief executive to decide relevant rehabilitation program** 17
for each serious sexual offence 18
- (1) After a person becomes a prisoner after the commencement of 19
this section, the chief executive must decide the rehabilitation 20
program or rehabilitation programs for each serious sexual 21
offence for which the person is convicted that is or are the 22
most appropriate for the prisoner to successfully complete. 23
- (2) In making a decision under subsection (1), the chief executive 24
must consider the rehabilitation program or rehabilitation 25
programs available, or to be available, before the end of the 26
prisoner's period of detention in custody in relation to the 27

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	conviction for a serious sexual offence or serious sexual offences.	1 2
(3)	To remove any doubt, it is declared that if a prisoner is imprisoned for 2 or more serious sexual offences, a relevant rehabilitation program for 1 particular type of offence may be the same program or a different program for another particular type of offence.	3 4 5 6 7
9	Notice to prisoner about relevant rehabilitation program for each serious sexual offence	8 9
(1)	The chief executive must give written notice to the prisoner about the rehabilitation program or rehabilitation programs the prisoner must successfully complete for each serious sexual offence for which the prisoner is convicted.	10 11 12 13
(2)	The notice mentioned in subsection (1) must be given to the prisoner within 28 days after the day the prisoner is sentenced to imprisonment.	14 15 16
(3)	If, within the 28 days, the chief executive has not received all the medical, psychiatric or psychological reports the chief executive has requested or requires to make a decision about a rehabilitation program or rehabilitation programs, the notice must be given as soon as practicable after the reports are received.	17 18 19 20 21 22
10	Notice not to be amended in a substantial way	23
(1)	If a prisoner is given a notice stating 1 or more relevant rehabilitation programs the prisoner must successfully complete, the chief executive may not amend the notice, despite the <i>Acts Interpretation Act 1954</i> , section 24AA, ² except to correct a minor or technical error, including, for example, the name of a rehabilitation program.	24 25 26 27 28 29
(2)	However, if a rehabilitation program mentioned in a notice given to a prisoner is no longer available or will not become available, a regulation may prescribe a replacement	30 31 32

² *Acts Interpretation Act 1954*, section 24AA (Power to make instrument or decision includes power to amend or repeal)

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rehabilitation program that a prisoner must successfully
complete in order to comply with the notice. 1 2

- (3) The chief executive may give written notice to the prisoner
about the regulation and how it affects a notice previously
given to the prisoner under section 9(1). 3 4 5

Part 4 Applications by DPP if relevant rehabilitation program not successfully completed 6 7 8

11 Application if prisoner does not complete relevant rehabilitation program 9 10

- (1) This section applies if a prisoner has not successfully
completed, or will not be able in the time available to
successfully complete, each relevant rehabilitation program
for the prisoner before the completion of the prisoner's period
of detention in custody. 11 12 13 14 15
- (2) At least 28 days before the completion of the prisoner's period
of detention in custody, the DPP must apply to the Supreme
Court for an order declaring that the court considers the
prisoner has failed to successfully complete, without
reasonable excuse, each relevant rehabilitation program for
the prisoner. 16 17 18 19 20 21
- (3) The DPP must give notice of the application to the prisoner at
least 14 days before the application is set down for hearing. 22 23

12 Declaratory order 24

- (1) If, on hearing an application under section 11, the Supreme
Court is satisfied the prisoner has failed, without reasonable
excuse, to successfully complete each relevant rehabilitation
program for the prisoner, the court must, by order, make a
declaration accordingly (*declaratory order*). 25 26 27 28 29

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(2)	The DPP has the onus of proving the prisoner has failed, without reasonable excuse, to successfully complete each relevant rehabilitation program for the prisoner.	1 2 3
13	Effect of declaratory order	4
(1)	Subject to this Act, on the making of a declaratory order about a stated prisoner, the prisoner is to be detained in custody until the prisoner—	5 6 7
(a)	successfully completes each relevant rehabilitation program for the prisoner as stated in the declaratory order; and	8 9 10
(b)	is otherwise eligible for discharge or release.	11
(2)	A person detained in custody under subsection (1) remains a prisoner.	12 13
Part 5	Reviews	14
14	Review—periodic	15
(1)	If the Supreme Court makes a declaratory order about a person, 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 person continues to be detained in custody under section 13.	16 17 18 19 20
(2)	The DPP must make any application required to be made to cause the reviews mentioned in subsection (1) to be carried out.	21 22 23
(3)	The DPP must give notice of the review to the prisoner at least 14 days before the review is set down for hearing.	24 25
15	Review hearing	26
(1)	If the court is satisfied the prisoner has failed to successfully complete, without reasonable excuse, each relevant	27 28

rehabilitation program for the prisoner as stated in the declaratory order, the court must make a further declaratory order.

(2) The DPP has the onus of proving the prisoner has failed to successfully complete, without reasonable excuse, each relevant rehabilitation program for the prisoner as stated in the declaratory order.

Part 6 Ending statutory detention 8

16	Satisfying condition of release	9
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- (1) Section 13³ stops applying to a prisoner detained in custody under the section as soon as the prisoner successfully completes each relevant rehabilitation program for the prisoner as stated in the declaratory order.
- (2) Also, section 13 stops applying to a prisoner detained in custody under the section if the court—
 - (a) refuses an application made by the DPP under section 11(2) or 14(2); or
 - (b) otherwise orders that the prisoner be released from custody.
- (3) When section 13 stops applying to a person, the application declaration about the person stops being in force.

3 Section 13 (Effect of declaratory order)

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Part 7	General	1
17	Supreme Court may give directions	2
	The Supreme Court may give directions in relation to the	3
	conduct of a proceeding under this Act on its own initiative or	4
	on an application.	5
18	Service on a prisoner	6
(1)	If a document is required under this Act to be given to a	7
	prisoner detained in custody, the document is taken to have	8
	been given to the prisoner if the document is given to the	9
	person in charge of the place where the prisoner is detained.	10
(2)	If, under subsection (1), a document is given to the person in	11
	charge of a place where a prisoner is detained in custody, the	12
	person in charge must give the document to the prisoner	13
	without undue delay.	14
19	Service or filing by a prisoner	15
(1)	If a prisoner is unrepresented and is required under this Act to	16
	give or file a document, the prisoner may give the document to	17
	the person in charge of the place where the prisoner is	18
	detained in custody.	19
(2)	The person in charge must give or file the document without	20
	undue delay.	21
20	Appearance at hearings	22
	A prisoner is entitled to appear at a hearing under this Act.	23
21	Declaratory order taken to be a warrant for Corrective Services Act 2000	24 25
	A declaratory order about a person is taken, for the <i>Corrective</i>	26
	<i>Services Act 2000</i> , section 9 ⁴ to be a warrant for the person's	27
	detention.	28

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22	Relationship with other Acts	1
(1)	The <i>Bail Act 1980</i> does not apply to a person detained under this Act.	2 3
(2)	This Act does not limit the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> .	4 5
23	Removal of provision from sch 1	6
(1)	This section applies if schedule 1 is amended and an offence is no longer mentioned in the schedule (the <i>omission</i>).	7 8
(2)	The omission does not affect the application of this Act to a person convicted before the omission.	9 10
(3)	For the application of this Act to the person, the offence continues to be a serious sexual offence.	11 12
24	Regulation-making power	13
	The Governor in Council may make regulations under this Act.	14 15
Part 8	Consequential amendment	16
25	Act amended in pt 8	17
	This part amends the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> .	18 19
26	Insertion of new s 4A	20
	Part 1, after section 4—	21
	<i>insert—</i>	22

4 *Corrective Services Act 2000*, section 9 (Authority for admission to corrective services facility)

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‘4A	Relationship with Offenders (Serious Sexual Offenders) Minimum Imprisonment and Rehabilitation Act 2006	1
		2
		3
	‘This Act does not limit the <i>Offenders (Serious Sexual Offences) Minimum Imprisonment and Rehabilitation Act 2006</i> .’.	4
		5
		6

Schedule 1	Serious sexual offences	1
	section 2	2
	schedule 2, definition <i>serious sexual offence</i>	3
1	Any of the following provisions of the Criminal Code—	4
	• section 208 (Unlawful sodomy)	5
	• section 209 (Attempted sodomy)	6
	• section 210 (Indecent treatment of children under 16)	7
	• section 213 (Owner etc. permitting abuse of children on premises)	8 9
	• section 215 (Carnal knowledge with or of children under 16)	10 11
	• section 216 (Abuse of intellectually impaired persons)	12
	• section 217 (Procuring young person etc. for carnal knowledge)	13 14
	• section 218 (Procuring sexual acts by coercion etc.)	15
	• section 218A (Using internet etc. to procure children under 16)	16 17
	• section 219 (Taking child for immoral purposes)	18
	• section 221 (Conspiracy to defile)	19
	• section 222 (Incest)	20
	• section 228A (Involving child in making child exploitation material)	21 22
	• section 228B (Making child exploitation material)	23
	• section 228C (Distributing child exploitation material)	24
	• section 228D (Possessing child exploitation material)	25
	• section 229B (Maintaining a sexual relationship with a child)	26 27
	• section 320A (Torture)	28

Schedule 1 (continued)

•	section 323A (Female genital mutilation)	1
•	section 323B (Removal of child from State for female genital mutilation)	2 3
•	section 349 (Rape).	4
2	The <i>Classification of Computer Games and Images Act 1995</i> , section 28 (Obtaining minor for objectionable computer game).	5 6 7
3	Any of the following provisions of the <i>Classification of Films Act 1991</i> —	8 9
•	section 42(3) or (4) (Making objectionable film)	10
•	section 43 (Procurement of minor for objectionable film).	11 12
4	Any of the following provisions of the <i>Classification of Publications Act 1991</i> , section 18 (Procurement of minor for RC publication or child abuse photograph).	13 14 15

Schedule 2	Dictionary	1
	section 2	2
<i>application declaration</i>	see section 3(1)(a).	3
<i>conviction</i>	means a finding of guilt, or the acceptance of a plea of guilty, by a court.	4 5
<i>declaratory order</i>	see section 12(1).	6
<i>department</i>	means the department in which the <i>Corrective Services Act 2000</i> is administered.	7 8
<i>DPP</i>	means the director of public prosecutions.	9
<i>period of imprisonment</i>	has the meaning given under the <i>Penalties and Sentences Act 1992</i> .	10 11
<i>Note—</i>		12
	Under the <i>Penalties and Sentences Act 1992</i> , section 4—	13
<i>period of imprisonment</i>	means the unbroken duration of imprisonment that an offender is to serve for 2 or more terms of imprisonment, whether—	14 15 16
	(a) ordered to be served concurrently or cumulatively; or	17
	(b) imposed at the same time or different times;	18
	and includes a term of imprisonment.	19
<i>term of imprisonment</i>	means the duration of imprisonment imposed for a single offence, and includes the imprisonment an offender is serving, or is liable to serve—	20 21 22
	(a) for default in payment of a single fine; or	23
	(b) for failing to comply with a single order of a court.	24
<i>prisoner</i>	means a person in relation to whom there is an application declaration.	25 26
<i>Note—</i>		27
	See section 3(1)(a) for when an application declaration is made and section 16(3) for when an application declaration stops being in force in relation to a person.	28 29 30

Schedule 2 (continued)

<i>rehabilitation program</i> means a medical, psychiatric or psychological treatment program made available by or through the department that is intended—	1 2 3
(a) to correct a behaviour relevant to a particular type of offence for which a prisoner was convicted; and	4 5
(b) to cause the prisoner to behave in a way acceptable to the community.	6 7
<i>relevant rehabilitation program</i> , for a prisoner, means a rehabilitation program that the chief executive decides, under section 8(1), ⁵ is a rehabilitation program that is appropriate for the prisoner to successfully complete in relation to a serious sexual offence for which the prisoner was convicted.	8 9 10 11 12
<i>serious sexual offence</i> means an offence prescribed under schedule 1.	13 14
<i>successfully complete</i> , in relation to a rehabilitation program, means complete the program in a way prescribed under a regulation for the program.	15 16 17

5 Section 8 (Chief executive to decide relevant rehabilitation program for each serious sexual offence)