

Passed by both Houses



New South Wales

Crimes (Serious Sex Offenders) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Crimes (Serious Sex Offenders) Bill 2006

Act No , 2006

An Act to provide for the supervision and detention of serious sex offenders; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

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Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Serious Sex Offenders) Act 2006*.

2 Commencement

This Act commences on the date of assent.

3 Objects of Act

The objects of this Act are to provide for the extended supervision and continuing detention of serious sex offenders so as:

- (a) to ensure the safety and protection of the community, and
- (b) to facilitate the rehabilitation of serious sex offenders.

4 Definitions

In this Act:

adult means a person who is not a child.

business day means any day that is not a Saturday, Sunday or public holiday.

child means a person who is under the age of 16 years.

continuing detention order means a continuing detention order made under section 17.

correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

corrective services officer means a member of staff of the Department of Corrective Services.

extended supervision order means an extended supervision order made under section 9 or 17.

interim detention order means an order made under section 16.

interim supervision order means an order made under section 8.

offence of a sexual nature—see section 5 (2).

qualified psychiatrist means a registered medical practitioner who is a fellow of the Royal Australian and New Zealand College of Psychiatrists.

registered psychologist means a person who is registered as a psychologist under the *Psychologists Act 2001*.

serious sex offence—see section 5 (1).

sex offender and *offender* mean a person who has at any time been sentenced to imprisonment following his or her conviction of a serious sex offence, other than an offence committed while the person was a child.

supporting documentation, in relation to proceedings under Part 2 or 3, means the documentation referred to in section 6 (3) or 14 (3), as the case requires.

5 Definitions of “serious sex offence” and “offence of a sexual nature”

- (1) For the purposes of this Act, a *serious sex offence* means any of the following offences:
- (a) an offence under Division 10 of Part 3 of the *Crimes Act 1900*, where:
 - (i) in the case of an offence against an adult or a child, the offence is punishable by imprisonment for 7 years or more, and
 - (ii) in the case of an offence against an adult, the offence is committed in circumstances of aggravation (within the meaning of the provision under which the offence arises),
 - (b) an offence under section 38, 111, 112 or 113 of the *Crimes Act 1900* that has been committed with intent to commit an offence under Division 10 of Part 3 of the *Crimes Act 1900*, where the offence intended to be committed is punishable by imprisonment for 7 years or more,
- and includes:
- (c) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious sex offence for the purposes of this Act, and
 - (d) any other offence that, at the time it was committed, was a serious sex offence for the purposes of this Act.
- (2) For the purposes of this Act, an *offence of a sexual nature* means any of the following offences:
- (a) an offence under Division 10 of Part 3 of the *Crimes Act 1900*,
 - (b) an offence under section 38, 111, 112 or 113 of the *Crimes Act 1900* that has been committed with intent to commit an offence referred to in paragraph (a),
 - (c) an offence under Division 15 of Part 3 of the *Crimes Act 1900*,
 - (d) an offence under section 11G of the *Summary Offences Act 1988*,
 - (e) an offence under section 21G or 21H of the *Summary Offences Act 1988* in relation to the filming of a child,

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Part 1 Preliminary

- (f) an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*,
- (g) an offence under section 13 of the *Child Protection (Offenders Prohibition Orders) Act 2004*,
- (h) an offence under section 12 of this Act,
and includes:
 - (i) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence of a sexual nature for the purposes of this Act, and
 - (j) any other offence that, at the time it was committed, was an offence of a sexual nature for the purposes of this Act.

Part 2 Extended supervision orders

6 Application for extended supervision order

- (1) The Attorney General may apply to the Supreme Court for an extended supervision order against a sex offender who, when the application is made, is in custody or under supervision:
 - (a) while serving a sentence of imprisonment:
 - (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature,whether the sentence is being served by way of full-time, periodic or home detention and whether the offender is in custody or on release on parole, or
 - (b) pursuant to an existing extended supervision order or continuing detention order,referred to in this Part as his or her *current custody or supervision*.
- (2) An application may not be made until the last 6 months of the offender's current custody or supervision.
- (3) An application must be supported by documentation:
 - (a) that addresses each of the matters referred to in section 9 (3), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing a further serious sex offence.
- (4) An application may indicate the kinds of conditions that the Attorney General would consider appropriate for inclusion under section 11 in the event that an extended supervision order is made.

7 Pre-trial procedures

- (1) An application for an extended supervision order must be served on the sex offender concerned within 2 business days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (2) The Attorney General must disclose to the offender such documents, reports and other information as are relevant to the proceedings on the application (whether or not intended to be tendered in evidence):
 - (a) in the case of anything that is available when the application is made, as soon as practicable after the application is made, and
 - (b) in the case of anything that subsequently becomes available, as soon as practicable after it becomes available.

- (3) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (4) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must make orders:
 - (a) appointing 2 qualified psychiatrists to conduct separate psychiatric examinations of the offender and to furnish reports to the Supreme Court on the results of those examinations, and
 - (b) directing the offender to attend those examinations.
- (5) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must dismiss the application.

8 Interim supervision orders

- (1) If, in proceedings on an application for an extended supervision order, it appears to the Supreme Court:
 - (a) that the offender's current custody or supervision will expire before the proceedings are determined, and
 - (b) that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order,the Supreme Court may make an order for the interim supervision of the offender.
- (2) An order under this section commences on the day fixed in the order in that regard (or, if no such day is fixed, as soon as it is made) and expires at the end of such period (not exceeding 28 days from the day on which it commences) as is specified in the order.
- (3) An order under this section may be renewed from time to time, but not so as to provide for the supervision of the offender under such an order for periods totalling more than 3 months.

9 Determination of application for extended supervision order

- (1) The Supreme Court may determine an application for an extended supervision order:
 - (a) by making an extended supervision order, or
 - (b) by dismissing the application.

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- (2) An extended supervision order may be made if and only if the Supreme Court is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision.
- (3) In determining whether or not to make an extended supervision order, the Supreme Court must have regard to the following matters in addition to any other matter it considers relevant:
- (a) the safety of the community,
 - (b) the reports received from the psychiatrists appointed under section 7 (4) to conduct psychiatric examinations of the offender, and the level of the offender's participation in any such examination,
 - (c) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner as to the likelihood of the offender committing a further serious sex offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
 - (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious sex offence,
 - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
 - (f) the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an earlier extended supervision order,
 - (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the *Child Protection (Offenders Registration) Act 2000* or the *Child Protection (Offenders Prohibition Orders) Act 2004*,
 - (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
 - (i) any other information that is available as to the likelihood that the offender will in future commit offences of a sexual nature.

10 Term of extended supervision order

- (1) An extended supervision order:
 - (a) commences when it is made, or when the offender's current custody or supervision expires, whichever is the later, and
 - (b) expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.
- (2) An offender's obligations under an extended supervision order are suspended while the offender is in lawful custody, whether under this or any other Act or law, but that suspension does not affect the expiry date of the order.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent extended supervision order against the same offender.

11 Conditions that may be imposed on supervision order

An extended supervision order or interim supervision order may direct an offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender:

- (a) to accept home visits by a corrective services officer, or
- (b) to make periodic reports to a corrective services officer, or
- (c) to notify a corrective services officer of any change in his or her address, or
- (d) to participate in treatment and rehabilitation programs, or
- (e) to wear electronic monitoring equipment, or
- (f) not to reside in or resort to specified locations or classes of locations, or
- (g) not to associate or make contact with specified persons or classes of persons, or
- (h) not to engage in specified conduct or classes of conduct, or
- (i) not to engage in specified employment or classes of employment, or
- (j) not to change his or her name.

12 Breach of supervision order

A person who fails to comply with the requirements of an extended supervision order or interim supervision order is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

13 Supervision order may be varied or revoked

- (1) The Supreme Court may at any time vary or revoke an extended supervision order or interim supervision order on the application of the Attorney General or the offender.
- (2) For the purpose of ascertaining whether to make such an application in relation to an extended supervision order, the Commissioner of Corrective Services must provide the Attorney General with a report on the offender at intervals of not more than 12 months.

Part 3 Continuing detention orders

14 Application for continuing detention order

- (1) The Attorney General may apply to the Supreme Court for a continuing detention order against a sex offender who, when the application is made, is in custody in a correctional centre:
 - (a) while serving a sentence of imprisonment by way of full-time detention:
 - (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature, or
 - (b) pursuant to an existing continuing detention order, referred to in this Part as his or her *current custody*.
- (2) An application may not be made until the last 6 months of the offender's current custody.
- (3) An application must be supported by documentation:
 - (a) that addresses each of the matters referred to in section 17 (4), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing a further serious sex offence.
- (4) An application may indicate the kinds of conditions that the Attorney General would consider appropriate for inclusion under section 11 in the event that an extended supervision order is made.

15 Pre-trial procedures

- (1) An application for a continuing detention order must be served on the sex offender concerned within 2 business days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (2) The Attorney General must disclose to the offender such documents, reports and other information as are relevant to the proceedings on the application (whether or not intended to be tendered in evidence):
 - (a) in the case of anything that is available when the application is made, as soon as practicable after the application is made, and
 - (b) in the case of anything that subsequently becomes available, as soon as practicable after it becomes available.

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- (3) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
 - (4) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of a continuing detention order or extended supervision order, the Supreme Court must make orders:
 - (a) appointing 2 qualified psychiatrists to conduct separate psychiatric examinations of the offender and to furnish reports to the Supreme Court on the results of those examinations, and
 - (b) directing the offender to attend those examinations.
 - (5) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of a continuing detention order or extended supervision order, the Supreme Court must dismiss the application.

16 Interim detention orders

- (1) If, in proceedings on an application for a continuing detention order, it appears to the Supreme Court:
 - (a) that the offender's current custody will expire before the proceedings are determined, and
 - (b) that the matters alleged in the supporting documentation would, if proved, justify the making of a continuing detention order or extended supervision order,the Supreme Court may make an order for the interim detention of the offender.
- (2) An order under this section commences on the day fixed in the order in that regard (or, if no such day is fixed, as soon as it is made) and expires at the end of such period (not exceeding 28 days from the day on which it commences) as is specified in the order.
- (3) An order under this section may be renewed from time to time, but not so as to provide for the detention of the offender under such an order for periods totalling more than 3 months.

17 Determination of application for continuing detention order

- (1) The Supreme Court may determine an application for a continuing detention order:
 - (a) by making an extended supervision order, or
 - (b) by making a continuing detention order, or
 - (c) by dismissing the application.
- (2) An extended supervision order may be made if and only if the Supreme Court is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision.
- (3) A continuing detention order may be made if and only if the Supreme Court is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision and that adequate supervision will not be provided by an extended supervision order.
- (4) In determining whether or not to make a continuing detention order or extended supervision order, the Supreme Court must have regard to the following matters in addition to any other matter it considers relevant:
 - (a) the safety of the community,
 - (b) the reports received from the psychiatrists appointed under section 15 (4) to conduct psychiatric examinations of the offender, and the level of the offender's participation in any such examination,
 - (c) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner as to the likelihood of the offender committing a further serious sex offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
 - (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious sex offence,
 - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
 - (f) the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an earlier extended supervision order,

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- (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the *Child Protection (Offenders Registration) Act 2000* or the *Child Protection (Offenders Prohibition Orders) Act 2004*,
 - (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
 - (i) any other information that is available as to the likelihood that the offender will in future commit offences of a sexual nature.
- (5) Part 2 applies to an extended supervision order made under this section in the same way as it applies to an extended supervision order made under section 9.

18 Term of continuing detention order

- (1) A continuing detention order:
 - (a) commences when it is made, or when the offender's current custody expires, whichever is the later, and
 - (b) expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.
- (2) An offender's custody under a continuing detention order is suspended while the offender is in lawful custody under any other Act or law, but that suspension does not affect the expiry date of the order.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent continuing detention order against the same offender.

19 Detention order may be varied or revoked

- (1) The Supreme Court may at any time vary or revoke a continuing detention order or interim detention order on the application of the Attorney General or the offender.
- (2) For the purpose of ascertaining whether to make such an application in relation to a continuing detention order, the Commissioner of Corrective Services must provide the Attorney General with a report on the offender at intervals of not more than 12 months.

20 Warrant of committal

- (1) As soon as practicable after making a continuing detention order or interim detention order against an offender, the Supreme Court must issue a warrant for the committal of the offender to a correctional centre for the period specified in the order.

Clause 20 Crimes (Serious Sex Offenders) Bill 2006

Part 3 Continuing detention orders

- (2) A warrant under this section is sufficient authority:
- (a) for any police officer to convey the offender to the correctional centre identified in the warrant, and
 - (b) for the governor of the correctional centre to keep the offender in his or her custody in accordance with the terms of the warrant.

Part 4 Supreme Court proceedings

21 Nature of proceedings

Proceedings under this Act (including proceedings on an appeal under this Act) are civil proceedings and, to the extent to which this Act does not provide for their conduct, are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

22 Right of appeal

- (1) An appeal to the Court of Appeal lies from any determination of the Supreme Court to make, or to refuse to make, an extended supervision order or continuing detention order.
- (2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.
- (3) An appeal against the decision of the Supreme Court may be made, as of right, within 28 days after the date on which the decision was made or, by leave, within such further time as the Court of Appeal may allow.
- (4) The making of an appeal does not stay the operation of an extended supervision order or continuing detention order.
- (5) This section does not limit any right of appeal that may exist apart from this Act.

23 Costs not to be awarded against offender

An order for costs may not be made against an offender in relation to any proceedings under this Act (including proceedings on an appeal under this Act).

24 Preservation of Supreme Court jurisdiction

Nothing in this Act limits the jurisdiction of the Supreme Court apart from this Act.

Part 5 Miscellaneous

25 Attorney General may require provision of certain information

- (1) The Attorney General may, by order in writing served on any person, require that person to provide to the Attorney General any document, report or other information in that person's possession, or under that person's control, that relates to the behaviour, or physical or mental condition, of any sex offender.
- (2) A person who fails to comply with the requirements of an order under this section is guilty of an offence.
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (3) Despite any Act or law to the contrary, any document or report of a kind referred to in subsection (1), or any copy of any such document or report, is admissible in proceedings under this Act.

26 Protection of certain persons from liability

No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person if it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

27 Hearings

This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative, or
- (b) to call witnesses and give evidence, or
- (c) to cross-examine witnesses, or
- (d) to make submissions to the Court on any matter connected with the proceedings.

28 Bail Act 1978 not to apply

The *Bail Act 1978* does not apply to or in respect of a person who is a defendant in proceedings under this Act, other than proceedings for an offence under section 12 or 25 (2).

29 Rules of court

- (1) Rules of court may be made under the *Supreme Court Act 1970* for regulating the practice and procedure of the Supreme Court in respect of proceedings under this Act.

- (2) This section does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

30 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

31 Amendments and savings and transitional provisions

- (1) The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.
- (2) Schedule 2 has effect.

32 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) For the purposes of the review, the Minister may require the Commissioner of Corrective Services to provide information as to how the Commissioner's functions in relation to the administration of this Act are being, and have been, exercised.
- (3) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

(Section 31 (1))

[1] Section 3 Interpretation

Omit “(b) or (c)” from the definition of *convicted inmate* in section 3 (1).

Insert instead “(b), (c) or (c1)”.

[2] Section 4 Application of Part

Insert after section 4 (1) (c):

- (c1) any person the subject of a warrant under section 20 of the *Crimes (Serious Sex Offenders) Act 2006* by which the Supreme Court has committed the person to a correctional centre pursuant to a continuing detention order or interim detention order under that Act, and

[3] Section 4 (3)

Omit “(b) or (c)”. Insert instead “(b), (c) or (c1)”.

[4] Section 126 Eligibility for release on parole

Insert after section 126 (3):

- (4) An offender is not eligible for release on parole if the offender is the subject of a continuing detention order under the *Crimes (Serious Sex Offenders) Act 2006*.

[5] Section 160A

Insert before section 161:

160A Relationship of parole orders to supervision orders under the Crimes (Serious Sex Offenders) Act 2006

- (1) An offender’s obligations under a parole order are suspended while the offender is subject to an extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*.
- (2) For the purposes of Division 3 of Part 7, the offender’s obligations under the extended supervision order are taken to be obligations under the parole order.

Note. Consequently, the offender’s parole order may be revoked under Division 3 of Part 7 if the offender fails to comply with his or her obligations under the supervision order.

Schedule 2 Savings, transitional and other provisions

(Section 31 (2))

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Application of Act to past offences

This Act applies to and in respect of offences committed before the date of assent to this Act in the same way as it applies to and in respect of offences committed after that date.

3 Application of Act to persons serving existing sentences of imprisonment

This Act applies to and in respect of a person who is serving a sentence of imprisonment that commenced before the date of assent to this Act in the same way as it applies to and in respect of a person who is serving a sentence of imprisonment that commences after that date.