SUPREME COURT OF QUEENSLAND

CITATION:	*A-G for the State of Qld v Boulton* [2018] QSC 41
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **BRANDON JAMES BOULTON** (Respondent)
FILE NO/S:	BS No 10872 of 2017
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 March 2018
DELIVERED AT:	Brisbane
HEARING DATE:	26 February 2018. Further submissions 27 & 28 February and 1 March 2018.
JUDGE:	Lyons SJA
ORDER:	**I order that pursuant to s 13(5)(a) of the Act, the respondent, Brendan James Boulton, be detained in custody for an indefinite term for control, care or treatment.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks orders under Part 2, Division 3 (Section 13) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the respondent has been convicted of multiple sexual offences against children – whether the respondent is a serious danger to the community in the absence of a Part 2, Division 3 order – whether a continuous Detention Order under section 13 (5)(a) should be preferred *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 9A, s 13 *Attorney-General for the State of Queensland v Evans* [2008]

QSC 309

Attorney-General for the State of Queensland v Sutherland
[2006] QSC 268

COUNSEL: Mr J. Tate for the Applicant
Mr J. McInnes for the Respondent

SOLICITORS: Crown Law for the Applicant
Legal Aid Queensland for the Respondent

[1] The respondent is a 22 year old man who is currently serving a term of three years imprisonment for two episodes of sexual offending, both of which were dealt with on 11 February 2016. His full time release date is 10 March 2018. The Attorney-General for the State of Queensland argues that he is a serious danger to the community and seeks orders pursuant to Part 2, Division 3 (Section 13) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ('the Act') that he be detained in custody for an indefinite term for control, care or treatment or if he is released from custody, he be subject to a supervision order with mandatory conditions. In the circumstances of this case the applicant argues that a continuing detention order under s 13(5)(a) of the Act is the appropriate order. If the respondent is to be released pursuant to s 13(5)(b) the applicant argues that the order should be in place for at least 10 years.

The respondent

[2] In February 2016 the respondent was dealt with for two episodes of sexual offending. The first episode occurred between 2010 and 2012 and related to one charge of indecent treatment of a child under 12 and two charges of attempted indecent treatment of a child under 12. Those offences were committed against two brothers who were 6 and 10. The second episode occurred in 2015 and related to offences of carnal knowledge and grooming of a child under 16 with intent to procure engagement in a sexual act. Those offences related to a 15 year old female. In addition to those offences, the respondent was also dealt with on that date for breaching a suspended sentence imposed on 30 July 2013 for an earlier offence of rape which was committed in 2012 when he was 16 and the complainant was 17. His full-time discharge date is 10 March 2018.

[3] The respondent's criminal history comprises some six pages and his offending is in many offence categories including stealing, weapons offences, burglary and motor vehicle offences. Counsel for the applicant summarised the respondent's Queensland criminal history as follows:[1]

Gladstone Children's Court 30/07/2013	• Rape	Sentenced as an adult. Conviction recorded. Sentenced to 3 years imprisonment to be suspended for 4 years after serving 12 months.

[1] Affidavit of Kerry Ann Heenan sworn 21 September 2016, Exhibit KAH-2, 3-8 (Qld criminal history); for the Verdict and Judgement records, see the Affidavit of Zoe Rutherford sworn 16 October 2017, Exhibit ZR-1, 1-2 (rape & enter dwelling), ZR-7, 45-7 (indecent treatment, grooming & carnal knowledge etc.).

	• Burglary and commit indictable offence	Conviction recorded. Sentenced to 12 months imprisonment. All terms of imprisonment to be served concurrently. 92 days pre-sentence custody declared as time already served. Sentenced as a juvenile to a 2 year probation order.
Gladstone District Court 06/02/2015	• Breach of suspended sentence imposed on 30/07/2013 re: rape	Suspended sentence extended until 30/07/2018.
	• Breach of probation order imposed on 30/07/2013 re: burglary and commit indictable offence	Admonished and discharged.
Gladstone District Court 11/02/2016	• Carnal knowledge of children under 16 years	Conviction recorded. Sentenced to 18 months imprisonment.
	• Grooming child under 16 years with intent to procure engagement in a sexual act	Conviction recorded. Sentenced to 6 months imprisonment.
	• Indecent treatment of children under 16 child under 12 years	Conviction recorded. Sentenced to 12 months imprisonment.
	• Attempted indecent treatment of child under 16 (procure to commit) child under 12 years (2 charges)	On all charges conviction recorded. Sentenced to 6 months.
	• Supplying schedule 2 dangerous drug	All terms of imprisonment to be served concurrently. 337 days pre-sentence custody declared as time already served.
	• Fail to comply with reporting conditions (3 charges) • Stealing (2 charges) • Trespass • Assault or obstruct police officer • Possess utensils or pipes for use • Possession of a knife in a public place	On all charges conviction recorded. Not further punished.
	• Breach of suspended sentence imposed on 30/7/2013 and extended on 06/02/2015 re: rape	Breach proven suspended sentence partially invoked. Conviction recorded. Sentenced to 18 months imprisonment. To be served cumulatively. Parole eligibility date of 10 September 2016.

[4] The respondent's full criminal history is an important factor and it is a significant feature that there is a reference to material from the Gladstone Youth Justice Service referring to an assault charge in 2005 when he was 10. His sexual offending then

commenced in 2007 when he was almost 12 and involved a charge of indecent treatment which was dealt with in the Children's Court by way of a caution. By the age of 19 he had already had three separate incidents of sexual offending. The respondent has had previous community based treatment which included treatment sessions with a psychologist to address his sexually motivated offending. However, his engagement was deemed to be superficial and it was considered by the psychologist John Glanville that he lacked insight into his offending.[2] When he was sentenced in 2016, Judge Butler referred to the fact he had not taken advantage of the probation and parole assistance he had been given.

The reports of the psychiatrists

[5] The respondent has been assessed by three psychiatrists namely Dr Aboud, Dr Timmins and Dr McVie who all prepared extensive reports for the purposes of this application. The psychiatrists all agree that the respondent's essential diagnosis is that he suffers from psychopathy, sexual deviancy and substance abuse. There was however a difference amongst the psychiatrists in relation to the ability to formulate other diagnoses due to a lack of data and the variability of some of the information provided to the psychiatrists particularly by the respondent. A further difficulty in formulating risk assessments is due to the respondent's age and the fact that many of the sexual offences were committed before he was an adult. Accordingly there are some outstanding issues as to whether the respondent has paedophilia or paedophile urges and whether there is the possible presence of sadism and to a lesser extent, masochism.

[6] Dr Aboud in his report dated 27 September 2017 considers that the respondent has a diagnosis of psychopathy, anti-social personality disorder, polysubstance abuse and deviant paedophile urges. In terms of psychopathy, Dr Aboud stated the following at the hearing:

> "Well, first of all quite straightforwardly he scored above the cut-off on the Hare psychopathy checklist – revised. And that is the most robust diagnostic tool for psychopathy. In terms of what it means – well, just looking at my assessment – according to that psychopathy checklist, he scored on a wide range of items, and there was, certainly, a loading towards his antisocial behaviour, attitudes and the problematic childhood that he experienced. What this really means is that – Mr Boulton is a man who has broken rules. He's violated social norms. He has acted in a self-serving manner. He has at times not told the truth. And much of his behaviour has been impulsive and irresponsible. That needs to be taken into the context of his age. He's a young man now. He was even younger at the time of his offending. Some of his offending that is listed – it was even when he was an adolescent. He would've been less than 16 years old. He also had a wide range of offending, and that should also be taken in the context of his problematic childhood somewhat disrupted and early onset of substance abuse. I feel that what's important in respect of Mr Boulton is to pay some consideration to the possibility of maturation, some of which may have started and some of which may

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[2] Report of John Glanville, Psychologist, dated 6 May 2014 (as Exhibit PM-1, 20-3 to Affidavit of Paula May sworn 6 October 2017.

> still occur. And for me I think that's probably the most important aspect of seeing the way forward."[3]

[7] Dr Timmins in her report dated 23 December 2017 considers he has a diagnosis of psychopathy, anti-social personality disorder with narcissistic traits, polysubstance abuse and a possible presence of sadism and to a lesser extent, masochism and considers that paedophilia and deviant sexual fantasies cannot be excluded. She noted that he was attracted to both males and females and had a high sex drive. Her view was that his attraction to females extends to prepubescent females whom he will groom in order to meet his sexual needs and that he will most likely take advantage of them by way of a pseudo relationship. Dr Timmins also considered that he was "highly manipulative and coercive, and not above using substances to ensure compliance. He is also not adverse to using physical violence to get his needs met."[4]

[8] Dr McVie's report is dated 17 January 2018 and she considers the respondent has a diagnosis of psychopathy, sexual deviance, substance use disorder and conduct disorder in childhood with evidence of anti-social personality traits in adolescence as well as ADHD. Dr McVie also considered that the respondent's criminal history was lengthy with convictions for rape, carnal knowledge, grooming and indecent dealing with boys. She considered that his sexual deviance was "eclectic" but that other than the one incident involving a six year old boy, the other offences involved victims within five years of his age. Dr McVie noted "From May 2013 to February 2016, he incurred at least 11 breaches of bail charges, two breach of probation, four fail to comply with reporting conditions, one fail to appear and one breach of suspended sentence."[5]

[9] The psychiatrists also all agree that the respondent's unmodified risk of sexual reoffending is in the high range.

Is the respondent a serious danger to the community in the absence of a Division 3 Order?

[10] The statutory scheme under the Act is to provide for the continuing detention or supervised release of a particular class of prisoners to ensure the adequate protection of the community and also to provide continuing control, care or treatment of those prisoners to ensure their rehabilitation. Section 13 provides that a Division 3 Order can be made if the Court is satisfied by acceptable, cogent evidence to a high degree of probability that that the prisoner is a serious danger to the community in the absence of such an order. A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or is released from custody without an order being made. The Act requires that in determining the application for such an order, I take into account a number of factors which are set out in s 13(4) of the Act as follows:

> (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—

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3 Transcript (26 February 2018) 1 – 12, 13: 41-10.
4 Dr Timmins' Report, dated 23 December 2017, p 32 from line 1469.
5 Dr McVie's Report, dated 17 January 2018, p 18.

(aa) any report produced under section 8A ;
(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;
(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.

[11] The respondent was initially incarcerated in the Maryborough Correctional Centre and since March 2013 has been at the Capricornia Correctional Centre. His behaviour in custody has been satisfactory. He has maintained employment and has undertaken a number of vocational courses during his imprisonment. He is currently a full time student and he wants to continue his tertiary preparation course and attend university. I have considered the reports of the psychiatrist as required and also taken into account the evidence that whilst the respondent commenced a drug and alcohol course in November 2017, he has not otherwise addressed the cause or causes of his offending behaviour. He has not participated in any rehabilitation programs in relation to his sexual offending whilst in custody. Whilst he was required to attend treatment with psychologist as a condition of his Probation Order imposed on 30 July 2013 he attended on one occasion only and failed to attend at follow up appointments. He also declined a place in the Getting Started Program so as not to be separated from his family which in my view shows a lack of commitment to his rehabilitation. I have also considered his antecedents, his criminal history, the risk assessments undertaken by the psychiatrist and whether he has a propensity to commit serious sexual offences in the future.

[12] I am satisfied on the evidence therefore that the respondent clearly represents a serious danger to the community in the absence of a Division 3 order. I consider that the respondent's risk of sexual re-offending and the offending against children is unacceptable. In forming this view I have considered the factors in s 13(4) of the Act. In the circumstances of this case a Division 3 Order is clearly required and indeed Counsel for the respondent concedes that the grounds for an Order under s 13 have been made out.

Should the respondent be placed on a continuing detention order or a supervision order?

[13] The real issue in this case is whether there should be a continuing detention order or whether the respondent can be released subject to a supervision order with conditions. The evidence of the psychiatrists is that the respondent's risk in the community would be reduced to moderate to low or moderate to high should he complete a High Intensity Sexual Offender Program (HISOP) in custody prior to release.

[14] Ms Katherine McKinnon, the acting Principal Advisor of the Offender Intervention Unit at Corrective Services gave evidence at the hearing and indicated that in terms of his static risk the respondent was on the high end of the risk scale and that the HISOP or an alternative high-intensity sexual-offender program would be most suitable program for him and that the Medium Intensity Sexual Offender Program (MISOP) would be inappropriate given his risk because " – the groups are designed to group together a cohort of individuals of similar risk and need level, that putting someone that's high risk into the medium-intensity program would be placing him with people of much lower risk, perhaps even low risk, and it can actually increase the risk of other people in the group."[6] The evidence is that the first available HISOP course does not commence until October 2018 and would take basically a year to complete because it is an intensive course lasting over some 39 weeks with three by three-hour sessions each week. It would mean that the respondent's fulltime release date could be extended by at least a couple of years. The reality was therefore that the respondent would not complete the necessary program until late 2019. It was also clear that the HISOP was best done in a group and that the HISOP was not available in the community but rather was only provided in a custodial setting.

[15] All three psychiatrists gave evidence at the hearing in relation to this specific aspect.

[16] Dr Aboud considers that if he completed the HISOP program and the Pathways Substance Misuse program, those programs would reduce his risk of re-offending to between moderate to high. He also considered that in the community he would require careful support, supervision and monitoring and that a formal requirement for community supervision pursuant to a court order would reduce the risk of sexual reoffending to between moderate and low. Dr Aboud recommended that the sex offender program be completed prior to his release. He accepted that the respondent was relatively untested in a group setting and that it would be hard to predict how he would perform but considered that as the best option in the circumstances.

[17] Dr Aboud referred to the fact that the respondent had declined a place in the Getting Started Preparatory Program which had meant he could not progress to the HISOP Course prior to his full time release date. The reason which was given for the refusal to undertake the course was not wanting to be separated from his family. Dr Aboud indicated that the respondent may have used that as a reason "to avoid having to challenge himself emotionally and psychologically and go through the – what can be a confronting experience of group sex offender therapy."[7] Even if it was a straightforward refusal based on social factors that did not have anything to do with anxiety about engaging in the course Dr Aboud stated that the respondent must have known that it was important to undergo such a course given the nature of his convictions for the sexual

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6 Transcript (26 February 2018) 1-18: 35 – 39.
7 Transcript (26 February 2018) 1-15: 12 – 14.

offences and that if he really wanted to rehabilitate himself, he would have been wanting to do the course rather than avoid doing it.

[18] Dr Aboud considered that the respondent had various dynamic risk vulnerabilities which he would have to manage including finding a stable environment in which to live, not to misuse substances, to find a stable social environment and the need to occupy his time in a structured and meaningful way. He would also have to volunteer to engage with a psychological therapist and significantly "He would also have to, I think, develop insight somehow without having done a course or program such as the [indistinct] have to somehow develop insight and a – a sophisticated formulation of what might go wrong and how to best manage those factors and avoid high-risk situations. I think overall, this would be very difficult for a man of at least…low average intelligence who has demonstrated high levels of impulsivity, early onset and longstanding substance abuse vulnerabilities and a [indistinct] underlying sexual deviance. I think I would be very challenging, very difficult for him to somehow do all of those things and do them right."[8]

[19] Dr Aboud stated that whilst the structure of the supervision order would manage such things as substance abuse, accommodation and the avoidance of high risk situations there were some things that a supervision order could not manage. He considered that whilst he could be engaged in individual psychological therapy to address his broader vulnerabilities and sexual deviance, what would be lacking would be that he had not undergone an evidence-based program designed for individuals who score in a similar risk group to him whereby he would be exposed to the challenges of working, not only with a group facilitator, but also with the other people in the group. Dr Aboud stated "that is actually a very important part of the therapy where your peers become part of the therapy process."[9] He considered that the respondent would not have the intensive nature of a HISOP, "that is, the frequency and the dosage of that therapy program. He would be at risk of not developing the greater insights into his sexual reoffending risk, how to best manage it, insights into himself, his vulnerabilities. It would present, for me, as a gap that one would always be struggling to try to bridge and that would be in a community circumstance."[10]

[20] Dr Aboud was acutely aware of the fact that the requirement to complete a HISOP course in custody would essentially mean the respondent's return to the community could be delayed for almost 2 years. Ultimately he concluded;

> "It's quite confronting, when one adds up that period, the time periods and comes to a numerical value of two years. It does seem like a long period of time for an individual to have to remain in custody in order to attend courses. But on the other hand I would put weight on the assessment of risk, which has been thorough, and how that assessment of risk then logically leads to considerations of management and treatment. So rather than put weight on the fact that it [indistinct] be two years, which I find troubling, when it's put like that, I'd rather – more preferably – put weight on understanding his risk, his needs and therefore a logical step towards formulating this in terms of risk management, and I believe

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8 Transcript (26 February 2018) 1-16: 6 – 14.
9 Transcript (26 February 2018) 1-16: 38 – 49.
10 Transcript (26 February 2018) 1-16: 41- 46.

> that his risk-management needs are best met by undergoing both group substance-abuse program and a high-intensity sex-offender program and – in custody prior to being released on a supervision order."[11]

[21] Dr McVie noted Dr Aboud's recommendation that the respondent complete the HISOP program before release and she agreed that the risk assessment indicates he is a high risk of offending and has high treatment needs. She considered therefore that HISOP would be the preferred group program in custody and noted that HISOP is not available in the community. Her view, however, was that the respondent would be difficult to manage in a group situation and would at best be disruptive. She also noted that it was possible that Mr Boulton would learn more about deviant sexual behaviours by being exposed to a group of offenders with various different types of sexual offending. She also considered he was unlikely to be able to develop any real remorse or victim empathy due to his psychopathic features. She stated that he needs to learn how to identify human emotions and how to respond to them. Whilst intelligent subjects can teach themselves these skills, the less intelligent don't have that capacity and her concern was that he would not develop compassion in a prison environment. Ultimately she concluded:

> "Despite the challenges he presents, my recommendation is that he be released on a supervision order. He should have regular treatment with a therapist experienced in dealing with sex offenders and young persons with psychopathy.[12]

[22] Dr McVie also considered that if he were to be released on a supervision order, his risk would be reduced to some degree by the structure of the supervision order. She also considered that he would need extensive support on his release. If he was able to re-engage with an appropriate psychologist who had experience in dealing with sexual offenders and was able to engage him in therapy for his psychopathy then his risk would be further reduced. Her view was it would be best if he obtained therapy for his psychopathy first and then complete the HISOP. Dr McVie noted however that it would take some time to engage appropriately with that form of psychological therapy and that he had a history of non- compliance with previous orders.

[23] In terms of what was available in the community should he be released on a supervision order, Dr McVie acknowledged that whilst the Medium Intensity Sex Offender Program (MISOP) was available in the community it was really targeted towards the low to moderate risk group of offenders, rather than high risk offenders. She considered however that such a program would be appropriate if he received the other therapy first which included some feedback of his engagement with therapy for psychopathy.[13]

[24] Dr Timmins also considered that his most outstanding treatment need was his treatment need for sexual offending and that that was best done before he was released from custody and that would be in the form of an intensive group sex offender course such as HISOP. She considered that although his risk would be modified under the supervision

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[11] Transcript (26 February 2018) 1-19: 19 – 31.
[12] Dr McVie's Report, dated 17 January 2018, p 19.
[13] Transcript (26 February 2018) 1-30: 22-43.

order, he would still fall in the moderate-high risk category. She gave the following evidence in response to questions from Counsel for the applicant:

> "If I could ask you just to give us some indication, risk levels, from your perspective, with some scenarios, and you've heard that I've asked this of the other psychiatrists. Currently you consider his risk high?---Yes.
>
> If he's released to – that is to say, unmodified risk if released to the community without an order. If he was released to the community without undertaking the programs before release that you've indicated, would you see any reduction? That is to say, it's just a supervision order. Would you see any reduction and, if so, what?---I think there would be a reduction, mainly because of the structure that the order provides, things such as the monitoring, the stable, you know, housing. So at present, the ability to get him into appropriate treatment with a forensic psychologist. Also, the ability to sort of watch where he's – he's, you know, working, who he is going to socialise with, all of these sorts of things. So that will provide a base and a structure around him. That's probably more than the community orders that he's had in the past. So that's going to modify his risk level.
>
> But that's entirely imposed externally by virtue of the order?---That's correct. Yes that's correct. So it doesn't – it doesn't rely on him doing any of the work and understanding – and I think we've got to realise, also, that his previous ability to engage in psychological therapy with Mr Glanville, wasn't that – didn't show much benefit. And that was supposed to be around his sexual offending at the time, and that he didn't engage very well and he told me that he basically was going to tell the man whatever he wanted to hear, so I think he needs to take his history seriously and learn about himself and how to manage his emotional state, his risk issues and also contribute – not just rely on the external supports that an order might provide him.
>
> So would you see any reduction at all, without attending treatment, out on a supervision order. That was - - -?---I think – I think just with a supervision order in place, it would probably go to moderate to high.
>
> Now, considering undertaking the treatment that you suggested with the programs and then being released to the community on a supervision order. What would your opinion be about risk?---I think it's difficult to predict with 100 per cent certainty how much that would decrease the risk level for him. It depends on his engagement in a course such as in custody and what he actually learns, how much value he gains from that sort of course. And we don't know any of those issues, so it would be very hard for me to actually sort of categorically say that – how much it would decrease his risk if he had done those courses before he got out on the supervision order.
>
> But we'd certainly know a lot more about him?---Absolutely, yes, without a doubt.

And would that be important in relation to professional people being able to form a clinical view about risk and whether or not he is a danger to the community?---I think certainly the information that – that we could gain from that program would help, yes.

And are you hopeful that he would be able to engage and get some personal benefit out, rehabilitation, as a result of this approach?---Yes, I am. I think – I think, through this process, he's starting to realise that this is actually serious and I think that's partly to do with his maturity, as well, and I think – I hope that he would give it a fair go and start to learn about himself, and then we could get him into some individual therapy in the community, which, again, hopefully he would take seriously, as well.

You heard the evidence this morning of Kath McKinnon?---Yes.

You heard her talk about the report that she's received from his participation in the LISI program?---Yes.

Was that comforting?---Yes. Definitely.

You've had an opportunity of looking at the courses that he's done during his time in custody?---Yes.

Does that give you any comfort about engagement?---Yes. And I think that also points to him wanting to improve himself.

Yes?---And having some sort of a future that maybe doesn't involve offending against the community.

Lastly, Doctor, the countervailing problem that exists in this case is that this man is – his full-time release date is in a couple of weeks' time. Our understanding, you've read the affidavit material, is that, basically, it's unlikely that he would be able to finish the necessary courses that you've suggested or indicated for upwards of two years. Does that cause you a moment for pause?---Certainly, two years in custody past his full-time date is – is a serious concern. I think there needs to be some consideration into how that could perhaps be lessened, if that's what the court decides to – to keep him in custody, to do courses, which courses are going to give the most benefit for him, to decrease that time in custody.

You've heard that the first step would be a GP assess, where needs can be - - -?---Yes.

- - - properly identified?---Yes.

Are you suggesting that there be some sort of a review after that step is taken?---I think that could be appropriate, yes."[14]

[14] Transcript (26 February 2018) 1-33-34: 9 – 47.

[25] It became clear during the hearing that the respondent was currently untested in a group environment for sex offender treatment and that given his young age many of the risk instruments were not entirely appropriate in terms of assessing the risk that the respondent actually posed to the community. I also expressed my very significant concern that whilst the respondent had reached his fulltime release date he could be kept in custody for a further 2 years to complete sex offender programs which may be inappropriate for him. In the circumstances I considered whether it would be appropriate to adjourn the current application pursuant to s 9A of the Act to enable further information to be provided to the Court. Having considered the requirements of the section and the decision of Martin J in *Attorney-General for the State of Queensland v Evans*[15] I am satisfied that this is not an appropriate case for such an adjournment. It would seem to me that any adjournment would necessarily be for a lengthy period so that new evidence would be able to be presented based on the respondent's response to treatment. The evidence of the psychiatrists was that any engagement with such treatment would necessarily take some time particularly given that the first available high intensity program would not even commence until October 2018. It is necessary therefore to proceed on the basis of the evidence I currently have before me and ascertain whether the adequate protection of the community could be ensured by a supervision order or whether it was necessary for the respondent to be detained for an indefinite term for control, care or treatment.

[26] Counsel for the respondent, in both his written and oral submissions, argued that the Mr Boulton should be released on a supervision order. In particular, Mr McInnes notes that whilst there is a risk in releasing the respondent on a supervision order, the alternative of the deprivation of liberty of the 22 year-old respondent should not be accepted. Counsel submitted that there was a consistency between the evidence of the three psychiatrists that supervision will reduce risk and relied particularly on the evidence of Dr McVie, who held the opinion that the respondent could be released on a supervision order, without the courses completed in custody.[16] In the respondent's submission, Dr McVie had "turned her mind the most…of any of the three [doctors], to the specific challenges that Mr Boulton presents."[17] Namely, the risk that the respondent will not respond well to group therapies, and either increase in his own risk of reoffending through discussion with other sexual offenders, or increase the risk of others he speaks to in such group therapy sessions.

[27] In the respondent's submissions dated 26 February 2018, it was also noted that all three psychiatrists agree with the diagnosis of psychopathy, anti-social personality disorder (or traits) and substance abuse however none of them give a formal diagnosis of paedophilia or paedophilic urges. Mr McInnes argued that "what is acceptable judicially will not always align with some point on the low, medium, high risk spectrum identified by psychiatrists"[18] and relied on Sutherland's case[19] to support the submission that Mr Boulton should be released on a continuing supervision order, and not subject to indefinite detention.

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15 [2008] QSC 309.
16 Transcript (26 February 2018) 1-44: 2 – 13.
17 Transcript (26 February 2018) 1-45: 4 – 5.
18 Transcript (26 February 2018) 1-44: 5 – 6.
19 *Attorney-General for the State of Queensland v Sutherland* [2006] QSC 268.

[28] As counsel for the applicant correctly identifies, the issue is whether the adequate protection of the community requires that the respondent, prior to being released on a supervision order, complete the Pathways (Substance Misuse) Program and the High Intensity Sexual Offender Program (HISOP).[20] If the answer is yes, then the only appropriate option is one that detains the prisoner in custody for an indefinite term for control, care or treatment. The onus is on the applicant to demonstrate that the alternative option of a supervision order affords inadequate protection to the community.

[29] The requirements of the Act are clear and the Act provides that the paramount consideration is the need to ensure the adequate protection of the community. I am satisfied that the protection of the community, at this stage, cannot be adequately ensured if the respondent is released on a supervision order. A supervision order by itself cannot reduce the risk to an acceptable level particularly given that his unmodified risk is high, he has previously breached orders in the community, he has significant history for criminal offending and he has undertaken no rehabilitation to date. In my view the current risk is unacceptable and on the evidence currently before me it cannot be reduced to a lower, manageable level, without completing the courses. I am satisfied that the weight of evidence supports a continuing detention order under the Act.

[30] Given the fact that the necessary courses will take some time to complete it would clearly be of assistance to the future rehabilitation of a 22 year old man who has already spent significant period in custody if he was able to access such a program prior to October 2018. It would also be beneficial if he could receive, as Dr McVie has indicated, some therapy for his psychopathy prior to commencing that group course. In this regard, I note that the respondent has stated the following, showing his intention to undertake these courses:

> "My lawyers have discussed with me the High Intensity Sexual Offenders Program ("HISOP"), which I understand is only available in prison. I understand two of the psychiatrists do not think I should be released until I have completed this course. If this Court ordered my continued detention I would be willing to participate in the HISOP even if this required me to move to Brisbane. I have already spoken to the course facilitators here at Capricornia before Christmas. I can and will move to Brisbane to do the course. I have already made up my mind that I am willing to move to Brisbane to participate."[21]

[31] Given that the respondent is now showing a clear desire for rehabilitation programs and treatment it would be beneficial if he could be engaged in treatment as early as possible.

Conclusion

[32] I am satisfied to the requisite standard and on the basis of acceptable cogent evidence that the respondent, Brandon James Boulton, is a serious danger to the community in the absence of an order under division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld).

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[20] Applicant's Outline of Submissions (12 February 2018) p 6.
[21] Applicant's Supplementary Submissions dated 28 February 2018, p 4.

[33] I order that pursuant to s 13(5)(a) of the Act, the respondent, Brandon James Boulton, be detained in custody for an indefinite term for control, care or treatment.