



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 3

#### VICTIMS ETC

### CHAPTER 2

#### REPRESENTATIONS AND INFORMATION

#### *Transfer directions*

#### **42 Victims' rights: preliminary**

- (1) This section applies if—
  - (a) a person (“the offender”) is convicted of a sexual or violent offence,
  - (b) a relevant sentence is imposed on him in respect of the offence, and
  - (c) while the offender is serving the sentence, the Secretary of State gives a transfer direction and a restriction direction in respect of him.
- (2) The local probation board for the area in which the hospital specified in the transfer direction is situated must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes—
  - (a) to make representations about the matters specified in subsection (3);
  - (b) to receive the information specified in subsection (4).
- (3) The matters are—
  - (a) whether the offender should be subject to any conditions in the event of his discharge from hospital;
  - (b) if so, what conditions.

- (4) The information is information about any conditions to which the offender is to be subject in the event of his discharge from hospital.

### **43 Representations**

- (1) This section applies if section 42 applies.
- (2) If—
- (a) a person makes representations about a matter specified in section 42(3) to the local probation board mentioned in section 42(2) or the relevant local probation board, and
  - (b) it appears to the relevant local probation board that the person is the victim of the offence or acts for the victim of the offence,
- the relevant local probation board must forward the representations to the persons responsible for determining the matter.
- (3) The duty in subsection (2) applies only while the restriction direction given in respect of the offender is in force.
- (4) The Secretary of State must inform the relevant local probation board if he is considering—
- (a) whether to give a direction in respect of the offender under section 42(1) of the Mental Health Act 1983 (c. 20) (directions lifting restrictions),
  - (b) whether to discharge the offender under section 42(2) of that Act, either absolutely or subject to conditions, or
  - (c) if the offender has been discharged subject to conditions, whether to vary the conditions.
- (5) A Mental Health Review Tribunal must inform the relevant local probation board if—
- (a) an application is made to the tribunal by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender's case to the tribunal under section 71 of that Act (references concerning restricted patients).
- (6) Subsection (7) applies if—
- (a) the relevant local probation board receives information under subsection (4) or (5), and
  - (b) a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
    - (i) when his wishes were ascertained under section 42(2), expressed a wish to make representations about a matter specified in section 42(3), or
    - (ii) has made representations about such a matter to the relevant local probation board or the local probation board mentioned in section 42(2).
- (7) The relevant local probation board must provide the information to the person.
- (8) The relevant local probation board is—
- (a) if the offender is to be discharged subject to a condition that he reside in a particular area, the local probation board for the area;

- (b) in any other case, the local probation board for the area in which the hospital in which the offender is detained is situated.

#### 44 Information

- (1) This section applies if section 42 applies.
- (2) Subsection (3) applies if a person who appears to the relevant local probation board to be the victim of the offence or to act for the victim of the offence—
  - (a) when his wishes were ascertained under section 42(2), expressed a wish to receive the information specified in section 42(4), or
  - (b) has subsequently informed the relevant local probation board that he wishes to receive that information.
- (3) The relevant local probation board must take all reasonable steps—
  - (a) to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge;
  - (b) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family;
  - (c) if the restriction direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect;
  - (d) to provide that person with such other information as the board considers appropriate in all the circumstances of the case.
- (4) The Secretary of State must inform the relevant local probation board—
  - (a) whether the offender is to be discharged;
  - (b) if he is, whether he is to be discharged absolutely or subject to conditions;
  - (c) if he is to be discharged subject to conditions, what the conditions are to be;
  - (d) if he has been discharged subject to conditions—
    - (i) of any variation of the conditions by the Secretary of State;
    - (ii) of any recall to hospital under section 42(3) of the Mental Health Act 1983 (c. 20);
  - (e) if the restriction direction is to cease to have effect by virtue of action to be taken by the Secretary of State, of the date on which the restriction direction is to cease to have effect.
- (5) Subsections (6) and (7) apply (instead of subsection (4)) if—
  - (a) an application is made to a Mental Health Review Tribunal by the offender under section 69, 70 or 75 of the Mental Health Act 1983 (applications concerning restricted patients), or
  - (b) the Secretary of State refers the offender's case to a Mental Health Review Tribunal under section 71 of that Act (references concerning restricted patients).
- (6) The tribunal must inform the relevant local probation board—
  - (a) of the matters specified in subsection (4)(a) to (c);
  - (b) if the offender has been discharged subject to conditions, of any variation of the conditions by the tribunal;
  - (c) if the restriction direction is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction direction is to cease to have effect.

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*Status: This is the original version (as it was originally enacted).*

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- (7) The Secretary of State must inform the relevant local probation board of the matters specified in subsection (4)(d) and (e).
- (8) The duties in subsections (3) to (7) apply only while the restriction direction is in force.
- (9) The relevant local probation board has the meaning given in section 43(8).