

INDEPENDENT MONITORING OF POLICE CUSTODY IN SOUTH AFRICA

TRAINING MANUAL **ANNEXURES**



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ANNEXURES

Annexure 1

Code of Conduct for
Independent Custody Visitors



1. GENERAL PROVISIONS

Independent Custody Visitors play an active role in promoting the rights of persons in police custody through monitoring the conditions of detention and providing oversight of the South African Police Service (SAPS) detention facilities.

This Code of Conduct is binding on all Independent Custody Visitors, who are required to sign it prior to commencing their duties. It is the Independent Custody Visitor's responsibility to ensure that they are familiar with, and that their actions comply with, the provisions of this Code of Conduct.

This Code of Conduct applies to Independent Custody Visitors' individual conduct and regulates their interaction with members of the South African Police Service, and detainees. All Independent Custody Visitors are responsible for encouraging, advocating and promoting the dissemination of the Code of Conduct and have a role in implementing, monitoring and enforcing its standards.

2. PURPOSE

This Code of Conduct sets out the professional standards of conduct expected in the performance of duties by Independent Custody Visitors. It serves to regulate the behaviour of Independent Custody Visitors to ensure uniformity and consistency in the performance of their duties.

3. VALUES

The Independent Custody Monitoring Scheme is centred on the promotion and protection of the human rights of persons in custody. The actions and decisions of Independent Custody Visitors should be premised on a human rights-based approach to their work, and, specifically, be committed to the following values:

3.1 Integrity

To perform all duties with integrity, which includes adherence to the principles found in this Code of Conduct, and avoiding situations in which the duties of the Independent Custody Visitors can be influenced financially or in any other way.

3.2 Objectivity

To make decisions on merit and record all information in an honest, transparent and accurate manner.

3.3 Confidentiality

To respect the confidentiality of detainees.

3.4 Honesty

To record information accurately and to declare any private or other conflicting interests.

4 PERFORMANCE OF DUTIES

In the performance of duties, an Independent Custody Visitor should:

- 4.1 Act in a manner that will uphold and promote the aims and objectives of the Independent Custody Monitoring Scheme;
- 4.2 Treat all persons with respect and dignity;
- 4.3 Exercise judgement fairly and impartially in observing and assessing the treatment of persons in custody and adherence by officials to the regulatory framework;
- 4.4 Conduct all visits and interact with all South African Police Service members, detainees, or other persons present at the station without prejudice or discrimination, directly or indirectly, against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- 4.5 Be punctual in the execution of duties and appointments with the detention facilities;
- 4.6 Project an image of professionalism, and dress in clothes that are appropriate for the detention environment;
- 4.7 Uphold the values of this Code of Conduct by ensuring that personal and professional conduct is of the highest standard;
- 4.8 Safeguard and make responsible use of information and resources to which they have been given access;
- 4.9 Record observations and information in an honest, transparent and accurate manner;
- 4.10 Honour the confidentiality of conversations with detainees and consider all records, documents and discussions as being confidential;
- 4.11 Perform all duties and conduct all private affairs in a manner that avoids conflicts of interest;
- 4.12 Refrain from engaging in any transaction or action that is in conflict with or infringes on the performance of official duties;
- 4.13 Refrain from acting in a manner that will jeopardise the safety of a person in custody; and
- 4.14 Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of the Independent Custody Monitoring Scheme.

5. RELATIONSHIPS WITH THE SOUTH AFRICAN POLICE SERVICE AND DETAINEES

5.1 Relationship with members of the South African Police Service

An Independent Custody Visitor should:

- 5.1.1 Honour and respect the policies of the police station and act in compliance with them in the performance of all duties;
- 5.1.2 Cooperate with the Station Commander and other members of the South African Police Service in the performance of all duties; and
- 5.1.3 Use appropriate channels to raise any issues of concern during the performance of duties;

5.2 Relationship with detainees

An Independent Custody Visitor should:

- 5.2.1 Put the detainees' rights first in the performance of duties;
- 5.2.2 Refrain from making any promises or committing to personally assist any detainee;
- 5.2.3 Refrain from abusing the position of Independent Custody Visitor to promote personal or financial gain;
- 5.2.4 Respect and protect every detainee's right to dignity, and all rights enshrined in the Constitution of South Africa; and
- 5.2.5 Follow all lawful directives, instructions and standing orders when dealing with persons in custody.

6. COMPLIANCE WITH THIS CODE OF CONDUCT

Failure by Independent Custody Visitors to comply with this Code of Conduct may amount to misconduct, without prejudice to any criminal sanctions that may apply under the laws of South Africa.

ANNEXURES

Annexure 2

Relevant Standing Orders and
National Instructions



STANDING ORDER (G) 341

ARREST AND THE TREATMENT OF AN ARRESTED PERSON UNTIL SUCH PERSON IS HANDED OVER TO THE COMMUNITY SERVICE CENTRE COMMANDER

1. Background

Arrest constitutes one of the most drastic infringements of the rights of an individual. The rules that have been laid down by the Constitution of the Republic of South Africa, 1996, the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other legislation and this Order, concerning the circumstances when a person may be arrested and how such person should be treated, must therefore be strictly adhered to.

There are several legislative provisions authorising the removal and detention of persons without actually arresting such persons, for example, the removal of a child in terms of the Children's Act, 2005 (Act No 38 of 2005) for the purposes of taking such child to a place of safety. Another example is the removal and, in certain specific instances, the detention of a mentally ill person in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002). It is important to note that the provisions of this Order will not be applicable in those circumstances because, although the person is being detained, such person has not been arrested by a member.

2. Definitions

- (1) In this order, unless the context otherwise indicates, "**First Schedule**" means the First Schedule to the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) Any reference in this order to "**reasonable suspicion/grounds**" must be interpreted to mean that a person will have "**reasonable suspicion/grounds**" to believe or suspect something or that certain action is necessary if:
 - (a) he or she really 'believes' or 'suspects' it;
 - (b) his or her belief or suspicion is based on certain facts from which he or she has drawn an inference or conclusion; and
 - (c) any reasonable person would, in view of those facts, also have drawn the same conclusion.

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Arrest and the treatment of an arrested person until such person is handed over to the community service centre commander

3. Securing the attendance of an accused at the trial by other means than arrest

- (1) There are various methods by which an accused's attendance at a trial may be secured. Although arrest is one of these methods, it constitutes one of the most drastic infringements of the rights of an individual and a member should therefore regard it as a last resort.
- (2) It is impossible to lay down hard and fast rules regarding the manner in which the attendance of an accused at a trial should be secured. Each case must be dealt with according to its own merits. A member must always exercise his or her discretion in a proper manner when deciding whether a suspect must be arrested or rather be dealt with as provided for in subparagraph (3).
- (3) A member, even though authorised by law, should normally refrain from arresting a person if -
 - (a) the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977; or
 - (b) the member believes on *reasonable grounds* that a magistrate's court, on convicting such person of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Government Gazette*, in which event such member may hand to the accused a written notice [J 534] as a method of securing his or her attendance in the magistrate's court in accordance with section 56 of the Criminal Procedure Act, 1977.
- (4) If a member is satisfied that the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, the member must open a docket and refer it to the public prosecutor for the public prosecutor to have a summons issued. The summons may then be served on the person.

4. The object of an arrest**(1) General rule**

As a general rule, the object of an arrest is to secure the attendance of such person at his or her trial. A member may not arrest a person in order to punish, scare, or harass such person.

(2) Exceptions to the general rule

There are circumstances where the law permits a member to arrest a person although the purpose with the arrest is not solely to take the person to court. These circumstances are outlined below and constitute

exceptions to the general rule that the object of an arrest must be to secure the attendance of an accused at his or her trial. These exceptions must be studied carefully and members must take special note of the requirements that must be complied with before an arrest in those circumstances will be regarded as lawful.

(a) Arrest for the purpose of further investigation

If a member has a *reasonable suspicion* that a person has committed a *First Schedule* offence but realises that further investigation will be necessary before it will be possible to determine whether the suspect should be charged, such member may arrest the suspect *if the detention of the suspect is necessary to complete such further investigation*. It is thus proper for a member to arrest such a person with the purpose of conducting further investigation and, depending on the outcome of such further investigation, to charge or release the person. A member may only arrest a person for this purpose if such member has reasonable grounds to believe that the investigation will be hampered should the person not be arrested. This will normally be the case if such member has *reasonable grounds* to believe that:

- (i) the person will either abscond, do away with an article required as an exhibit, interfere with a witness or otherwise endeavour to evade or defeat the ends of justice;
- (ii) it is necessary for the purpose of the investigation of the case to establish the bodily features of that person and such person refuses to submit himself or herself voluntarily to the examination of his or her bodily features as provided for in section 37 of the said Act; or
- (iii) such person is an illegal foreigner (a person who is not a South African citizen and is in South Africa in contravention of the Immigration Act (Act No. 13 of 2002)) or a person who is a prohibited person in terms of section 29 of the Immigration Act, 2002. Such person may be arrested without a warrant and be detained for purposes of conducting an investigation in terms of the said Act which may lead to the obtaining of a warrant from the Minister of Home Affairs authorising such person's removal from the Republic.

(b) Arrest to verify a name and/or address

In the circumstances provided for in section 41(1) of the Criminal Procedure Act, 1977, a member may request a person to furnish

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his or her full name and address. If such a person furnishes a name or address which the member reasonably suspects to be false, such member may arrest the person and detain him or her for a period of twelve hours in order to verify the name and address.

(c) Arrest in order to prevent the commission of an offence

In terms of section 40(1)(f) of the Criminal Procedure Act, 1977, a member may arrest a person whom he or she finds at night in circumstances which afford *reasonable grounds* for believing that such person is about to commit an offence. The purpose with the arrest in these circumstances is to prevent the commission of an offence. Such a person may only be detained until the member is satisfied that the person did not commit any offence and will not proceed to commit an offence.

(d) Arrest in order to protect a suspect

If a member is authorised by any legislation to arrest a person and such member has *reasonable grounds* to believe that such person may be killed or be seriously injured unless he or she is immediately arrested, such member may arrest such person in order to protect him or her. (This would normally be the case when the suspect is threatened by the victim of the offence or a mob of people that he or she will be assaulted or be killed.) Such person may normally be detained until he or she is brought before a court and the court has decided whether he or she should be released or be further detained.

(e) Arrest in order to end an offence

If a person may be arrested in terms of any legislation and a failure to arrest the person will result in the person continuing to commit an offence, such person may be arrested to prevent him or her from continuing to commit an offence. (This would for instance be the case where a person trespasses on property and refuses to leave the property.) Such person must be detained and be taken to court in accordance with the normal procedure.

5. The requirements for a lawful arrest

For an arrest to be lawful and for lawful continued detention after arrest, the following four requirements must be complied with:

- (a) The arrest (with or without a warrant) must have been properly authorised.**

There must be a statutory provision authorising the arrest. (See paragraphs 6(1) and (2) below).

- (b) **The member who effected the arrest must exercise physical control over the person who has been arrested.**

(See paragraphs 7(1) and (2) below).

- (c) **The person who has been arrested must be informed of the reason for his or her arrest and of the rights that he or she has as an arrested person, in terms of section 35(1) of the Constitution of the Republic of South Africa, 1996**

(See paragraph 7(4) below).

- (d) **The person who has been arrested must be brought to the appropriate place as soon as possible.**

(See paragraph 8(7) below.)

For information regarding the period of 48-hours after arrest, within which an arrested person must be brought before a court, refer to Standing Order (G) 361.

6. Manner of effecting an arrest

(1) General rule - Arrest with a warrant

- (a) An arrest should preferably be effected only after a warrant for the arrest has been obtained in terms of section 43 of the Criminal Procedure Act, 1977.
- (b) In order to obtain a warrant of arrest a member must in writing apply to a magistrate or justice of the peace for the issuing of a warrant in terms of section 43 of the Criminal Procedure Act, 1977. A copy of the application must be filed in the docket. The said section also provides that Directors of Public Prosecutions and public prosecutors may also apply for a warrant of arrest.
- (c) Once a warrant for the arrest of a person has been issued to a member, any member may execute such warrant. It is accordingly not necessary for the warrant to be executed by a particular member.

(2) Arrest without a warrant

- (a) It is only in exceptional circumstances where a member is specifically authorised by an Act of Parliament (for example, sections 40 and 41 of the Criminal Procedure Act, 1977) to arrest a person without a warrant, that a person may be arrested without a warrant. Any arrest without a warrant, which is not specifically authorised by law, will be unlawful.

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- (b) Section 40(2) of the Criminal Procedure Act, 1977, determines that if provision is made in a statute for a member to arrest a person without a warrant, subject to certain conditions or to the existence of certain circumstances mentioned in the Criminal Procedure Act, 1977, those conditions must be present and those circumstances must exist before the arrest is made.
- (c) Section 41 of the Criminal Procedure Act, 1977, provides that a member may call upon any person-
 - (i) whom he or she reasonably suspects of having committed any offence or of having attempted to commit any offence; or
 - (ii) who may, in his or her opinion, be able to give evidence in regard to the commission or suspected commission of any offence,
 to furnish his or her full name and address.
- (d) If the person referred to in subparagraph (c), fails to furnish his or her full name and address, or the member reasonably suspects that a false name or address has been given, the member may forthwith arrest him or her. In the event that the person refuses to furnish his or her name or address, or furnishes a false name or address, such person is guilty of an offence and should be charged with the offence in the normal manner.

7. Physical execution of an arrest**(1) Exercise of physical control**

The member must confine the freedom of movement of the arrested person. Section 39 of the Criminal Procedure Act, 1977, determines that, unless the person who has been arrested submits to custody, an arrest is effected by actually touching his or her person or, if the circumstances so require, by forcibly confining his or her person.

(2) Amount of force which may be used in effecting arrest

- (a) As a rule there should be no need for the use of force, and, in every case where it may be necessary, only such force as may be reasonably necessary to overcome resistance to the arrest, may be used. No justification whatsoever exists for beating, kicking or otherwise ill-treating an arrested person and there is no excuse whatsoever for a member to act in this manner. Any member found guilty of an offence as a result of the use of force while effecting an arrest where the use of such force cannot be justified, must expect to be dealt with severely.

- (b) Section 49 of the Criminal Procedure Act, 1977, provides for circumstances where the use of force by a member towards a person who is resisting arrest or fleeing from arrest, may be justified. (For further information refer to the Instructions relating to the Use of Force in effecting an arrest set out in the Special Service Order contained in Circular 18/5/1 over 1/1/4/1(5) dated 2003-07-18).

(3) Entering of premises for the purpose of arrest

- (a) Section 48 of the Criminal Procedure Act, 1977, determines that before any premises are entered with the purpose of arresting any person whom a member has authority to arrest and who is known or suspected to be in/on such premises, such member must first –
 - (i) audibly demand entry into such premises; and
 - (ii) notify or announce the purpose for which entry is sought.
- (b) If the member fails to gain entry after complying with the requirements stated in subparagraphs (a)(i) and (ii), such member may break open, enter and search such premises for the purpose of effecting the arrest.

(4) Information that must be furnished to a person upon arrest

- (a) In terms of section 35(1) of the Constitution, 1996, the information that must be furnished to a person at the time of or immediately after his or her arrest is as follows:
 - (i) the reason for his or her arrest;
 - (ii) that he or she has the right to remain silent and that anything he or she says, may be used as evidence against him or her in a court of law;
 - (iii) that he or she has a right to consult with a legal practitioner of his or her choice or that he or she may, if he or she so prefers, apply to the Legal Aid South Africa to have a legal practitioner assigned to the case at state expense; and
 - (iv) that he or she has the right to apply to be released on bail.
- (b) Section 39(2) of the Criminal Procedure Act, 1977, requires that the person who effects an arrest must, at the time of effecting the arrest or immediately thereafter, inform the person who has been arrested of the reason for his or her arrest. It is not necessary to use the actual words of the charge - mentioning the offence would be sufficient. If the arrest took place by virtue of a warrant, a copy of the warrant must, upon his or her demand, be handed to the person who has been arrested.

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- (c) The information in subparagraph (a) must be furnished to the arrested person in a language which he or she understands. For this purpose the said information is printed on the first pages of the Pocket book (SAPS 206) in all eleven official languages. To ensure that a person is fully informed of these rights, the arresting member must read this information from the Pocket book to the arrested person in a language which the arrested person understands.
- (d) If a member -
 - (i) is unable to establish what language the person understands; or
 - (ii) cannot speak the language that the person understands; the member must read this information in English. In such a case, the member must, upon his or her arrival at the police station, inform the community service centre commander that the person does not understand English. It is the responsibility of the community service centre commander to ascertain what language the person understands in order to convey the information to the person in that language.
- (e) Should a person volunteer any statement on arrest or prior to being formally charged at the community service centre, he or she must, once again, be informed of his or her rights as set out in subparagraph (a).

8. Procedure after arrest**(1) Recording of the fact that the arrested person has been informed of his or her rights**

- (a) A member who arrests a person must, as soon as possible after having furnished the information in paragraph 6(4)(a)(above), to the arrested person, record in his or her Pocket book the fact that the information was so furnished.
- (b) The member must request the arrested person to acknowledge that he or she has been informed of his or her rights and that he or she understands the contents thereof, by signing next to the recording in the Pocket book, referred to in subparagraph (a).
- (c) If the arrested person refuses to sign in the Pocket book, a third person (whether a civilian or another member) who witnessed the person being informed of his or her rights, must be requested to sign next to the recording to certify that he or she has witnessed

this and that the arrested person refused to sign. If a third person is not available, the member must make a recording in the Pocket book to the effect that a third person was not available to certify that the arrested person was informed of his or her rights and that the arrested person refused to sign the Pocket book.

(2) Presumption of innocence

- (a) An arrested person has the right to be presumed innocent until proven guilty by a court of law. A member who arrests a person must therefore, at all times, control himself or herself and must never allow his or her belief in the guilt of the arrested person to move him or her to treat the arrested person in a manner which would amount to punishing the person for what the member believes that the person has done.
- (b) Even though an arrested person must be presumed to be innocent, a member must do everything which may legally be done in order to obtain evidence which could be presented in court to prove the guilt of the arrested person. A member must also take every precaution necessary in the circumstances to ensure that the person is not allowed any opportunity to escape.

(3) Injuries sustained prior to or during arrest

Upon the arrest of a person, a member is obliged to ensure the safety of such person while in his or her care. The following provisions must be complied with:

- (a) The member concerned must take all reasonable precautions to ensure that the person will not be injured and will not escape before arrival at the police station.
- (b) Should the arrested person show any signs that he or she is seriously ill or is seriously injured, irrespective of whether the injury was sustained during the arrest or not, the member must follow the instructions as set out in Standing Order (G) 349
- (c) The member who effects an arrest which results in the arrested person being injured, must enter the particulars of the injuries, as well as the circumstances under which they were sustained or inflicted, as soon as possible in his or her Pocket book and in due course submit a full statement, for the information of the Public Prosecutor which must be included in the case docket. He or she must also report any injuries which the arrested person had

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sustained prior or during the arrest to the community service centre commander upon arrival at the community service centre.

(4) Search of the arrested person

In terms of section 23 of the Criminal Procedure Act, 1977, a member may search an arrested person. The purpose of such a search is twofold, namely to find any article that may be in such person's possession and which could be used as evidence, and to find any article which such person could use to injure himself or herself or any other person.

- (a) Every arrested person must always, immediately upon his or her arrest, at least be searched to determine whether he or she has any concealed weapons on him or her.
- (b) The search of an arrested person must be undertaken in a decent manner which displays respect for the inherent dignity of the person as required by section 29 of the Criminal Procedure Act, 1977, and a person may only be searched by a person of the same gender.

(5) The use of restraining measures

- (1) In order to curb the increasing number of escapes from police custody, a person must, upon his or her arrest, be placed in handcuffs and/or leg-irons (the latter depends on the circumstances). The circumstances when and the manner in which restraining measures may be used are set out in Standing Order (G) 350.
- (2) Irrespective of whether restraining measures are used to secure an arrested person, members in charge of arrested persons must always remain alert until such persons are safely placed in a cell.

(6) Informing an employer in the case of arresting an employee

If a member has to arrest a person while such person is on duty and is in charge of his or her employer's property or business during the latter's absence, the member must take reasonable steps to inform his or her employer of the arrest and take reasonable steps to ensure that the employer's interests are safeguarded.

(7) Transporting the arrested person

- (1) In terms of section 50(1) of the Criminal Procedure Act, 1977, a person who has been arrested must as soon as possible be brought to –
 - (a) a police station; or

- (b) in the case of an arrest by warrant, to the place stipulated in the warrant.
- (2) The member, transporting the arrested person must drive carefully and must take the safest and shortest possible route to the police station or any other place specified in the warrant.

9. Handing suspect over to the community service centre commander

- (1) Upon arrival at the police station, the member must hand the arrested person to the community service centre commander or the member in charge of the detention facilities at an office under the control of the Service, and provide such person with the following information:
 - (a) the name of the member who has arrested the person;
 - (b) the name of the person arrested;
 - (c) the reason for the arrest;
 - (d) the date, time and place of arrest; and
 - (e) whether the person sustained any injuries prior to or during the arrest (see paragraph 8(3)(c) above).
- (2) The member must also, upon arrival at the police station, complete the Arrest Statement (SAPS 3M(i)) referred to in paragraph 10 below.
- (3) If a person has been arrested on suspicion and it subsequently transpires that the suspicion was unfounded, he or she must immediately be released and if he or she has already appeared in court, the Public Prosecutor must be informed forthwith.

10. Completion of Arrest Statement (SAPS 3M(i))

- (1) The Arrest Statement (SAPS 3M(i)) must be completed after the arrest of every suspect by the member who made the arrest. If the arrest was made by someone other than a member, the member to whom the arrested person was handed to, must complete the statement. In such an event a statement must be taken from the person that effected the arrest.
- (2) Any force used during the arrest to overcome resistance or to prevent an escape, which resulted in injuries being sustained by the person during the arrest, must be recorded in a separate statement made by the member who applied the force. (Read together with paragraph 8(3)(c) above).
- (3) The instructions, printed at the beginning of the Arrest Statement (SAPS 3M(i)), must be strictly adhered to.

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- (4) After the Arrest Statement (SAPS 3M(i)) has been completed, it must be filed under part “A” of the docket.

Standing order 341

STANDING ORDER (GENERAL) 350

USE OF RESTRAINING MEASURES

1. Background

The decision whether to use *restraining measures* on a *person in custody* depends on a variety of circumstances, for example, the type of offence which was committed, the character, reputation and behaviour of the arrested person, and the opportunities for escape.

It is the duty of a member to take all reasonable precautions to prevent the escape of any *person in custody* though he or she may not use unnecessary force during an arrest or in the prevention of an escape.

The purpose of this Order is to regulate the use of *restraining measures*, to restrict the number of escapes from police custody and to protect members against persons in custody.

2. Definitions

In this Order, unless the context otherwise indicates -

- (a) “**person in custody**” means a person who has been arrested and who is in the custody of the Service and who has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention; and
- (b) “**restraining measures**” means handcuffs and/or leg irons which are issued and approved by the Head Logistics: Head Office.

3. Circumstances in which restraining measures may be used

(1) Use of restraining measures when effecting an arrest

- (a) The general rule is that every person arrested for an offence must be placed in restraining measures until he or she is handed over to the community service centre commander or until he or she is placed in a police cell.
- (b) In exceptional circumstances where the member is of the opinion that, due to the physical condition of the *person in custody* and the nature or seriousness of the alleged offence, such person does not pose a threat or danger to either the member or another person, such member may decide not to apply *restraining measures* to an arrested person. A member must be guided by the circumstances of each particular case, but must bear in mind that if a person escapes through any neglect or lack of proper

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precautions by the member, he or she may face a disciplinary hearing for contravening regulation 20(a) of the South African Police Service Discipline Regulations, 2006.

(2) Use of restraining measures after arrival at a police station

- (a) *Restraining measures* may be used when a person:
 - (i) is being detained in a police cell or any other detention facility; or
 - (ii) is removed and/or transported from one place to another (for example, the transport of a *person in custody* from the police cell to the court, etc).
- (b) When a person is transported from a place of safe custody (under escort) to the court or to any other place for whatever reason, he or she may be kept in *restraining measures*. The *restraining measures* may be lifted when the person arrives back at a place of safe custody.
- (c) The following factors must be considered in deciding whether *restraining measures* should be used:
 - (i) the nature and seriousness of the offence for which the person has been arrested or is charged with;
 - (ii) whether there are reasonable grounds to suspect that a person will attempt to escape;
 - (iii) where the behaviour (unruliness) of the person is of such a nature that it is difficult to restrain such a person; and
 - (iv) whenever it is necessary for the safe custody of a person or other detainees, or to prevent a person from damaging property.
- (d) A member must decide whether or not he or she should make use of handcuffs only or handcuffs and leg-irons when restraining a *person in custody*.

4. Recording the use of restraining measures

- (1) When a *person in custody* is, while being detained in a police cell or other detention facility, placed in *restraining measures*, the following actions must be taken:
 - (a) an entry must be made to this effect in the Occurrence Book;
 - (b) the person must be visited hourly; and
 - (c) the restraint must be lifted as soon as the circumstances allow it.
- (2) The Occurrence Book entry must state:
 - (a) the time when the person was placed under restraint;

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- (b) the reason why the restraint was applied;
 - (c) by whom the restraint was applied; and
 - (d) the *restraining measures* used, eg handcuffs or leg-irons.
- (3) An Occurrence Book entry must also be made when the restraint was lifted.
- (4) The use of *restraining measures* in respect of a person after his or her arrest and during his or her transport to and from a police station need not be recorded in the Occurrence Book.

5. Basic principles when using restraining measures

- (1) A member must ensure that the handcuffs or leg irons are not so tightly secured that the blood circulation of the person is impeded. The person should be allowed sufficient play for restricted movement but not enough for the wrists to turn around freely.
- (2) When handcuffs or leg-irons are placed on a *person in custody*, it must be frequently inspected to ensure that it remains securely fastened and does not impede blood circulation.
- (3) When a *person in custody* is fed, he or she may be handcuffed in front of his or her body to enable him or her to eat. Members must, however, take the necessary precautionary measures to prevent an escape. After having had his or her meal, the person's hands must be handcuffed behind his or her back again.
- (4) Should a *person in custody* while being transported, request to go to the toilet, both members must accompany him or her. The handcuffs must be removed in the toilet. Both members must take up position outside the toilet with the door slightly ajar, but in such a manner that the privacy of the person is not interfered with. After having used the toilet, the person's hands must, once again, be handcuffed behind his or her back.

6. Ways in which a person in custody should be handcuffed

- (1) Members must decide, depending on the circumstances, in which way to apply *restraining measures*.
 - (a) Normally, one clasp of the cuffs is placed around each one of the person's wrists and is locked;
 - (b) Where circumstances necessitate this, -
 - (i) one clasp of the cuffs may be placed around one of the person's wrists and be locked, while the other clasp is placed around the other wrist and the point thereof passed

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through the first clasp and is locked. This method will curtail any excessive free movement between the person's wrists, without the latter being subjected to any risk of injury or impediment to his or her blood circulation; or

- (ii) one clasp may be placed around the person's wrist and it must be locked. The cuff must then be passed between the person's thighs, while he or she is sitting down, and the other clasp must be locked around the other wrist.
- (2) Subject to paragraph 5(3) (above), a *person in custody* must be handcuffed with his or her hands behind his or her back. The person's hands must not be handcuffed in front of his or her body.
- (3) A member of the Service may never handcuff himself or herself to a *person in custody*.
- (4) If a person is uncontrollable, his or her ankles must be secured by means of leg irons.
- (5) If it is necessary to place the *person in custody* under further restraint, the handcuffs and/or leg irons must be linked by means of suitable strong cord or a belt.
- (6) In order to further restrain a *person in custody*, the handcuffs may be locked to the leg-irons.
- (7) When dealing with hardened criminals, a member may also handcuff a person to a suitable fixed object (eg luggage rack of a compartment in a train). (See paragraph 7 below).

7. Restraining of persons in custody, while being transported by motor vehicle or patrol van

- (1) (a) If it is necessary to transport one or two persons in custody by motor vehicle, the driver must, except under exceptional circumstances, be accompanied by a second member of the Service. The second member must sit on the back seat with the *person in custody* whose hands must be handcuffed behind his or her back. The safety belt in the rear of a sedan vehicle must also be fastened.
- (b) In the event of three *persons in custody* being transported by motor vehicle, all three persons must be seated on the back seat with their hands handcuffed behind their backs. The safety belts

in the rear of a sedan vehicle must also be fastened. The second member must always be alert and wary to prevent any attempt by the *persons in custody* to jump out of the motor vehicle or to overwhelm the driver.

- (2) (a) When a member travelling alone in a motor vehicle, arrests a person and it is, not reasonably possible to obtain the assistance of a second member or to have the *person in custody* transported by patrol van, the *person in custody* must occupy the front seat with his or her hands cuffed behind his or her back. The member must use the passenger's safety belt to prevent the *person in custody* from hindering the driver or attempting to escape.
- (b) Should it become necessary to arrest a second or third person, the member must use his or her discretion and where reasonably possible, summon assistance by radio or telephone.
- (3) The doors of the motor vehicle must at all times be locked. If a vehicle is equipped with child safety locks such locks must be engaged.
- (4) A *person in custody* who is transported in the back of a patrol van, must be handcuffed, and, where necessary, be placed in leg irons to prevent such person from escaping. Such person may however not be handcuffed to any part of the vehicle, to prevent him or her from being injured.

8. Restraining of persons in custody when appearing in court

- (1) It is sometimes necessary for a *person in custody* to appear in court under restraint.
- (2) The Public Prosecutor must always be made aware of the reasons why a person must appear in court under restraint to enable him or her to inform the court accordingly.

9. Restraining of persons in custody in hospital

Hospital staff should be warned of dangerous *persons in custody* or persons who have previously attempted to escape. All *persons in custody* must, unless the medical practitioner in charge of the *person in custody* instructs otherwise, be handcuffed and/or put in leg-irons where reasonably possible.

10. Restraining of a mentally ill person in custody

When the restraining of a mentally ill *person in custody* is necessary to prevent the person from injuring himself, herself or others, the following restraining procedures must be followed:

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| <ul style="list-style-type: none"> (a) the person must be handcuffed and be kept under surveillance; and (b) because there are various sedatives which could be utilized to bring a mentally ill person under control, a member must, where reasonably possible, immediately obtain the help of - <ul style="list-style-type: none"> (i) an available physician; (ii) a district surgeon; (iii) a registered clinical psychologist; (iv) a psychologist in the service of the state; or (v) a private doctor. | |
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STANDING ORDER (GENERAL) 361

HANDLING OF PERSONS IN THE CUSTODY OF THE SERVICE FROM THEIR ARRIVAL AT THE POLICE STATION

1. Background

In order to comply with its obligations in terms of the Constitution, the Service is obliged to take certain steps with regard to every person in its custody. The steps that must be followed from the arrival of such person at the police station, are outlined below.

2. Definitions

In this Order, unless the context otherwise indicates, —

- (a) “*Ambassador*” means the accredited diplomat representing a foreign state and who acts as the official channel of communication between his or her home state and South Africa and includes a High Commissioner who represents a state that forms part of the Commonwealth;
- (b) “*appropriate adult*” means:
 - (i) in the case of a child offender, his or her parent or guardian or any member of the child’s family, including a sibling who is 16 years or older, or a care-giver of the child (which includes any person other than a parent or *guardian* who factually cares for the child) including —
 - (aa) a foster parent;
 - (bb) a person who cares for a child with the implied or express consent of a parent or *guardian* of the child;
 - (cc) a person who cares for a child whilst the child is in *temporary safe care*;
 - (dd) the person at the head of a *child and youth care centre* where a child has been placed;
 - (ee) the person at the head of a shelter;
 - (ff) a child and youth care worker who cares for a child who is without appropriate family care in the community; and
 - (gg) the child at the head of a child headed household, if such a child is 16 years or older; or person in whose care the parent or guardian has placed the child in conflict with the law, a probation officer or other social worker in whose area of jurisdiction the child in conflict with the law, is being detained, an official from correctional services in the area concerned, the station commander

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or any other responsible member of the public who is 18 years or older; and

- (ii) in the case of a person who is mentally ill or - handicapped, a relative, guardian or other person responsible for his or her care or custody, or someone who has experience in dealing with mentally ill or - handicapped persons or another responsible member of the public who is 18 years or older. If none of the afore-mentioned are available, the station commander or any other member (excluding the community service centre commander) to whom he or she has delegated his or her authority in writing;
- (c) “*community service centre commander*” means the member in charge of the community service centre or the member in charge of the detention facilities at an office under the control of the Service and includes a member who is performing the functions of a community service centre commander;
- (d) “*Consul-General*” means an official appointed by a foreign state to protect the interests of that state and its nationals in South Africa;
- (e) “*detention facilities*” means a police cell, lock-up or temporary detention facility (stormsel) which are under the control of the Service;
- (f) “*disabled person*” means a person who has a physical or mental impairment that has a substantial and long-term adverse affect on his or her ability to carry out normal day-to-day activities, for example a person bound to a wheelchair, blindness, hearing impairment, amputated limb(s), etc.
- (g) “*foreigner*” means an individual who is not a citizen nor a resident of the Republic of South Africa, but who is present in South Africa;
- (h) “*intimate search*” means a search which consists of the physical examination of a person's intimate body openings or orifices but excludes the mere looking, with the naked eye, into a person's mouth, nose and ears;
- (i) “*person in custody*” means a person who has been arrested and who is in the custody of the Service and who has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention;

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- (j) “*restraining measures*” means handcuffs or leg irons, or any other device approved and issued by the Divisional Commissioner: Supply Chain Management for the purpose of restraining a person;
- (j) “*torture*” includes, but is not limited to —
 - (i) any cruel, inhuman or degrading treatment or punishment, as referred to in section 12(1)(e) of the Constitution of the Republic of South Africa, 1996; or
 - (ii) any act by which severe pain, suffering or humiliation, whether physical or mental, which is intentionally inflicted on a person for purposes of —
 - (aa) obtaining from him or her or a third person information or a confession;
 - (bb) punishing him or her for an act he or she or a third person has committed or is suspected of having committed; or
 - (cc) intimidating him or her or a third person, when such pain, suffering or humiliation is inflicted by or at the instigation of or with the consent or acquiescence of a member or any other person acting under the authority or protection of the Service.

3. Recording of arrival in the Occurrence Book and Custody Register

- (1) As soon as is reasonably possible after a person who has been arrested arrives at the police station, the fact that the person was arrested and has arrived at the police station must be recorded in the Occurrence Book as required in Standing Order(G) 303.
- (2) This entry must contain the following —
 - (a) the name of the member who arrested the person;
 - (b) the name of the arrested person;
 - (c) the reason for the arrest (including, if already available at this stage, the CR/CAS number); and
 - (d) whether the arrested person has any visible injuries or is, in the opinion of the *community service centre commander*, sick or under the influence of intoxicating liquor or any other substance with a narcotic effect.
- (3) The necessary particulars must also be recorded in the appropriate columns of the Custody Register (see Standing Order(G) 362 for

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detailed instructions on the completion of the Custody Register).

4. Recording of steps taken regarding the medical treatment of a person in custody during detention at a police station

- (1) All steps taken with regard to the obtaining of medical treatment for a *person in custody* as provided for in Standing Order(G) 349, including the steps taken to allow such person to consult with a medical practitioner of his or her choice, must be fully recorded in the Occurrence Book. The outcome of any medical examination must similarly be recorded, together with the name of the medical practitioner and where the examination had taken place. If more than one entry be required, the different entries must be cross-linked in the Occurrence Book. The number of the first entry must be recorded in the Custody Register (see Standing Order(G) 362 for detailed instructions).
- (2) Regarding the obtaining of medical treatment for a *person in custody* upon arrival at a police station, during his or her further detention at the police station, and his or her request to consult with a medical practitioner of his or her choice, refer to Standing Order(G) 349.

5. Arrest statement

As soon as is reasonably possible after arrival at the police station, the member who effected the arrest, must complete an arrest statement as provided for in Standing Order(G) 341. The arrest statement must be filed under part A in the docket. In the event that no docket has been opened or is not readily available, the arrest statement must be kept in a file at the Community Service Centre for this purpose.

6. Notice of Constitutional Rights

In order to ensure that a *person in custody* is duly informed of his or her rights in terms of the Constitution, the *community service centre commander* must issue a Notice of Constitutional Rights (SAPS 14A) (hereinafter referred to as "Notice") to every person who is admitted into a *detention facility*. All the rights of an arrested and detained person, as set out in section 35(1) and (2) of the Constitution, are contained in this Notice. The procedure to be followed in regard to this Notice is set out in paragraph 7.

7. Procedure with regard to the Notice of Constitutional Rights

- (1) The reason for the person's detention must be inserted by the

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community service centre commander on the Notice.

- (2) The *community service centre commander* must ascertain what language the *person in custody* understands.
- (3) If it can be determined what language the *person in custody* understands, the following steps must be taken once the language has been determined:
 - (a) If the language is one of the official languages of the Republic the *community service centre commander* must —
 - (i) if he or she can read and speak that language, read the contents of the rights set out in the Notice to the *person in custody* in that language;
 - (ii) if he or she cannot read and speak that language and —
 - (aa) someone is available who can read and speak that language, request such person to read the contents of the rights set out in the Notice to the *person in custody* in that language; or
 - (bb) if no one is available who can read and speak that language, read the contents of the rights set out in the Notice to the *person in custody* in English and take all reasonable steps to find someone who can read and speak that language. If such a person is found, paragraph (aa) must be complied with.

For the purpose of this paragraph, use must be made of the translations of the Notice into the official languages of the Republic which appear in the beginning of the Notice book.

- (b) If the language is not one of the official languages of the Republic the *community service centre commander* must —
 - (i) if he or she can communicate in that language, convey the contents of the rights set out in the Notice to the *person in custody* in that language; or
 - (ii) if he or she cannot communicate in that language and —
 - (aa) someone is available who can communicate in that language, request such person to convey the contents of the rights set out in the Notice to the *person in custody* in that language; or
 - (bb) if no one is available who can communicate in that

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language, read the contents of the rights set out in the Notice to the *person in custody* in English and take all reasonable steps to find someone who can communicate in that language. If the *person in custody* is a *foreigner*, the relevant *Ambassador* or *Consul-General* may be contacted and requested to provide the services of someone who can communicate in that language. If such a person is found, paragraph (aa) must be complied with.

- (c) An entry must be made in the Occurrence Book of any steps taken in terms of subparagraphs (a)(ii)(bb) or (b)(ii)(bb).
- (4) If it is impossible to determine any language that the *person in custody* understands, such person should in any event be advised of his or her rights in English and in any other language in which the *community service centre commander* is able to communicate and which such commander suspects that the *person in custody* may understand. An appropriate entry to this effect must be made in the Occurrence Book.
- (5) The *community service centre commander* must inform the *person in custody* that these are continuing rights which may be exercised at any stage during his or her detention.
- (6) The *community service centre commander* must request the *person in custody* to complete the certificate provided for in the Notice. By doing so, the *person in custody* acknowledges that he or she has been informed of his or her rights in terms of the Constitution and that he or she understands the contents thereof.
- (7) If the *person in custody* refuses to sign the Notice, a third person (a civilian or another member) who witnessed the rights being explained to the person, must sign the statement to certify that he or she has witnessed this and that the *person in custody* refused to sign the Notice.
- (8) The number of the book in which the Notice appears and the reference number of the Notice given to the *person in custody*, must be recorded in the applicable columns of the Custody Register (see Standing Order(G) 362 for detailed instructions).
- (9) The original Notice must be handed over to the *person in custody* who may take the Notice with him or her into the *detention facility* (also see paragraph 8(6)). The first copy of the Notice must be filed by the

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investigating officer in the docket under part A. The second copy of the Notice remains in the Notice of Constitutional Rights Book for record purposes.

8. Special groups

(1) Persons with hearing or speaking disabilities

If a *person in custody* appears to be deaf or there is doubt about his or her hearing or speaking ability and the *community service centre commander* cannot establish effective communication with him or her, the *community service centre commander* must, as soon as practicable, take steps to ascertain how to communicate with the *person in custody*, and call an appropriate interpreter to communicate with such person.

(2) Children

- (a) If the *person in custody* is a child (person below the age of 18 years), the *community service centre commander* must ensure that the child is dealt with in accordance with the National Instruction on Children in Conflict with the Law (National Instruction 2 of 2010).
- (b) The *appropriate adult* must, as soon as practically possible, be informed that the child has been arrested, the reasons therefor and the place where he or she is being detained. In the case of a child who is known to be subject to a supervision order, reasonable steps must be taken to notify the person supervising him or her. (Read together with paragraph 13(1)(d) of this Order regarding the separation of categories when detaining children and Standing Order(G) 292). The National Instruction on Children in Conflict with the Law (National Instruction 2 of 2010) must also be adhered to.

(3) Mentally ill persons

- (a) If a *person in custody* appears to be mentally ill, mentally handicapped or appears to be suffering from a mental disorder, the *community service centre commander* must, as soon as possible, inform an *appropriate adult* of the grounds for his or her detention and the place where he or she is being detained and ask the *appropriate adult* to visit the *person in custody* at the police station. (See Standing Order (G) 291 which specifically deals with the obligations of members in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002)).

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(b) If the *appropriate adult* is already at the police station when information, as required in paragraph 6, is given to a person who is mentally ill, the information must be given to the *person in custody* in the presence of the *appropriate adult*. If the *appropriate adult* is not at the police station when the information is given, the information must be repeated to the *person in custody* in the presence of the *appropriate adult*, once such person arrives. The *appropriate adult* may be requested to sign the Notice of Constitutional Rights on behalf of the person who is mentally ill. An entry must be made in the Occurrence Book which contains the particulars of the *appropriate adult* and which reflects the fact that the *appropriate adult* signed on behalf of the said person.

(4) Blind, seriously visually handicapped or illiterate persons

If a *person in custody* is blind, seriously visually impaired or is unable to read and is thus illiterate, the *community service centre commander* must ensure that the *person in custody's* legal practitioner, relative, an *appropriate adult* or some other person likely to take an interest in him or her (and not involved in the investigation) is available to help in checking any documentation. Wherever written consent or signification is required (for example the Notice of Constitutional Rights referred to in paragraph 6), the person assisting the *person in custody*, may, at the request of the *person in custody*, sign the required documentation.

(5) Refugees

If the *person in custody* is a refugee and a stateless person, but usually resides in a country other than the Republic of South Africa, he or she must, at his or her request, be assisted to communicate with the representative of such State.

(6) Persons under the influence of alcohol or any substance with a narcotic affect

(a) If a *person in custody* appears to be under the influence of alcohol or any substance with a narcotic affect and the *community service centre commander* is of the opinion that he or she is not able to understand the information which is contained in the Notice of Constitutional Rights, such Notice must not, at that stage, be issued to such person. An entry must be made in the Occurrence Book which reflects the fact that the person was not issued with the Notice of Constitutional Rights, as required in paragraph 6 and the reasons therefore.

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- (b) It however remains the responsibility of the *community service centre commander* to ensure that such a person is issued with the Notice of Constitutional Rights as soon as he or she is in a condition to understand the information contained in the said Notice. The procedure set out in paragraph 7 must strictly be adhered to and a further entry must be made in the Occurrence Book to reflect the fact that the person was issued with the Notice.

9. Right to communicate with a legal practitioner

(1) Right to communicate with a legal practitioner of choice

A person has a right to choose and consult with a legal practitioner, or, if substantial injustice would otherwise result, to have a legal practitioner assigned to him or her by the state and at state expense.

- (a) Once a *person in custody* has received the Notice provided for in paragraph 6 above, the person must be asked whether he or she wishes to consult with a legal practitioner.
- (b) If the person does not want to consult with a legal practitioner, an Occurrence Book entry must be made to this effect and the person should be requested to sign the entry. If the person refuses to sign the entry, any person who witnessed that he or she stated that he or she does not want to consult with a legal practitioner, must be requested to sign the entry specifying that the *person in custody* stated that he or she does not want to consult with a legal practitioner.
- (c) If the person wishes to consult with a legal practitioner, a member must contact the legal practitioner. The member must inform the legal practitioner that the *person in custody* wishes to consult with him or her and that the telephone is situated in the community service centre and that the conversation may be overheard by members. The member must allow the *person in custody* to speak to the legal practitioner. An entry must be made in the Occurrence Book concerning this fact and the name of the legal practitioner must be mentioned in the entry. If the legal practitioner is not available, the member must inform the *person in custody* of this fact. The member must ask the *person in custody* whether he or she would like to contact another legal practitioner or whether he or she would like to contact the specific legal practitioner at a later stage. The entry in the Occurrence Book must reflect the fact that the legal practitioner was not available or could not be contacted, and the decision which was made by the *person in custody*.

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- (d) If a legal practitioner arrives at the police station, he or she must be allowed to consult in private with the *person in custody*. In such a situation, the member(s) guarding the *person in custody*, must ensure that he or she is out of hearing distance from the legal practitioner and the *person in custody*, but the *person in custody* must never be allowed out of his or her sight. The fact that the consultation had taken place must be recorded in an entry in the Occurrence Book.
- (e) A reasonable request of a *person in custody* to be supplied with stationery in order to prepare his or her defence or to write letters to his or her legal practitioner in connection with his or her defence, must be complied with.

(2) Procedure to be followed regarding application to Legal Aid South Africa to be provided with a legal practitioner

- (a) If the *person in custody* indicates that he or she wishes to have a legal practitioner appointed by the state to assist him or her, he or she must be assisted to do so. A station commander is responsible to liaise with the local representative of the Legal Aid South Africa (who is normally an official at the local magistrates' court) and issue instructions on the procedure that must be followed at his or her station when a request of this nature is received from a *person in custody*.
- (b) The steps taken in this regard in respect of a *person in custody*, must be recorded in an entry in the Occurrence Book. (With regard to more than one entry of this nature in the Custody Register, see Standing Order(G) 362).

(3) Limiting the right to communicate with a specific legal practitioner and the procedure which must be followed

- (a) A *person in custody* has the right to communicate with a legal practitioner of his or her choice. He or she may therefore request to communicate with a particular legal practitioner.
- (b) If a *person in custody* —
 - (i) has not yet been charged with an offence; and
 - (ii) it will, in the opinion of the investigating officer, not be in the interest of justice (as set out in subparagraph (c)) to allow such a person to communicate with that particular legal practitioner,
 he or she may be prevented from doing so, provided that the procedure, as set out below, is followed.

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- (c) If the investigating officer has reasonable grounds to believe that communication with a particular legal practitioner by the *person in custody* will —
- (i) lead to interference or tampering with evidence connected with a serious offence or interference with or physical injury to other persons;
 - (ii) alert other persons suspected of having committed such an offence but who have not yet been arrested, of the arrest; or
 - (iii) hamper the recovery of property obtained as a result of such an offence,
- it will not be in the interest of justice to allow such person to communicate with that particular legal practitioner while this remains the case.
- (d) The procedure referred to in subparagraph (3)(a) is as follows:
- (i) the investigating officer must, in an affidavit, set out the facts on which his or her opinion is based;
 - (ii) the affidavit must be submitted to the station commander;
 - (iii) the station commander may, if he or she is satisfied that it is in the interest of justice, after having consulted with a legal administration officer attached to the Service, issue a written Notice in duplicate in the form set out below, specifying the time period, which may not exceed 12 hours, during which the *person in custody* is prohibited from communicating with that particular legal practitioner, as well as the reasons for issuing the Notice;
 - (iv) the original Notice must be filed in part B of the docket and a copy of the Notice must be served on the *person in custody*; and
 - (v) the Notice may only be issued by the station commander and this power may not be delegated to any other member at the station. Where a station commander is absent from his or her station, the acting station commander will be responsible to issue the Notice. A member in charge of the station after office hours is not an acting station commander and may therefore not issue this Notice.
- (e) The issuing of such a Notice does not mean that the right of a *person in custody* to communicate with a legal practitioner may be completely denied during the period in question. Such person remains entitled to communicate with another legal practitioner during such period.

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10. Communication with next of kin

A *person in custody* is entitled to communicate with and be visited by his or her spouse or partner and next of kin. The *person in custody* must therefore be requested to indicate whether or not he or she prefers to inform his or her spouse or partner and next of kin of his or her arrest. If an enquiry as to the whereabouts of a *person in custody* is made by his or her spouse or partner, next of kin or other person with an interest in his or her welfare, this information must be provided to such person. (Please refer to paragraph 12 regarding a person's right to be visited by a chosen religious counsellor and the regulation thereof.)

(1) Procedure when person in custody prefers not to exercise this right

- (a) If the *person in custody* prefers not to inform his or her spouse or partner and next of kin of the arrest, or indicates that he or she has no spouse or partner or next of kin, an entry into the Occurrence Book to this effect must be made and the *person in custody* must be requested to sign the entry to confirm its contents.
- (b) If the person refuses to sign the entry referred to in subparagraph (a), any person who witnessed that he or she stated that he or she does not have a spouse or partner, or next of kin, or does not want to inform his or her spouse or partner, or next of kin, must be requested to sign the entry specifying that the *person in custody* stated the above.

(2) Procedure when person in custody prefers to exercise this right

- (a) If the person prefers to inform his or her spouse or partner and next of kin, the person should be requested to provide a telephone number for this purpose. The member must make the telephone call and must inform the said spouse or partner and next of kin that the person is in custody, wishes to speak to him or her, that the telephone is situated in the community service centre and that the conversation may be overheard by members.
- (b) The member must allow the *person in custody* to speak to the spouse or partner and next of kin. An entry in the Occurrence Book must be made. This entry must contain the telephone number that was phoned and the name of the person spoken to.
- (c) If the *person in custody* is unable to provide a telephone number where his or her spouse or partner and next of kin may

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be reached, but requests that they be informed at a specific address, the *community service centre commander* must exercise his or her discretion on how to do this. Once the news has been conveyed, an entry into the Occurrence Book must be made in which this fact is mentioned and the name of the member that has conveyed the news, is recorded as well as the name of the person to whom the news was conveyed.

- (d) If neither his or her spouse or partner or next of kin or his or her friends can reasonably be informed by telephone or in person, it must be done per SAPS 18 "Notification of Arrest" posted to the address provided by the *person in custody*. A copy of the SAPS 18 must be placed under Part B of the police docket.

(3) Limiting the right to communicate with his or her spouse or partner and next of kin

- (a) A *person in custody* has the right to communicate with his or her spouse or partner and next of kin. However, if a person has not yet been charged with an offence, and it will, in the opinion of the investigating officer, not be in the interest of justice to allow such person to communicate with his or her spouse or partner or a particular person who is his or her next of kin, he or she may be prevented from doing so, provided that a Notice is issued in accordance with the procedure, as set out in paragraph 9(3)(d)(i) to (v).
- (b) The issuing of such a notice does not mean that the right of a *person in custody* to communicate with his or her next of kin, may be totally denied during the period in question. Such person remains entitled to communicate with any other person, who is also one of his or her next of kin, during such period.

(4) Recording of steps taken to ensure communication with the spouse or partner and next of kin of a person in custody

- (a) Every step taken regarding the exercise of the right of a *person in custody* to communicate with his or her spouse or partner and next of kin must be recorded in the Occurrence Book.
- (b) In the event that more than one entry is made in the Occurrence Book with regard to the spouse or partner and next of kin of a particular *person in custody* all subsequent entries must be cross-linked. Only the first entry number must be recorded in the appropriate column in the Custody Register (see Standing Order(G) 362 for detailed instructions).

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11. Searches of persons in custody and seizure of objects in their possession

(1) Searching a person in custody upon his or her arrival at the police station

- (a) The *community service centre commander* is responsible —
 - (i) to ascertain what property a *person in custody* has with him or her when he or she arrives at the police station;
 - (ii) to ascertain what property a *person in custody* might have acquired for an unlawful or harmful purpose while he or she is in custody; and
 - (iii) for the safekeeping of any property (for example cell phones, watches and jewellery) which is taken from a *person in custody* while such a person remains at the police station.
- (b) In order to accomplish the above, the *community service centre commander* must search the *person in custody* or authorise that the *person in custody* be searched to the extent that the *community service centre commander* considers necessary, provided that an *intimate search* may only be conducted subject to the conditions set out in subparagraph (2). The particulars of the person conducting the search must be recorded in the Occurrence Book.
- (c) A search of a *person in custody* must be conducted with strict regard to decency. A person may only be searched by a person of the same gender. If no member of the same gender is available, the search must be conducted by any person of the same gender designated for that purpose by a member.

(2) Intimate search

- (a) An *intimate search* may only be authorised by a station commander if he or she has reasonable grounds to believe —
 - (i) that a *person in custody* has concealed a dangerous weapon on his or her person;
 - (ii) that such a person has concealed on his or her person an article which may afford evidence of the commission of an offence; or
 - (iii) that such a person has concealed on his or her person an article which may be used in an attempt to effect an escape.

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- (b) An *intimate search* must be conducted by a registered medical practitioner or a registered nurse.

(3) Searching of a person in custody who is pregnant

- (a) If a *person in custody* is pregnant, this fact must be reported to the *community service centre commander* who is responsible to ensure that an entry must be made to this effect in the Occurrence Book.
- (b) If the services of a female member or a female warder, special matron or other suitable woman are available, the pregnant woman must be requested to hand over her property (especially valuable articles) and be warned that if she retains anything, she does so entirely at her own risk.

(4) Seizing of articles, including clothing

- (a) Articles of clothing may only be seized if there are reasonable grounds to believe that —
 - (i) the *person in custody* may use such articles to cause physical injury to himself or herself or any other person (for example his or her belt), damage property or assist him or her to escape; or
 - (ii) they may afford evidence of the commission of an offence.
- (b) The *person in custody* must be informed of the reason why anything is taken for safekeeping.
- (c) When an article of clothing has been seized in terms of paragraph (a), the *community service centre commander* must ensure that the *person in custody* is issued with suitable replacement clothing.

(5) Searching of person in custody upon re-admission to a detention facility

- (a) Whenever a *person in custody* is taken out of a *detention facility* for exercise, to attend court or for any other purpose, he or she must be carefully searched before being re-admitted to the *detention facility*.
- (b) Exceptional care must be taken to ensure that no poison, intoxicating liquor, drugs, weapons or other instruments are secretly passed to a *person in custody* or smuggled into his or her cell (for example blankets that may have been folded up

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outside must be shaken out, food supplied must be examined, etc.).

- (c) Any article, for example food or clothing, given to a *person in custody* by a visitor, must be searched.

12. Regulating visits to a person in custody

(1) Determining and regulating visiting hours

- (a) The station commander is responsible to determine a reasonable time period during which *persons in custody* at his or her station may be visited and he or she must issue instructions to facilitate visits of this nature.
- (b) The station commander is responsible to ensure that a clearly visible notice, setting out the visiting hours as determined by him or her, is displayed at the community service centre of his or her police station.
- (c) The name and address of every visitor must be recorded in the Occurrence Book or in a special visitors' book (where such book is kept). This includes the particulars of the religious counsellor which visits the *person in custody*. The first entry in the Occurrence Book or, where applicable, the special visitor's book, must be recorded in the appropriate column of the SAPS 14. Any subsequent entries should be cross-linked in the Occurrence Book or, where applicable, the special visitor's book.

(2) Searching of visitors

- (a) Every person who visits the *person in custody* must be requested whether he or she would consent to a body search before he or she is allowed to visit a *person in custody*. If such person refuses to give consent to the search, such person must be informed that he or she will not be allowed to visit the *person in custody* unless he or she consents to such a search. (Ambassadors, Consulate-Generals, diplomatic agents and consular officials, enjoying diplomatic immunity in the Republic, are exempted from this requirement and may not be searched.)
- (b) A search of a visitor must be conducted with strict regard to decency. A person may only be searched by a person of the same gender. If no member of the same gender is available, the search must be conducted by any person of the same gender designated by a member for that purpose.

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- (c) Any article, for example food or clothing, given to a *person in custody* by a visitor, must be searched.

13. Safe custody and handling of persons in custody

(1) Separation of categories

- (a) *Persons in custody* arrested on the same charge or involved in the same case, must, if this is considered necessary in the interest of justice, be confined in separate cells and not be allowed to communicate with each other.
- (b) Males and females are never to be detained in the same cell and, as far as possible, they are to be prevented from seeing or conversing with each other.
- (c) If circumstances permit, sentenced offenders and *persons in custody* awaiting trial must be confined separately.
- (d) A child offender may only be detained if this is permitted in terms of the National Instruction on Children in Conflict with the Law (National Instruction 2 of 2010): Provided that the provisions of that Instructions are strictly adhered to.
- (e) A mentally ill or mentally handicapped person, must, when possible, be detained separately to ensure the safety of such person and other *persons in custody*.
- (f) A *disabled person* must, if reasonably possible, be detained separately to ensure the safety of such person.
- (g) Whenever reasonably possible, *persons in custody* who are alleged to have committed violent crimes, must be detained separately from other *persons in custody*.

(2) Conditions of detention regarding accommodation in detention facilities

- (a) The station commander must ensure that the number of persons who are accommodated in a *detention facility* is reasonable in relation to the size thereof (to assist a station commander in this regard, 2.33 m² per person may be used as a guideline). Where more persons have to be detained in a *detention facility*, the station commander must issue station orders on suitable alternative accommodation for all additional persons, such as an office or the *detention facilities* of a neighbouring station. A

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person in custody may not be detained in a police vehicle as an alternative to accommodation in *detention facilities*.

- (b) A station commander must ensure that all *detention facilities* have adequate light and ventilation.
- (c) *Detention facilities* must be equipped with reasonable means of rest such as a chair or bench, and a *person in custody*, who is kept in custody overnight, must be provided with a cell mat or mattress and blankets of a reasonable standard. The station commander must make the necessary arrangements to ensure that the cell mats or mattresses and blankets are in good order when issued and changed often enough to ensure its cleanliness.
- (d) The cells and their surroundings must at all times be kept clean and sanitary, and the doors and windows of cells that are unoccupied must be left wide open at all times, weather permitting.
- (e) Blankets, mats and other bedding must be taken out early each morning during fine weather, and be thoroughly aired. Folded articles must be opened up and inspected closely before being returned to the cells.
- (f) *Persons in custody* who are awaiting trial are required to perform such duties as may be necessary to maintain the good order and cleanliness of any cell, room or other place occupied by them and of any premises adjoining or in any way subserving that cell, room or place, or the occupants thereof or of any articles or objects of similar use, and may be permitted to perform other labour. (See section 9(1) and (2) of the Correctional Services Act, 1998 (Act No. 111 of 1998)).

(3) Conditions of detention regarding toilet-, washing- and exercise facilities

- (a) A *person in custody* must be allowed to use toilet facilities and be offered adequate washing facilities (which includes both hot and cold water).
- (b) Where *detention facilities* are not equipped with flush toilets, the station commander must issue station orders to the effect that

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containers must be emptied with regular intervals and that toilet paper be kept in constant supply.

- (c) If running water is not available often enough, arrangements may be made by the station commander to be able to heat water and provide this to *persons in custody* together with wash basins.
- (d) The use of razors is not to be allowed, unless shaving takes place under strict supervision.
- (e) Open air exercise must be offered daily whenever possible.

(4) Reporting of defects regarding detention facilities

- (a) *Detention facilities* must, for the safekeeping of *persons in custody*, be maintained in a secure condition and any defect must be reported without delay to the relevant provincial office of Supply Chain Management, with a view to it being repaired. When not in use, the keys of *detention facilities* must be kept in a safe place in the community service centre or other designated place.
- (b) If the conditions set out in subparagraphs (3) and (4) cannot be met, the station commander must, as a matter of urgency, follow the procedures regarding the upgrading of the *detention facilities* at his or her station in accordance with the prescripts relating to Supply Chain Management. The station commander must keep a written progress report setting out the progress made and the reasons for any delay. For purposes of the written report it is important to note that a station commander does not only have a responsibility to report such defects in the conditions mentioned above, but has a further responsibility to monitor and pursue such progress to the best of his or her ability.

(5) Reading material

- (a) It is the responsibility of the station commander to issue instructions on the manner in which reading material must be obtained for usage by *persons in custody*. Community based organisations may be approached for assistance in this regard.
- (b) It is the responsibility of the *community service centre commander* to ensure that the age limit on reading material, if any, are strictly complied with.

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- (c) A *person in custody* may be allowed to obtain reading material from relatives, friends or any other source, at his or her own expense.
- (d) The *community service centre commander* must ensure that a *person in custody* does not abuse reading material. Whenever it comes to the attention of the *community service centre commander* that reading material is being misused, such reading material must immediately be withdrawn for a period which he or she deems fit.

(6) Visiting of cells

- (a) At a station where there is a 24 hours-per-day *community service centre commander*, *persons in custody* are to be visited as follows:
 - (i) an ordinary *person in custody* - at least every hour;
 - (ii) a *person in custody* under restraint - at least every hour and the restraining measure must be lifted as soon as his or her condition or behaviour justifies it; and
 - (iii) a *person in custody* insensible from liquor or another cause - at least every half-hour until he or she has recovered consciousness. He or she must be roused on each visit unless he or she is breathing regularly.

During the visit to the cells the night rest of *persons in custody* may not unnecessarily be disturbed.

- (b) Under no circumstances, except in extreme cases, may a member unlock the door of a cell or area in which *persons in custody* are detained or enter that specific cell or area, unless a second member is present. The member who enters the specific cell or area must be unarmed, but the second member keeping guard outside, must be armed. The *community service centre commander* must ensure that the member who makes the visits is accompanied by another member to avoid the danger of escaping or violence.
- (c) If a 24-hour per day community service centre does not exist, the station commander must, taking into consideration the safe detention of *persons in custody*, make suitable arrangements for visits to the cells. Cell visits to *persons in custody* as mentioned in paragraphs (a) and (b) above, must proceed after

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the station has been closed.

- (d) Visits to female *persons in custody*, where a female member is not available, must be made by a female warder, special matron or other suitable woman, accompanied by a male member. If, however, such a female is not be available, the male member visiting the cells must always be accompanied by another member.
- (e) Every visit to the cells must be recorded in the Occurrence Book and any matter calling for attention must be duly recorded.
- (f) If a *person in custody* complains that he or she has been tortured, the station commander must either himself or herself conduct a thorough investigation into the matter or instruct another experienced member to do so. If the investigation reveals that an offence has been committed, a case docket must be opened. If the investigation reveals that a member has committed misconduct, disciplinary measures must be instituted against such member.
- (g) Unauthorised persons are never to be allowed entry into *detention facilities*.

(7) Restraining measures

Regarding the use of *restraining measures* on a *person in custody* while such person is being detained in a *detention facility*, refer to Standing Order(G) 350.

(8) Clothing

- (a) If it is necessary to remove the clothes of a *person in custody* for the purposes of safety, investigation, hygiene, health or cleaning, replacement clothing of a reasonable standard of comfort and cleanliness must, where reasonably possible, be provided. A *person in custody* may not be questioned unless adequate clothing has been offered to him or her.
- (b) The clothing of every person who is in custody for more than seven days, must be washed and ironed once a week at the cost of the Service. At a place where such washing can be done by the prison, this service must be requisitioned from the local prison authority. If the prison cannot undertake the service, existing state contracts must be made use of and in the absence of the latter, the most economical arrangements must

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be made and the expenditure involved reported to the Provincial and National Head Office.

- (c) A *person in custody* who is inadequately or improperly dressed to appear in public or in court, may be provided at State expense with the most essential articles of clothing to enable him or her to be dressed properly and adequately when having to appear in public or in court.

(9) Drinking water and food

- (a) A *person in custody* must have ready access to drinking water and be provided with nutritious food three times per day. The meal times are as follows:
- | | | |
|-----------|---|-------------------------|
| Breakfast | : | Between 06:00 and 08:00 |
| Lunch | : | Between 12:00 and 14:00 |
| Dinner | : | Between 17:00 and 19:00 |
- (b) After each provision of meals, an appropriate entry must be made in the Occurrence Book, reflecting the time of such meal. If it be necessary to again provide meals to other *persons in custody* during the prescribed times, a further similar entry must be made in the Occurrence Book.
- (c) *Persons in custody* admitted to the cells after the prescribed mealtime, may not be given a meal, unless they have not had anything to eat for some considerable time, and it would be inhuman or unreasonable to expect them to wait until the next mealtime. An appropriate Occurrence Book entry must likewise be made in such a case.
- (d) If meals have been supplied at irregular hours, or if a *person in custody* has not received food during a particular meal time for any reason, an entry to this effect must be made in the Occurrence Book. The entry number must be recorded in the appropriate column of the Custody Register.
- (e) Meals to *persons in custody* are supplied by —
- (i) the State; or
 - (ii) in the absence of the necessary cooking or storage facilities, a police mess, sport or tea club, or any other similar semi-official institution; or
 - (iii) a private concern.

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- (f) If meals are, owing to special circumstances, supplied by the station commander, full particulars must be submitted to Head Office for approval.
- (g) A supply of Epsom salts must be kept at hand for use, at their request, by *persons in custody*.
- (h) The meals which are provided to a *person in custody* must, —
 - (i) where reasonably practicable, take into account the religious requirements and cultural preferences of such a person;
 - (ii) take into account the dietary requirements relating to the medical condition, such as diabetes, of such a person; and
 - (iii) adhere to the requirements for meals and the menu for detainees as determined by National Head Office.
- (i) If the *person in custody* is a breastfeeding mother, she must be allowed to breastfeed her infant. If she is not able to breastfeed her infant, a suitable breast milk substitute must be prescribed by a medical practitioner and supplied to the mother (the smallest possible quantity must be obtained to cater for the period she is being detained in custody).
- (j) A *person in custody* may be allowed to obtain food (excluding liquor or drugs) from relatives or friends or any other source at his or her own expense during the specified meal times.

(10) General

- (a) To ensure the safety of all persons in the custody of the Service, a person who is detained in a *detention facility*, may not be allowed to smoke in such a *detention facility*. Such a person must however be given the opportunity to smoke in the exercise blocks whenever reasonably possible.
- (b) All persons in the custody of the Service must be given the opportunity to exercise when necessary and possible and the appropriate measures must be in place to prevent them from escaping.
- (c) If a *person in custody* is insensible from liquor or other causes, he or she must have his or her throat laid bare and must have his or her head raised when laying down.

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14. Guarding in hospitals

- (1) In order to ensure the safe custody of a *person in custody* in a hospital, treatment centre or any other medical facility, the relevant station commander must see to it that the respective roles and responsibilities are clearly defined and stated in the job descriptions and Performance Enhancement Process documents of the members performing the transportation, guarding and escort duties of *persons in custody*. These instructions must fall within the ambit of existing rules, regulations and the policy of each hospital or medical facility where a *person in custody* is to be guarded and must prevent a *person in custody* from escaping.
- (2) If a *person in custody* has to proceed from one place to another in a hospital or treatment centre, (eg to the theatre or the toilet), the member who performs the guarding must accompany such a *person in custody* as far as it is practicably possible and ensure that the person cannot escape.
- (3) The member guarding the *person in custody* must strictly comply with instructions as set out in their job descriptions and do everything in their power to ensure the safe custody of the *person in custody* by means of utilization of the required *restraining measures*.

15. Arrested person to be brought before a court as soon as reasonably possible (48-hours rule)

- (1) If the arrested person is not released —
 - (a) by reason that no charge is to be brought against him or her;
 - (b) on warning in lieu of bail; or
 - (c) on bail,
 such person must be brought before a lower court as soon as reasonably possible, but not later than 48-hours after the arrest. (See section 50(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and subparagraph (2)).
- (2) In terms of section 35(1)(d) of the Constitution, 1996 (Act No. 108 of 1996) a person who is arrested for allegedly committing an offence has the right to be brought before a court as soon as reasonably possible, but not later than —
 - (a) 48 hours after the arrest; or
 - (b) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day.

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- (3) If the 48-hours expire on a non-court-day, the accused must be taken to court before the end of the first court day thereafter. If the accused is however in transit from outside the jurisdiction of the court to within the jurisdiction, the 48-hours expire on the court day succeeding the day on which he or she came into the area of the jurisdiction of the court.
- (4) Once a *person in custody* arrives at the court cells he or she should be searched by the member in charge of that cells before his or her admission into the court cells and before he or she is released from the court cells into the custody of a member responsible to transport the person to another place of detention.

16. Disciplinary measures

- (1) All the rights of a *person in custody* are subject to the limitation that a *person in custody* must submit to the disciplinary regulations applicable to *persons in custody* who are remand detainees.
- (2) Any disciplinary action taken against a *person in custody* must be recorded in the Occurrence Book by the *community service centre commander*.

17. General

- (1) The member in charge of a case must always be in a position to inform the court of the amount of money (if any) which he or she may have found in the possession of a *person in custody*, in case the court may consider it expedient to make an order under sections 289, 300 or 301 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which authorises the court to impose compensatory fines.
- (2) If a *person in custody* requests to have another person warned to attend court as a witness on his or her behalf, and furnishes the names and addresses of the witnesses, the request must be acceded to. Any person informed of such request, shall simply be told that the *person in custody* wishes him or her to give evidence on his or her behalf, and that he or she must hold the *person in custody* responsible for his or her expenses. (See also section 179(3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)).
- (3) Every member who serves an indictment or summons on an accused to appear in a circuit court, must enquire from him or her whether he or she desires to call any witnesses at his or her trial in his or her defence, and thereafter record the names and addresses of such

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witnesses, if any, upon the original indictment or summons in order that the matter may be brought to the notice of the clerk of the magistrate's court dealing therewith. (See Standing Order(G) 307.)

- (4) If a *person in custody* wishes to dispose of his or her property for the purpose of raising bail or paying a fine, he or she must be provided every opportunity to do so, but a member is not allowed to purchase such property, directly or indirectly.
- (5) A newspaper reporter is not permitted to interview a *person in custody* or to remain within sight or hearing of any interview between a *person in custody* and his or her visitors, should any information be given to him or her by the Service concerning *persons in custody*.
- (6) Trading between a *person in custody* and a member, in any manner or form, is strictly forbidden, as is also the payment by a member of a *person in custody's* fine in order to hire or engage his or her services.

18. Arrest by a private person

- (1) If a person has been arrested by a private person in terms of section 42(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the *Community Service Centre Commander* must ensure that a statement is taken from the person who made the arrest, setting out the reasons for the arrest.
- (2) The *Community Service Centre Commander* must ensure that the arrest is recorded in the Occurrence Book as required by Standing Order(G) 303.
- (3) This entry must contain the following —
 - (a) the name, identification number, address and contact numbers of the person who arrested the person;
 - (b) the name of the arrested person;
 - (c) the reason for the arrest (including, if already available at this stage, the CR/CAS number); and
 - (d) whether the arrested person has any visible injuries or is, in the opinion of the *community service centre commander*, sick or under the influence of intoxicating liquor or any other substance with a narcotic effect.
- (4) The *Community Service Centre Commander* must determine whether

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the arrested person must be detained or be released —

- (a) by reason that no charge is to be brought against him or her;
- (b) on warning in lieu of bail; or
- (c) on bail.

- (5) If the *Community Service Centre Commander* decides to detain the arrested person, the person must be dealt with in accordance with this Instruction.

STANDING ORDER (GENERAL) 362 CUSTODY REGISTER (SAPS 14)

1. Background

In order to comply with its obligations in terms of the Constitution and international agreements, the Service must perform certain activities with regard to persons in custody. A complete record must be kept of the particulars of each person who has been arrested and who is detained in a detention facility. The specific procedures which must be complied with in terms of the Custody Register, are outlined below.

2. Definitions

In this Order, unless the context otherwise indicates, —

- (a) “*child*” means a person between the age of 10 and 18 years of age irrespective of the nationality of the child;
- (b) “*community service centre commander*” means the member in charge of the community service centre and/or the member in charge of the detention facilities at an office under the control of the Service and includes a member who is performing the functions of a Community Service Centre Commander.
- (c) “*foreigner*” means an individual who is not a citizen nor a resident of the Republic of South Africa, but who is present in South Africa;
- (d) “*person in custody*” means a person who has been arrested and who is in the custody of the Service and who has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention;
- (e) “*suckling*” means any baby or young child who is still drinking from his or her mother;
- (f) “*suspect person*” means any person in custody for an alleged crime committed but who has not yet been charged.

3. Administering a Custody Register

- (1) A Custody Register (SAPS 14) must be kept at each police station that has *detention facilities*. At a station where there are no detention facility, the SAPS 22 and the receipts in respect of the persons who are taken into custody, are deemed adequate for purposes of inspection.
- (2) Every action, as required in this Order, that is taken by a member

regarding the *person in custody* must be recorded in the Custody Register or, if appropriate, in the Occurrence Book. It is the responsibility of the *community service centre commander* to ensure that every action that is taken with regard to a *person in custody* is recorded.

- (3) The station commander, or a person designated by him or her for that purpose, must inspect the Custody Register or the SAPS 22 and Occurrence Book daily to ensure that the provisions of this Order are complied with.

4. Particulars of *persons in custody* to be entered into the Custody Register

- (1) If a *person in custody* is detained in a detention facility, the following particulars must be entered in the Custody Register under the different headings immediately after the information becomes available:
 - (a) the monthly serial number of the SAPS 14;
 - (b) the name, age and gender of the *person in custody*;
 - (c) the date, time and reason for the arrest (**which is the date and time of the person's arrest and not of the person's arrival at the police station**) and the CR/CAS reference number.
 - (d) the serial number of the SAPS 70 and the Occurrence Book entry number regarding the person's medical particulars, if any;
 - (e) the SAPS 14A book number and notice number (Notice of Constitutional Rights);
 - (f) the date and time when the person in custody is taken into detention (which is the date and time when the person is admitted to the detention facility) and the receipt number of the SAPS 22. The reference number of the SAPS 13 must also be recorded if applicable;
 - (g) the number of the Occurrence Book entry regarding actions taken in terms of the services of legal representatives;
 - (h) the Occurrence Book entry number in terms of the notifying of and visits by the next of kin of the *person in custody*;
 - (i) the Occurrence Book entry numbers when a person in custody is booked out for investigation;
 - (j) the date, time and Occurrence Book entry number when the suspect is charged;
 - (k) the date of sentence as well as the date the sentence will lapse (if applicable) of a sentenced offender;
 - (l) the date, time and reason for the discharge;
 - (m) the total number of meals supplied and the Occurrence Book entry number of meals supplied at irregular hours or if a person in custody has not received food during a particular meal; and
 - (n) any additional remarks.

5. Recording particulars in the Custody Register

The instructions, which must be strictly complied with regarding the recording of particulars in the Custody Register, are printed in the front of the Custody Register. In addition to the instructions, the following instructions regarding the completion of the register must also be complied with:

(a) Suspect

- (i) If a person is arrested and detained as a suspect, the date, time and reason for his or her arrest (for example, "theft") must be recorded in black ink in the appropriate columns under the heading "Arrest". The CR/CAS number must only be entered when it is a direct arrest or when the person is detained on a warrant (if available), and when the person is charged. If a suspect is detained, the column must be left blank, until he or she is charged. When a person is detained as a suspect, the station and CR/CAS number must be recorded in red ink in the remarks column.
- (ii) If the suspect is charged, the date on and time at which the suspect is charged, and the entry number in the Occurrence Book must be entered in black ink in the appropriate columns under the heading "Suspect charged". If the suspect cannot be charged due to any valid reason such as hospitalisation, a letter from the medical doctor must be obtained in order to be placed as an exhibit in the docket under part "A" in order to allow the Prosecuting Authority to extend the 48 hour period in which the suspect should have been charged.
- (iii) If a *child* needs to be detained, the entry in the Custody Register must be made in red ink and any aliases of the *child* must be recorded in the remarks column of the Custody Register. (See Standing Orders 345 and 349).

(b) Prisoner's property (SAPS 22)

If a person who is taken into custody is not issued with a SAPS 22 form, the word "nil" must be entered in the appropriate column in the Custody Register under the heading "Detained", opposite the name of the suspect who is taken into custody.

(c) Discharge

- (i) If a person is discharged (released) from custody, the date, time and reason for discharge are entered in the appropriate columns in the Custody Register under the heading "Discharge". Abbreviations may be used. The reason for discharge must be of such a nature that **no doubt** could exist as to the reason why the specific detainee was released or the destination he or she was transferred to.

- (ii) If bail was deposited or the accused is discharged (released) on a written warning or notice to appear in court, the receipt number of the J 398, or the serial number of the J 399, SAPS 496 or J 534 is entered in the column: "Reason for discharge".
- (iii) Once a person who was taken into custody has been discharged (released) by reason of him or her paying his or her fine, the words "FINE PAID" must be entered as the reason for discharge column. The serial number of the receipt that is issued (Z 263A) must also be entered in the "Reason for discharge" column.
- (iv) If a person had already been in custody before his or her trial and had paid his or her fine at court immediately after the court session, an entry "FINE PAID IN COURT" must be made in the "Reason for discharge" column.

(d) Hospitalization

- (i) If a *person in custody* is admitted to a hospital or another institution for treatment, he or she is not booked out in the Custody Register. In such a situation, an entry (including the date on and time at which the person is admitted to the hospital or other treatment institution, and the name of the hospital or other treatment institution) must be made in the Occurrence Book. The Occurrence Book entry must be reflected in the "Medical particulars" column. (See Standing Order (G) 349 for instructions regarding the medical treatment and hospitalization of a person who is in custody.)
- (ii) If the *person in custody* returns from the hospital or other treatment institution, an entry must be made in the Occurrence Book. The entry in the Occurrence Book must be cross-linked with the first entry in the Occurrence Book that relates to the medical particulars of the person who is in custody. {See paragraph 5 (d) (i)}.

(e) Remarks - Entry relating to *foreigners*

- (i) This column may be used for any general remarks.
- (ii) If a *person in custody* is a *foreigner* (an individual who is not a citizen nor a resident of the Republic of South Africa, but who is lawfully present in South Africa), this fact, as well as the country of which he or she is a citizen, must be recorded in red ink in the remarks column by writing: "*FOREIGNER (NAME OF COUNTRY)*".

6. Particulars brought forward from a previous month

- (1) If the particulars of the person who is in custody are brought forward from a previous month —
 - (a) the particulars, as referred to in paragraph 4, must be recorded in red ink in the Custody Register; and
 - (b) the original reference number of the Custody Register, followed by the month in which the person who is in custody was detained (for example, 100/10) must be entered in column 1 of the new month in red ink. If the original month dates from a previous year, the year must also be added (for example, 100/10/98).
- (2) Entries concerning the persons who are detained in the present month are numbered consecutively, starting from 1, in black ink, following the last entry which was made in red ink.

7. Particulars of a child detained with his or her mother

- (1) If a woman, who is accompanied by a minor child, is taken into custody and the child must necessarily also be detained in the detention facilities, the following instructions will apply:
 - (a) **If the child is still breast-fed (a *suckling*) —**
the name of the child, followed by the word "*SUCKLING*" is written in red ink in the remarks column, after the particulars of the mother.
 - (b)
 - (i) **If the child is not breast-fed —**
a new entry with regard to each child must be made in the Custody Register. The words "*CHILD OF SAPS 14/././.*" (for example, SAPS 14/22/10/2011) are entered in the "Reason for arrest" column in red ink. All the other columns are left open;
 - (ii) the child must be fed at the times that are stipulated in Standing Order (G) 361 and the cost of feeding is recovered from the responsible department in terms of Standing Order (F) 63; and
 - (iii) if the mother is released from custody, the words "*MOTHER RELEASED*" must be entered in the "Reason for discharge" column in red ink as the reason for the release of the child.

8. Entries relating to meals and matron fees

- (1) The entries in the Custody Register that relate to the meals that are supplied are calculated and an entry regarding the total number of meals supplied is made after the last entry made at the end of each

month. The cost of the total number of meals is calculated and summarized as follows:

 Total number of meals supplied x rate = R c

- (2) Underneath the summary of the meals supplied, the —
 - (a) date on which the claim for the cost of meals was submitted and the claim number that was allocated to the claim must be entered.
- (3) At a station where special matron fees are claimed, the total number of days for which the fees are claimed is recorded underneath the summary of the meals, together with the amount claimed.

GOVERNMENT NOTICE

DEPARTMENT OF POLICE

No. 759

2 September 2010

The National Instruction on children in conflict with the law issued in terms of section 97(5) of the Child Justice Act, 2008 (Act No. 75 of 2008), is hereby published for general information.



**MINISTER OF POLICE
EN MTHETHWA**

NATIONAL INSTRUCTION 2 OF 2010

CHILDREN IN CONFLICT WITH THE LAW

1. Background

The Child Justice Act, 2008 (Act No. 75 of 2008) creates a new separate criminal justice system for *children in conflict with the law*.

The Act requires that *children* be treated differently from adults, but provide for them to be held responsible and accountable for their actions. The Act provides that children be treated in a manner that will encourage them to turn away from crime.

The purpose of this National Instruction is to ensure that *members* treat *children in conflict with the law* in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage them to become law-abiding and productive adults.

2. Definitions

In this instruction, unless the context otherwise indicates, —

- (a) **“appropriate adult”** means any member of a child’s family, including a sibling who is 16 years or older, or a care-giver of the child, which includes any person other than a parent or *guardian* who factually cares for a child including —
 - (i) a foster parent;
 - (ii) a person who cares for a child with the implied or express consent of a parent or *guardian* of the child;
 - (iii) a person who cares for a child whilst the child is in *temporary safe care*;
 - (iv) the person at the head of a *child and youth care centre* where a child has been placed;
 - (v) the person at the head of a shelter;
 - (vi) a child and youth care worker who cares for a child who is without appropriate family care in the community; and
 - (vii) the child at the head of a child headed household, if such a child is 16 years or older;
- (b) **“arrest”** means the taking into custody of a *child* for an alleged offence in order to secure the presence of that *child* at his or her first appearance at a preliminary inquiry;
- (c) **“assessment”** means an *assessment* of a *child*, who is alleged to have committed an offence, by a *probation officer* to prepare an *assessment* report to recommend steps to be taken in respect of the *child*;
- (d) **“child”** means any person under the age of 18 years;

- (e) **"child and youth care centre"** means a facility established to provide residential care, outside the family environment, to more than 6 *children* at a time;
- (f) **"child in conflict with the law"** means a *child* suspected of having committed an offence;
- (g) **"child justice court"** means any court in which a criminal trial, in which a *child* is the accused, is conducted, or before which any bail application, plea, sentencing or proposal for diversion relating to such a case, is heard;
- (h) **"Children's Act"** means the Children's Act, 2005 (Act No. 38 of 2005);
- (i) **"Criminal Procedure Act"** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (j) **"designated probation officer"** means the *probation officer* designated by the Director-General: Social Development for a specific police station;
- (k) **"detention"** includes confinement of a *child* prior to sentence in a *police cell or lock-up*, prison or a *child and youth care centre*;
- (l) **"guardian"** means a parent or other person who has guardianship of a *child*;
- (m) **"member"** means a member of the South African Police Service appointed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (n) **"police cell or lock-up"** means any place which is used for the reception, *detention* or confinement of a person who is being detained by the Police, and includes all land, buildings and premises adjacent to any such place and used in connection therewith;
- (o) **"preliminary inquiry"** means an informal inquiry held by the inquiry magistrate to consider the *assessment* report of the *probation officer* and either determine the release or the placement of the *child*;
- (p) **"probation officer"** means any person who has been appointed as a *probation officer* under section 2 of the Probation Services Act, 1991 (Act No. 116 of 1991);
- (q) **"temporary safe care"**, means the care of a *child* in any place where the *child* is accommodated pending a decision or court order concerning the placement of that *child*;
- (r) **"the Act"** means the Child Justice Act, 2008 (Act No. 75 of 2008); and

- (s) “*working days*” excludes Saturdays, Sundays and public holidays.

3. Treatment of children

(1) Background

- (a) *Children* are different from adults and do not have the same knowledge, experience and insight normally expected from an adult. A *child* should therefore be treated differently from an adult. Accordingly, a *child*, who is suspected of having committed an offence, should be treated differently from an adult suspected of having committed the same offence.
- (b) *Children* are impressionable and prone to be influenced by the conduct of adults. *Children* are more likely to follow the example set by adults rather than to do what adults tell them to do. *Children* exposed to criminal activity by adults are, accordingly, themselves likely to get involved in criminal activity. This is because, generally speaking, *children* yearn to be adults and would like to be treated like adults. Accordingly, if they see adults committing offences, they want to prove to the world that they are adults by also committing offences.
- (c) If a *child* is suspected of having committed an offence, the first contact between the *child* and an official from the Criminal Justice System (normally a *member*) is critical. The manner in which that official (*member*) treats the *child*, may play a decisive role in persuading the *child* to change his or her ways and refrain from further involvement in criminal activities or push him or her to become further and deeper involved in criminal activities. This applies even though a *child* may have committed a heinous crime and may have been acutely aware at the time that what he or she was doing was wrong and that it constitutes a crime.
- (d) A *member* who confronts a *child* who is suspected of having committed an offence, must bear the foregoing in mind when he or she considers how to deal with the *child*.
- (e) A *member* must always treat a *child* in a manner which is in the best interest of the *child* as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children's Act.

(2) Treatment of a child suspected of having committed an offence

- (a) During the first contact with a *child* suspected of having committed an offence, the *member* must, if circumstances permit, introduce himself or herself to the *child* and, if a parent, *guardian* or an *appropriate adult* is present, to such person.
- (b) The *member* must explain to the *child* that he or she is being suspected of having committed the offence. The *member* must

explain this to the *child* in a language that he or she understands, preferably in the mother tongue of the *child*, using plain and simple vocabulary to assist the *child* to have a better understanding of the child justice system and the procedure that will be followed in his or her case. The *child* must understand that this is a very serious matter.

- (c) The *member* must realise that the *child* may be overwhelmed and scared in the presence of the Police and must therefore patiently explain the nature of the offence and the procedure that will be followed in his or her case. The *member* must give enough detail about the matters and allow sufficient time so that the *child* can absorb the information. The *member* must encourage the *child* to ask questions and respond to the questions and satisfy himself or herself that the *child* understands the information and explanation given. The *member* may elicit responses from the *child* by asking questions in order to ensure that he or she understands the information.
- (d) A *member* must not humiliate or intimidate a *child* and must at all times treat and communicate with the *child* in a manner which is appropriate to the age, maturity and stage of development of the *child*. The younger the *child*, the more patient and understanding the *member* must be while communicating with the *child*. The level of schooling of the *child* and the *child's* ability to read and write are also relevant when considering what would be an appropriate manner in which to treat and communicate with the *child*.
- (e) The *member* must take steps to protect the privacy and dignity of the *child* and must ensure that discussions with the *child* and his or her parent or *guardian* or an *appropriate adult* (whether at the police station or at the crime scene) take place in private, out of sight and hearing of other persons.
- (f) A *member* who explains to a *child* and his or her parent, *guardian* or an *appropriate adult*, the contents of a notice or procedure must take into account the background of the *child*, the parent, *guardian* or *appropriate adult* and the fact that they may not be conversant with the functioning of the courts and court procedures. The *member* must explain the contents of the notice or procedure in simple, understandable language and give sufficient details to the *child* and parent, *guardian* or *appropriate adult*. The *member* must also encourage the *child*, parent, *guardian* or *appropriate adult* to ask questions without interrupting him or her.

(3) Language of communication

- (a) A *child*, parent, *guardian* or *appropriate adult* must be addressed in a language that they understand, preferably the language of their choice, using plain and simple vocabulary.
- (b) If a *member* —
 - (i) is unable to establish what language the *child* and parent, *guardian* or *appropriate adult* understands; or
 - (ii) cannot speak the language that the *child* and parent, *guardian* or *appropriate adult* understands,
 the *member* must explain the information in English.
- (c) In the event that the *child* and parent, *guardian* or *appropriate adult* do not understand English, the *member* must inform the Community Service Centre Commander accordingly. The Community Service Centre Commander must determine what language the *child* and parent, *guardian* or *appropriate adult* understands and ensure that the information is conveyed in that language.
- (d) In the event that the *child* and parent, *guardian* or *appropriate adult* do not understand English, the Community Service Centre Commander must make an entry in the Occurrence Book (OB) setting out the steps taken to ensure that the information is conveyed in a language that is understood by the *child* and parent, *guardian* or *appropriate adult*.

(4) Arrest and detention of children

- (a) A *child* should only be arrested as a last resort and, if arrested, should only be detained for the shortest possible time.
- (b) A *member*, who is authorised to *arrest* a *child* in terms of the Act and this Instruction, may decide not to *arrest* the *child*, but rather to have the investigation completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted or not, and if so, to have a summons issued to secure the attendance of the *child* at a *preliminary inquiry*.
- (c) In considering whether the *child* should be *arrested* or whether the investigation should be completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted and to have a summons issued, a *member* may consider any information that may be contained in the Diversion Register. The Diversion Register is maintained by the Department of Social Development and contains information of children's criminal cases that have been diverted. This information may assist the *member* to decide whether it would be appropriate in the circumstances, bearing in mind the information obtained from the Diversion Register, to *arrest* the *child* or to rather follow the summons route.

- (d) A member must ensure that —
 - (i) a *child* is detained separately from adults and boys separately from girls;
 - (ii) a *child* is detained in conditions which take into account his or her particular vulnerability and which will reduce the risk of harm to the *child*, including the risk of harm emanating from other *children*;
 - (iii) the *child* may be visited by parents, *appropriate adults*, *guardians*, legal representatives, registered social workers, *probation officers*, assistant probation officers, health workers, religious counsellors and any other person who, in terms of any law, is entitled to visit the *child*; and
 - (iv) the *child* is cared for in a manner consistent with the special needs of *children*, including the provision of —
 - (aa) immediate and appropriate health care in the event of any illness, injury or severe psychological trauma in accordance with the procedure set out in Standing Order (General) 349;
 - (bb) adequate food, water, blankets, bedding; and
 - (cc) sanitary towels (if required by girl *children*).

4. Responsibility of Divisional Commissioner: Visible Policing, Provincial Commissioners and Station Commanders

- (1) The Divisional Commissioner: Visible Policing must obtain from the Department of Social Development the —
 - (a) contact particulars of every *designated probation officer* in every province and any changes thereto; and
 - (b) information concerning the location, amenities, features and level of security offered by every *child and youth care centre* in every province.
- (2) The Divisional Commissioner: Visible Policing must compile a list containing the information referred to in subparagraph (1) in respect of each province and provide every Provincial Commissioner with a copy of the list relating to his or her province.
- (3) A Provincial Commissioner must provide a copy of the list to every station commander in his or her province.
- (4) Every station commander must ensure that the information received from the Provincial Commissioner referred to in subparagraph (3), is at all times available in the community service centre of his or her station and is updated as new information is received from the Provincial Commissioner.

- (5) Every station commander must liaise with the *designated probation officer*, and, if another *probation officer* is designated, the newly *designated probation officer*, to reach agreement on —
 - (a) how he or she should be notified of the *arrest* of a *child* or be provided with a copy of an Information Notice or Written Notice issued to or in respect of a *child* (ie by handing over a copy of the Notice, or by faxing it to a particular number and telephonically notifying the *designated probation officer* of the fax); and
 - (b) the procedure to be followed in the event of a *member* being unable to establish contact with the *designated probation officer* to notify him or her or provide a copy of a Notice as set out in subparagraph (a) to him or her.
- (6) The station commander must set out the information agreed upon with the *designated probation officer* as contemplated in subparagraph (5) in writing.
- (7) The station commander must ensure that a copy of —
 - (a) *the Act*;
 - (b) the Regulations promulgated in terms thereof;
 - (c) this National Instruction;
 - (d) the station orders issued by him or her in terms of subparagraph (8); and
 - (e) a document containing the information referred to in subparagraph (6);
 are at all times available in the Community Service Centre.
- (8) The station commander must, taking into account the unique circumstances prevailing in his or her specific station area, the agreement reached with the *designated probation officer*, the available resources, etc., issue station orders —
 - (a) requiring a *member* under his or her command to follow the approach agreed upon as contemplated in subparagraph (6); and
 - (b) in general, instructing *members* under his or her command on any other matter relating to the treatment of *children in conflict with the law* which he or she deems necessary to determine in respect of his or her specific station area.
- (9) Where a police station area forms part of a larger area consisting of more than one police station area and a radio control unit has been established to patrol and attend to complaints in such larger area, every station commander of a station in such larger area must, for information purposes, provide the commander of such radio control unit with a copy of the station orders issued in accordance with subparagraph (8) and, if he or she amends the orders, a copy of the updated version thereof.
- (10) The station commander must see to it that all functional *members* at his or her station receive in-service training (also at station meetings) on *the*

Act, the Regulations, this Instruction and the station orders issued by him or her.

5. Criminal offences reported to the Police

- (1) if a member of the public reports the alleged commission of an offence to a police official, the member of the public will normally not know who had allegedly committed the offence. In such a case, the police official must take an affidavit, open a docket and have it registered on the CAS. The same applies if the member of the public suspects that the offence was committed by a particular person whose age is unknown to the member of the public, but he or she believes that person to be an adult or at least older than 10 years.
- (2) The detective designated as the investigating officer must, if he or she establishes, during the course of the investigation of the offence, that the person who had allegedly committed the offence, is a *child*, deal with the *child* in accordance with this Instruction.
- (3) If a member of the public reports the alleged commission of an offence to a police official and the member of the public knows that the person who had allegedly committed the offence, is younger than 10 years and acted alone (ie was not used by an adult to commit the offence), the member of the public must be informed that a *child* below the age of 10 years lacks criminal capacity and cannot be arrested, prosecuted or convicted of an offence. In such a case, the *member* must —
 - (a) take the particulars of the person reporting the alleged commission of the offence as well as the particulars of the alleged offence;
 - (b) determine from the member of the public how he or she knows that the *child* who had allegedly committed the offence is younger than 10 years and acted alone (was not used by an adult to commit the alleged offence);
 - (c) determine from the member of the public, the particulars of the *child* (name and residential address), as well as any information that the member of the public may have that will assist in determining whether the *child* is a child in need of care and protection and in need of immediate emergency protection as set out in the National Instruction on the Care and Protection of Children;
 - (d) make a comprehensive entry in the Occurrence Book (OB) setting out the particulars of the alleged offence, the person who reported it and the information (referred to in subparagraph (c)) that was provided by the member of the public; and
 - (e) provide the member of the public with the reference number of the OB entry.
- (4) The Community Service Centre Commander must satisfy himself or herself that the incident that was reported by the member of the public did in fact occur, that the *child* is likely to have been responsible for the

incident and is below the age of 10 years and, if so, act in accordance with paragraph 7(4) of this Instruction.

6. Conduct of a member at a crime scene

- (1) If a *member* —
 - (a) is present while an offence is being committed; or
 - (b) arrives at the scene after the commission of the offence and while the perpetrator is still at the crime scene,
 the *member* must do whatever may be reasonably necessary to ensure the safety of any person at the crime scene, to stop the alleged perpetrator of the offence and to secure the crime scene, irrespective of the age of the person who has allegedly committed the offence.
- (2) If the person who is alleged to have committed the offence is, according to the knowledge of the *member*, a *child* of a particular age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age that has allegedly committed such an offence.
- (3) If the *member* is uncertain whether the person who allegedly committed the offence, is an adult or a *child* and, if a *child*, what the age of the *child* is, the *member* must gather any information which may be available at the crime scene which will satisfy him or her that the person is a *child* or an adult and, if a *child*, what the age of the *child* is. Such information may include information that may be available from witnesses or other persons (such as a parent or friend of the *child*) that may be present at the crime scene or any documentation (such as a birth certificate, an identity document or driver's licence).
- (4) If the *member* is satisfied that the person who allegedly committed the offence, is an adult, this Instruction will not be applicable.
- (5) If the *member* is satisfied that the person who allegedly committed the offence, is a *child* of a certain age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.
- (6) If the *member* is satisfied that the person who allegedly committed the offence, is a *child*, but he or she remains uncertain about how old the *child* really is, the *member* must consider the youngest age that the *child* may possibly be and deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.

7. Dealing with a child younger than 10 years who is alleged to have committed any offence

- (1) If a *member* suspects that a *child* has committed an offence but that the *child* is younger than 10 years, the *member* **MUST NOT** arrest the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
 - (a) if a SAPS 583(a) (Information Notice to person to whom a child younger than 10 years is handed) is available at the scene, —
 - (i) complete the information notice and explain to the parent or *guardian* the contents of the notice;
 - (ii) hand the original Information Notice to the parent or *guardian* and request the parent or *guardian* to sign on the first duplicate original Information Notice to acknowledge receipt of the Notice;
 - (iii) hand over the *child* to the parent or *guardian*; and
 - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*;
 - (b) if a SAPS 583(a) (Information Notice to person to whom a child younger than 10 years is handed) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(iv);
 - (c) if a SAPS 583(a) (Information Notice to person to whom a child younger than 10 years is handed) is not available at the scene and the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for an information notice to be brought to the scene, arrange for the information notice to be brought to the scene and keep the *child* and the parent or *guardian* until the information notice arrives at the scene, where after the *member* must act in accordance with subparagraph (a)(i)-(iv);
 - (d) if a SAPS 583(a) (Information Notice to person to whom a child younger than 10 years is handed) is not available at the scene and —
 - (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
 - (bb) arrangements cannot be made for an Information Notice to be brought to the scene within a reasonable time,
 take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(iv).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate adult* is present and, if so, apply the provisions of paragraph (2) (replacing "parent or *guardian*" with "*appropriate adult*").

- (4) If neither the parent or *guardian* of the *child* nor an *appropriate adult* is present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate adult* and, —
- (a) if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate adult* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(iv); or
- (b) if unsuccessful, take the *child* to a *child and youth care centre* and —
- (i) complete a SAPS 583(a) (Information Notice to a person to whom child younger than 10 years is handed) and explain to the person receiving the *child*, the contents of the notice;
- (ii) hand the original Information Notice to the person receiving the *child* and request that person to sign on the first duplicate original Information Notice to acknowledge receipt of the notice;
- (iii) hand over the *child* to that person; and
- (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (5) If, in exceptional circumstances, the parent or *guardian* of the *child* or the *appropriate adult* is present or comes to collect the *child*, but the *member* is satisfied that it will not be in the best interest of the *child*, as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children's Act, to hand over the *child* to such a person, the *member* must act in accordance with subparagraph (4)(b).

8. Dealing with a child who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act

- (1) If a *member* suspects that a *child*, who is 10 years or older, has committed an offence, the *member* must satisfy himself or herself whether the offence is an offence referred to in Schedule 1 of the Act (attached hereto as Annexure A).
- (2) If the offence concerned is an offence referred to in Schedule 1 of the Act, the *member* **MUST NOT** arrest the *child* **UNLESS** there are **COMPELLING REASONS JUSTIFYING THE ARREST OF THE CHILD** as outlined in paragraph (3).
- (3) Compelling reasons that will justify the *arrest* of a *child* who is 10 years or older in respect of an offence referred to in Schedule 1 are —
- (a) where the *member* has reason to believe that the *child* —
- (i) does not have a fixed residential address;

- (ii) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
- (iii) is likely to continue to commit offences, unless he or she is *arrested*;
- (iv) will pose a danger to any person (including himself or herself) unless *arrested*;
- (v) is likely to destroy or tamper with evidential material relating to the offence;
- (vi) is likely to interfere with the investigation into the offence unless *arrested*; or
- (b) where the offence is in progress and is not yet completed.

9. Dealing with a child who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are no compelling reason to arrest the child

- (1) If there are no compelling reason to *arrest* the *child* who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act, the *member* may not *arrest* the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
 - (a) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is available at the scene, —
 - (i) complete the Written Notice and set the date of the *preliminary inquiry* to be the fifth (5th) working day after the date of the issuing of the Written Notice;
 - (ii) explain to the *child* and the parent or *guardian* the contents of the Written Notice;
 - (iii) hand the original Written Notice to the *child* and request the *child* and the parent or *guardian* to sign on the first duplicate original Written Notice to acknowledge receipt of the notice;
 - (iv) hand over the *child* to the parent or *guardian*;
 - (v) provide the first duplicate original Written Notice to the *designated probation officer* within 24 hours after the Written Notice was handed to the *child* and retain proof that it was received by the *designated probation officer*; and
 - (vi) make a copy of the Written Notice and file the copy under "B" in the docket opened in respect of the offence which the *child* is alleged to have committed;
 - (b) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(vi);
 - (c) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and the parent or *guardian* of

- the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for a Written Notice to be brought to the scene, arrange for the Written Notice to be brought to the scene and keep the *child* and the parent or *guardian* until the Written Notice arrives at the scene and, upon its arrival, act in accordance with subparagraph (a)(i)-(vi);
- (d) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and —
- (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
- (bb) arrangements cannot be made for a Written Notice to be brought to the scene within a reasonable time,
- take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(vi).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate adult* is present and, if so, apply the provisions of paragraph (2) (replacing "parent or *guardian*" with "*appropriate adult*").
- (4) If the parent or *guardian* of the *child* or an *appropriate adult* is not present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate adult* and, —
- (a) if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate adult* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(vi); or
- (b) if unsuccessful, the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 10 and 11 of the National Instruction on the Care and Protection of Children in terms of the Children's Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, (such as the person in charge of a *child and youth care centre*, if the *child* is placed in a *child and youth care centre*) becomes an *appropriate adult* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)). A copy of the Written Notice must be handed to the person in whose *temporary safe care* the *child* is placed.

10. Dealing with a child who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are compelling reasons to arrest the child

- (1) If there are compelling reasons to *arrest* a *child* who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act, the *member* may *arrest* the *child*.
- (2) Upon the *arrest* of such a *child*, the *member* must inform the *child* —
 - (a) of his or her constitutional rights as provided for in paragraph 7(4) of Standing Order (General) 341 (Arrest and the treatment of an arrested person until such person is handed over to the Community Service Centre Commander); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (3) Once a *child* of 10 years or older has been *arrested*, the *child* must be taken to a police station. The *member* who effected the *arrest* must record in the Arrest Statement the compelling reason (set out in paragraph 8(3)) that persuaded him or her to effect the *arrest*. The *member* must also state whether there is any reason (stating the reason) to believe that the *child* will pose a danger to any person (including himself or herself) if released.
- (4) The Community Service Centre Commander must consider the Arrest Statement and any other information at his or her disposal to satisfy himself or herself whether the *child* will pose a danger to any person (including himself or herself) if released.
- (5) If the Community Service Centre Commander is satisfied that the *child* will pose a danger to any person (including himself or herself) if released and that the *child* can therefore not be released, the Community Service Centre Commander must ensure that the *child* remains in *detention* and —
 - (a) inform the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*;
 - (b) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent or *guardian* the contents of the notice and set the date of the *preliminary inquiry* as a date that will ensure that the *child* appears at the *preliminary inquiry* within 48 hours (as extended by the Criminal Procedure Act) from the time of the arrest of the *child*;
 - (c) provide the Information Notice to the parent, *guardian* or *appropriate adult* and retain proof that the parent, *guardian* or *appropriate adult* received the Information Notice (if it is possible to hand the Information Notice to the parent, *guardian* or *appropriate adult*, the parent, *guardian* or *appropriate adult* must be requested to sign on the first duplicate original of the

- Information Notice to acknowledge receipt of the Information Notice);
- (d) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*; and
 - (e) make two copies of the Information Notice if the *child* will be detained at a *child and youth care centre* (or one copy if the *child* will be detained in a *police cell* (in which case the copy must be filed under "B" in the docket opened in respect of the case for which the *child* was *arrested*)).
- (6) The Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
 - (i) ensure that the *child* is transported to the *child and youth care centre* and is handed over to the person in charge of the centre;
 - (ii) instruct the *member*, who will be transporting the *child* to the *child and youth care centre*, to hand the two copies of the SAPS 583(j) (Information Notice upon the arrest of a *child*) (referred to in subparagraph (5)(e) above) to the person receiving the *child* at the *child and youth care centre* and request that person to sign one copy as proof of having received the *child*;
 - (iii) file the copy of the SAPS 583(j) (Information Notice upon the arrest of a *child*) (referred to in subparagraph (ii) signed by the person receiving the *child* at the *child and youth care centre* under "B" in the docket opened in respect of the case for which the *child* was *arrested*;
 - (iv) complete a SAPS 583(c) (Written Report on detention of *child* arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under "B" in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (v) provide the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a *child*) to the *designated probation officer* and retain proof that it was received by the *designated probation officer*;
 - (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
 - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain

the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;

- (iii) the Community Service Centre Commander of the police station where the *child* was originally detained, must complete the SAPS 583(c) (Written Report on detention of child arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under "B" in the docket opened in respect of the case for which the *child* was *arrested*;
- (iv) the Community Service Centre Commander must, if he or she was unable to provide the SAPS 583(j) (Information Notice upon the arrest of a child), to the parent, *guardian* or *appropriate adult*, —
 - (aa) complete the SAPS 583(j) (Information Notice upon the arrest of a child);
 - (bb) provide the Information Notice to the *designated probation officer* within 24 hours after the *arrest*;
 - (cc) file proof that the Information Notice was received by the *designated probation officer* under "B" in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (dd) file the first duplicate original Information Notice under "B" in the docket opened in respect of the case for which the *child* was *arrested*.

- (7) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
 - (a) inform the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate adult of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*; or
 - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under "B" in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

11. Releasing a child who is 10 years or older and who has been arrested for an offence referred to in Schedule 1 of the Act

- (1) If the Community Service Centre Commander is satisfied that the *child* will not pose a danger to any person (including himself or herself) if released, the Community Service Centre Commander may instruct a *member* to approach the Department of Social Development to establish whether a previous criminal case, in which the *child* was an accused, has been diverted (as recorded in the Diversion Register). If the Department of Social Development is approached and the information is obtained, this fact must be recorded in the Investigation Diary (SAPS 5) of the docket. This information must be taken into account to decide whether, bearing in mind the information obtained from the Diversion Register, it would be appropriate in the circumstances, to release the *child* on a Written Notice.
- (2) If the Community Service Centre Commander is satisfied that the *child* may be released, he or she must —
 - (a) if the parent or *guardian* of the *child* or an *appropriate adult* is present, —
 - (i) complete the SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) and set the date of the *preliminary inquiry* to be the fifth (5th) working day after the date of the issuing of the Written Notice;
 - (ii) explain to the *child* and the parent, *guardian* or *appropriate adult* the contents of the Written Notice;
 - (iii) hand the original Written Notice to the *child* and request the *child* and parent, *guardian* or *appropriate adult* to sign on the first duplicate original Written Notice to acknowledge receipt of the Written Notice;
 - (iv) hand over the *child* to the parent, *guardian* or *appropriate adult*; and
 - (v) provide the first duplicate original Written Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*.
 - (b) if the parent or *guardian* of the *child* or an *appropriate adult* is not present, take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate adult* and, —
 - (i) if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate adult* collects the *child*, the *member* must act in accordance with subparagraph (1)(a)-(e); or
 - (ii) if unsuccessful, —
 - (aa) the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 10 and 11 of the National Instruction on

the Care and Protection of Children in terms of the Children's Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, becomes an *appropriate adult* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)); and

- (bb) the Community Service Centre Commander must complete the SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate adult of the arrest of the child) which must be filed under "B" in the docket opened in respect of the case for which the *child* was *arrested* and which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

- (3) The *member* designated as the investigating officer of the case, must ensure that, at least one (1) day before the *preliminary inquiry*, the docket, opened in respect of the case for which the *child* was *arrested*, is presented to the prosecutor that will be present during the *preliminary inquiry*.

12. Dealing with a child who is 10 years or older and who is alleged to have committed an offence referred to in Schedule 2 of the Act

- (1) A *member* may *arrest* a *child* who is 10 years or older and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 2 of the Act (attached hereto as Annexure B).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
 - (a) has a fixed residential address;
 - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
 - (c) is likely to continue to commit offences, unless he or she is *arrested*;
 - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
 - (e) is likely to destroy or tamper with evidential material relating to the offence;
 - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
 - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.

- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
 - (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and
 - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under "A" in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
 - (a) of his or her constitutional rights as provided for in paragraph 7(4) of Standing Order (General) 341 (Arrest and the treatment of an arrested person until such person is handed over to the Community Service Centre Commander); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* requests that the *child* be released on bail, the Community Service Centre Commander must contact the prosecutor on standby, who is authorised to consider a bail application, and request him or her to come to the police station to consider the bail application in terms of section 21(2)(b) of the Act.
- (6) If the prosecutor authorises the release of the *child* on bail, the normal processes applicable to the release of a suspect on bail by an authorised prosecutor, must be followed: Provided that the *child* may only be released into the care of a parent, *guardian* or an *appropriate adult*.
- (7) If the *child* will remain in custody and the parent or *guardian* of the *child* or an *appropriate adult* is present, the Community Service Centre Commander must —
 - (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate adult* the contents of the notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate adult* and request the parent, *guardian* or *appropriate adult* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (8) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact

the parent or *guardian* of the *child* or an *appropriate adult* and, if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to come to the police station. When the parent or *guardian* of the *child* or *appropriate adult* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (7)(a)-(c).

- (9) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present and cannot be contacted, the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* does not request that the *child* be released on bail or the prosecutor refuses to grant bail to the *child*, the Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
 - (i) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the person receiving the *child*, the contents of the notice;
 - (ii) hand the original notice to the person receiving the *child* and request that person to sign on the first duplicate original information notice to acknowledge receipt of the notice;
 - (iii) hand over the *child* to that person;
 - (iv) provide the first duplicate original information notice to the *designated probation officer* and retain proof that the information notice was received by the *designated probation officer*; and
 - (v) make a copy of the information notice and file it under "B" in the docket opened in respect of the case for which the *child* was arrested;
 - (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
 - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (iii) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the notice to the *designated probation officer* and file proof that it was received by the *designated*

- probation officer* under "B" in the docket opened in respect of the case for which the *child* was *arrested*; and
- (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under "B" in the docket opened in respect of the case for which the *child* was *arrested*.

- (10) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate adult of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*; or
- (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under "B" in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

13. Dealing with a child who is 10 years or older but younger than 14 years and who is alleged to have committed an offence referred to in Schedule 3 of the Act

- (1) A *member* may *arrest* a *child* who is 10 years or older but younger than 14 years and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 3 of the Act (attached hereto as Annexure C).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
- (a) has a fixed residential address;
- (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
- (c) is likely to continue to commit offences, unless he or she is *arrested*;
- (d) will pose a danger to any person (including himself or herself) unless *arrested*;
- (e) is likely to destroy or tamper with evidential material relating to the offence;
- (f) is likely to interfere with the investigation into the offence unless *arrested*; or

- (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
 - (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and
 - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under "A" in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
 - (a) of his or her constitutional rights as provided for in paragraph 7(4) of Standing Order (General) 341 (Arrest and the treatment of an arrested person until such person is handed over to the Community Service Centre Commander); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate adult* is present, the Community Service Centre Commander must —
 - (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate adult* the contents of the notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate adult* and request the parent, *guardian* or *appropriate adult* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate adult* and, if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to come to the police station. When the parent or *guardian* of the *child* or *appropriate adult* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).

- (7) The Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
 - (i) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the person receiving the *child*, the contents of the Information Notice;
 - (ii) hand the original Information Notice to the person receiving the *child* and request that person to sign on the first duplicate original Information Notice to acknowledge receipt of the Information Notice;
 - (iii) hand over the *child* to that person;
 - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*, and
 - (v) make a copy of the Information Notice and file it under "B" in the docket opened in respect of the case for which the *child* was *arrested*;
 - (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, detain the *child* in police custody and —
 - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (iii) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the Information Notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under "B" in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under "B" in the docket opened in respect of the case for which the *child* was *arrested*.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate adult of arrest of child) setting out the steps taken to notify the parent,

- guardian or an appropriate adult of the arrest of the child and the reason why he or she was unable to notify the parent, guardian or an appropriate adult of the arrest of the child; or*
- (b) *notify the designated probation officer of the arrest of the child, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the probation officer and the reason why he or she was unable to notify the probation officer, and file it under "B" in the docket, which must be submitted to the prosecutor, who will be present at the preliminary inquiry, and who must be requested to hand the report to the presiding officer at the preliminary inquiry.*

14. Dealing with a child who is 14 years or older and who is alleged to have committed an offence referred to in Schedule 3 of the Act

- (1) *A member may arrest a child who is 14 years or older and who he or she has reasonable grounds to believe that the child has committed an offence referred to in Schedule 3 of the Act (attached hereto as Annexure C).*
- (2) *In considering whether or not to arrest the child, the member must take into account whether the child —*
- (a) *has a fixed residential address;*
 - (b) *has absconded from foster care, a child and youth care centre or temporary safe care;*
 - (c) *is likely to continue to commit offences, unless he or she is arrested;*
 - (d) *will pose a danger to any person (including himself or herself) unless arrested;*
 - (e) *is likely to destroy or tamper with evidential material relating to the offence;*
 - (f) *is likely to interfere with the investigation into the offence unless arrested; or*
 - (g) *is busy committing the offence (the offence is in progress) or whether it has been completed.*
- (3) *If the member decides not to arrest the child, the member must —*
- (a) *record the full particulars of the child (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and*
 - (b) *upon arrival at the police station and after the docket in respect of the offence allegedly committed by the child, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under "A" in the said docket.*

- (4) If the *member* decides to *arrest the child*, the *member* must, upon the *arrest of the child*, inform the *child* —
 - (a) of his or her constitutional rights as provided for in paragraph 7(4) of Standing Order (General) 341 (Arrest and the treatment of an arrested person until such person is handed over to the Community Service Centre Commander); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate adult* is present, the Community Service Centre Commander must —
 - (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate adult* the contents of the Information Notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate adult* and request the parent, *guardian* or *appropriate adult* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate adult* and, if successful, request the parent or *guardian* of the *child* or the *appropriate adult* to come to the police station. When the parent or *guardian* of the *child* or *appropriate adult* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).
- (7) If the parent or *guardian* of the *child* or the *appropriate adult* is not present and cannot be contacted, the Community Service Centre Commander must —
 - (a) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (b) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (c) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the Information Notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under "B" in the docket opened in respect of the case for which the *child* was *arrested*; and

- (d) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under "B" in the docket opened in respect of the case for which the *child* was *arrested*.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
 - (a) inform the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate adult of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate adult* of the *arrest* of the *child*; or
 - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under "B" in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

15. Transportation of a child

- (1) If it is necessary for a *child*, who is alleged to have committed an offence, to be transported in a police vehicle, the *child* must, as far as reasonably possible, be transported —
 - (a) in an unmarked police vehicle. If this is not possible, and the *child* has to be transported in a marked police vehicle, the *child* must —
 - (i) preferably be transported in a sedan police vehicle; and
 - (ii) if the *child* has to be transported in a marked police van, the *child* must be transported in the cabin of the van and not in the back of the van; and
 - (b) separately from adults.
- (2) Restraining measures, as provided for in Standing Order (General) 350, may be applied to a *child* during the transportation of the *child*, where this is necessary and appropriate, in order to ensure the safety of the *child*, other *children* and *members* accompanying him or her and to prevent the escape of the *child*.
- (3) If it is not possible to transport a *child* separately from adults to or from a *preliminary inquiry* or other hearing before a *child justice court*, the *member* who is the driver of the police vehicle, or other *member* who authorised the transport of the *child* together with the adult, must —
 - (a) complete a SAPS 583(g) (Written Report on transportation of child with adults);

- (b) within 48 hours after the transport has been undertaken, hand the original SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court where the *preliminary inquiry* or hearing before a *child justice court* will be or has been held and request that the Written Report be handed to the judicial officer who presided or will preside over the *preliminary inquiry* or other hearing;
 - (c) request the clerk of the court to sign on the first duplicate original copy of the Written Report to acknowledge receipt; and
 - (d) file the first duplicate original copy of the Written Report under "B" in the docket opened in respect of the offence allegedly committed by the *child*.
- (4) If, for whatever reason, it was not possible to hand the SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court within 48 hours after the transport had been undertaken, the responsible *member* must —
- (a) make an affidavit setting out the reasons why it was not possible to do so;
 - (b) make a copy of the affidavit;
 - (c) attach the original affidavit to the original Written Report, which is handed to the clerk of the court;
 - (d) request the clerk of the court to sign on the copy of the affidavit to acknowledge receipt; and
 - (e) file the copy of the affidavit, signed by the clerk of the court, together with the first duplicate original copy of the Written Report under "B" in the docket opened in respect of the offence allegedly committed by the *child*.

16. Access to Custody Register

- (1) An entry in the Custody Register relating to a *child* in police custody, must be made in red ink and any aliases of the *child* must be recorded in the remarks column of the entry in the register.
- (2) The register may be examined by —
 - (a) a *member* in the performance of his or her functions;
 - (b) a social worker, health care practitioner or *probation officer* in the performance of his or her functions;
 - (c) the prosecutor in the performance of his or her functions;
 - (d) a *member* of the Intersectoral Committee for Child Justice established in terms of the *Act*;
 - (e) an independent observer appointed in terms of the *Act*;
 - (f) a person who is by law empowered or mandated to take care of the interests of a *child*;
 - (g) a parent of the *child* or the *appropriate adult* or *guardian*;
 - (h) a staff *member* of the *child* and youth care centre where the *child* is placed;
 - (i) the presiding officer involved in the case; and
 - (j) the legal representative of the *child*.

- (3) A person, other than a person referred to in subparagraph (2), who wishes to examine the register must —
 - (a) submit a SAPS 583(h) (Application for Access to Custody Register) to the station commander or the person designated in writing by the station commander; and
 - (b) identify himself or herself and provide documentary proof of his or her capacity, if requested to do so by the station commander or designated person.
- (4) The station commander or designated person must consider the application and, if he or she —
 - (a) is satisfied that the applicant has a *bona fide* reason for examining the register and has no reason to believe that allowing him or her to examine the register will detrimentally affect any *child* or other detainee whose name and particulars appear in the register, he or she may authorise the applicant to examine the register; or
 - (b) is not so satisfied, he or she must decline the application, record his or her reasons for declining the application on the application and provide the applicant with a copy of the declined application.
- (5) A *member* must remain present while a person examines the register to protect the privacy of persons in police custody who are not the subject of an investigation involving the *child*.

17. Summons

- (1) If a summons is received which is to be served on a *child* who allegedly committed an offence, the investigating officer must contact a parent or *guardian* of the *child* or an *appropriate adult* and make arrangements that will enable him or her to serve the summons in the presence of a parent or *guardian* of the *child* or an *appropriate adult* at least 10 (ten) *working days* before the date of the *preliminary inquiry* or other hearing in respect of which the *child* is summoned.
- (2) When the summons is served, the *member* serving the summons must —
 - (a) explain the contents of the summons to the *child* and the parent, *guardian* or *appropriate adult*;
 - (b) hand the original summons to the *child* in the presence of the parent, *guardian* or *appropriate adult* and request the *child* and parent, *guardian* or *appropriate adult* to sign the Return of Service to acknowledge receipt of the summons; and
 - (c) make two copies of the summons and the Return of Service and —
 - (i) provide the first copy of the summons and the Return of Service to the *designated probation officer* within 24 hours after the summons was handed to the *child*; and
 - (ii) file proof that it was received by the *designated probation officer* together with the second copy of the summons and

the Return of Service under "B" in the docket opened in respect of the case for which the *child* was summoned.

- (3) If the investigating officer is unable to make arrangements that will enable him or her to serve the summons at least 10 (ten) *working days* before the date of the *preliminary inquiry* or other hearing in respect of which the *child* is summoned, the investigating officer must make an appropriate entry in the investigation diary of the docket and submit the docket to the prosecutor with a request to have a new summons issued.

18. Assessment of a child

- (1) The station commander and Community Service Centre Commander must render full support to a *probation officer* to enable the *probation officer* to conduct an *assessment* of a *child* in police custody.
- (2) A station commander and Community Service Centre Commander must, if requested thereto by a *probation officer*, take all reasonable steps (including phoning the parent or *guardian* of the *child* or an *appropriate adult* or visiting the last known address of the parent or *guardian* of the *child* or an *appropriate adult* (if within a reasonable distance)) in order to assist the *probation officer* to locate a parent or *guardian* of the *child* or an *appropriate adult*.
- (3) The station commander must make a room, other than a *police cell*, available for the *probation officer* in which to conduct the *assessment*. Such a room must enable the *probation officer* to conduct the *assessment* in private.
- (4) (a) If the station commander, Community Service Centre Commander or any other *member* is of the opinion that —
 - (i) the *child* poses a danger to the *probation officer* or any other person; or
 - (ii) there is a risk that the *child* may escape during the *assessment*,
 the *member* must inform the *probation officer* of the basis for his or her opinion.
- (b) If the *probation officer* requests that a *member* be present during the *assessment*, the station commander or Community Service Centre Commander must make a *member*, other than the investigating officer, available for this purpose.
- (5) If a *member* is present while an *assessment* is conducted, such *member* may not disclose any information that came to his or her knowledge during the *assessment*, except if requested thereto by the presiding officer at a *preliminary inquiry* or other court proceeding.

19. Error regarding placement

- (1) In terms of the *Act*, no presiding officer (whether at a preliminary enquiry or at a *child justice court*) may remand a *child* to police custody pending the *child's* next appearance in court. Accordingly, if a court issues a warrant for the further *detention* of a *child* and the warrant states that the *child* must be detained in police custody until the date, stated in the warrant, when he or she must again appear in court, this amounts to an error on the part of the presiding officer and the matter must be dealt with as set out in subparagraph (2).
- (2) The Community Service Centre Commander must —
 - (a) accept the *child* into police custody and perform the normal duties relating to the *detention* of a *child* in police custody;
 - (b) make an entry in the Occurrence Book (OB) recording the fact that the warrant for the *detention* of the *child* in police custody was erroneously issued by the presiding officer;
 - (c) complete the SAPS 583(i) (Notification of Error regarding Placement form);
 - (d) make a copy of the warrant for the *detention* of the *child* at the police station and attach the copy to the SAPS 583(i) (Notification of Error regarding Placement form); and
 - (e) ensure that —
 - (i) if the *child* is received at the police station at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* is returned to the presiding officer immediately together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached; or
 - (ii) if the *child* is received at the police station at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* must be detained in police custody until the next court day and, at the beginning of the next court day, be returned to the presiding officer together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached.
- (3) If a *child* is erroneously placed in a *child and youth care centre* and a request is received from the *child and youth care centre* to return the *child* to the presiding officer for the error to be corrected, the station commander must instruct the investigating officer of the case in respect of which the *child* is in *detention*, if he or she is available, and, if not, another *member*, to, —
 - (a) if the request is received by the station commander at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, collect the *child* and return the *child* to the presiding officer immediately together

- with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached; or
- (b) if the request is received by the station commander at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that day, collect the *child* at the beginning of the next court date and return the *child* to the presiding officer, together with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached.

20. Confession by a child in conflict with the law

- (1) If a *child* indicates to a *member* that he or she is willing to make a confession, the *member* must inform the *child* that he or she —
- will be taken to a magistrate or a police officer (whoever is applicable), that the confession will be written down and may be used as evidence against him or her in court;
 - is entitled to have a legal representative present while making the confession; and
 - is entitled to be assisted by his or her parent, *guardian* or an *appropriate adult* while making the confession.
- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the confession is taken, the *member* must —
- establish who the legal representative is;
 - contact the legal representative and inform him or her that the *child* wishes to have him or her present while he or she makes the confession and of the time when and place where the confession will be taken to enable him or her to attend while the confession is taken; and
 - inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the legal representative when the *child* is taken to the magistrate or the police officer for the taking of the confession.
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the confession is taken, the *member* must —
- establish the whereabouts of the parent, *guardian* or the *appropriate adult*;
 - contact the parent, *guardian* or the *appropriate adult* and inform him or her that the *child* wishes to have him or her present while he or she makes the confession and of the time when and place where the confession will be taken to enable him or her to attend and assist the *child* during the taking of the confession; and
 - inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the parent,

guardian or the *appropriate adult* when the *child* is taken to the magistrate or the police officer for the taking of the confession.

- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the confession is taken, the *member* must —
- (a) if the *member* and the *child* is present at the police station, —
 - (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the confession is taken;
 - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the taking of the confession; or
 - (b) if the *member* and the *child* is not present at the police station, —
 - (i) make an entry in his or her Pocketbook stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the confession is taken;
 - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the taking of the confession; and
 - (c) if requested thereto by the said magistrate or police officer, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate adult*.

21. Pointing-out by a child in conflict with the law

- (1) If a *child* indicates to a *member* that he or she is willing to make a pointing-out, the *member* must inform the *child* that he or she —
- (a) will be taken to a magistrate or a police officer (whoever is applicable), that the pointing-out will be recorded and may be used as evidence against him or her in court;
 - (b) is entitled to have a legal representative present while making the pointing-out; and
 - (c) is entitled to be assisted by his or her parent, *guardian* or an *appropriate adult* while making the pointing-out.

- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the pointing-out is made, the *member* must —
 - (a) establish who the legal representative is;
 - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while he or she makes the pointing-out and of the time when and place where the pointing-out will be made to enable him or her to attend while the pointing-out is made; and
 - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the legal representative when the *child* will be taken to the magistrate or the police officer for the pointing-out.
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the pointing-out is made, the *member* must —
 - (a) establish the whereabouts of the parent, *guardian* or the *appropriate adult*;
 - (b) contact the parent, *guardian* or the *appropriate adult* and inform him or her that the *child* wishes to have him or her present while he or she makes the pointing-out and of the time when and place where the pointing-out will be made to enable him or her to attend and assist the *child* during the pointing-out; and
 - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the parent, *guardian* or the *appropriate adult* when the *child* will be taken to the magistrate or the police officer for the pointing-out.
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the pointing-out is made, the *member* must —
 - (a) if the *member* and the *child* is present at the police station, —
 - (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the pointing-out is made;
 - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the making of the pointing-out; or
 - (b) if the *member* and the *child* is not present at the police station, —
 - (i) make an entry in his or her Pocketbook stating that the *child* was informed as set out in subparagraph (1) but that

the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her while the pointing-out is made;

- (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
- (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the making of the pointing-out; and
- (c) if requested whereto by the said magistrate or police officer, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate adult*.

22. Admission by a child in conflict with the law

- (1) If a *child* makes an admission, the *member* must inform the *child* that he or she is entitled to —
 - (a) remain silent and does not have to make any statement or answer any question and that anything that he or she says may be written down and may be used as evidence against him or her in court;
 - (b) consult with a legal representative before making any statement or answering any question; and
 - (c) be assisted by his or her parent, *guardian* or an *appropriate adult* before making any statement or answering any question.
- (2) If the *child* indicates that he or she wishes to consult with his or her legal representative before making any statement or answering any question, the *member* must —
 - (a) establish who the legal representative is;
 - (b) contact the legal representative and inform him or her that the *child* wishes to consult with him or her before making any statement or answering any question and when and where he or she may consult with the *child*; and
 - (c) record in the Occurrence Book (OB), if the *member* is at the police station or, if the *member* is not at the police station, in his or her Pocketbook, the steps that he or she has taken to inform the legal representative as set out in subparagraph (b).
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate adult* present before making any statement or answering any question, the *member* must —
 - (a) establish the whereabouts of the parent, *guardian* or the *appropriate adult*;
 - (b) contact the parent, *guardian* or the *appropriate adult* and inform him or her that the *child* wishes to have him or her present when making any statement or answering any question and when and where the statement will be taken or the questions will be asked to enable him or her to assist the *child* while the statement is being taken or the questions are being asked; and

- (c) record in the Occurrence Book (OB), if the *member* is at the police station or, if the *member* is not at the police station, in his or her Pocketbook, the steps that he or she has taken to inform the parent, *guardian* or the *appropriate adult* as set out in subparagraph (2)(b).
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her before making any statement or answering any question, the *member* must —
 - (a) if the *member* and the *child* is present at the police station, —
 - (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her before making any statement or answering any question;
 - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (iii) take any statement made by the *child* by properly completing Form SAPS 3M(m); or
 - (b) if the *member* and the *child* is not present at the police station, —
 - (i) make an entry in his or her Pocketbook stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present before making any statement or answering any question;
 - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (iii) take any statement made by the *child* by properly completing Form SAPS 3M(m).

23. Identity parade in which a child in conflict with the law appears as a suspect

- (1) An investigating officer in a case in which a *child* is a suspect, who decides that it is necessary for the purposes of the successful conclusion of the investigation of the case, for the *child* to appear as a suspect on an identification parade, must, well in advance before the identification parade is to be held so as to allow the *child* a reasonable opportunity to secure the presence of his or her legal representative and his or her parent, *guardian* or *appropriate adult* at the parade, inform the *child* —
 - (a) of the intention to hold the identification parade and the purpose of the identification parade;
 - (b) that he or she is legally obliged to participate in the identification parade; and
 - (c) that he or she is entitled to have his or her legal representative and his or her parent, *guardian* or *appropriate adult* present at the parade.

- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the identification parade is held, the investigating officer must —
 - (a) establish who the legal representative is;
 - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while the identification parade is held and of the time when and place where the identification parade will be held to enable him or her to attend the identification parade; and
 - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the legal representative as set out in subparagraph (b).
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate adult* present to assist him or her during the identification parade, the *member* must —
 - (a) establish the whereabouts of the parent, *guardian* or the *appropriate adult*;
 - (b) contact the parent, *guardian* or the *appropriate adult* and inform him or her —
 - (i) that the *child* wishes to have him or her present during the identification parade and of the time when and place where the identification parade will be held to enable him or her to attend and assist the *child* during the identification parade; and
 - (ii) that he or she is entitled to attend the identification parade and may assist the *child* during the identification parade; and
 - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the parent, *guardian* or the *appropriate adult* as set out in subparagraph (b).
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her during the identification parade, the *member* must —
 - (a) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate adult* present to assist him or her during the identification parade;
 - (b) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (c) if requested thereto by the *member* in charge of the identification parade, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate adult*.

- (5) The *member* in charge of an identification parade must, before the commencement of the parade, inform every *child* who will be required to appear as a suspect on the parade of the following:
 - (a) the nature of the allegations against him or her;
 - (b) the purpose of the identification parade;
 - (c) his or her right to legal representation and afford him or her a reasonable opportunity and assist him or her to contact his or her legal representative or to secure legal representation;
 - (d) his or her right to be assisted by his or her parent, *guardian* or an *appropriate adult* during the parade and assist him or her to contact his or her parent, *guardian* or an *appropriate adult* to secure the presence of his or her parent, *guardian* or an *appropriate adult* at the parade;
 - (e) his or her right to remain silent; and
 - (f) that he or she is legally obliged to participate in the identification parade.
- (6) If the *child* refuses to participate in the parade, he or she must not be physically taken to the parade. The *child* must, however, be informed that his or her refusal will be adduced as evidence against him or her during his or her trial and that the court may draw an adverse inference from the refusal.
- (7) The legal representative of the *child* or his or her parent, *guardian* or an *appropriate adult* may not participate or interfere with the proceedings and is merely an observer. The parent, *guardian* or an *appropriate adult* who attends the parade must be informed accordingly and must be allowed to support the *child* between the appearances of witnesses. The legal representative of the *child* may elicit facts with regard to the identification parade during cross-examination in court and even give evidence thereon.
- (8) The *child* must participate in the parade in such condition, position or clothing as the *member* in charge of the parade may determine. The *child* or his or her legal representative, parent, *guardian* or the *appropriate adult* may make reasonable requests regarding the appearance of the *child* on the parade. However, the *member* in charge of the parade may refuse to comply with such a request if it will be in the interest of justice to refuse - such as where the change of appearance will actually result in the *child* being disguised.
- (9) National Instruction 1 of 2007 on Identification Parades (as amended by subparagraphs (1)-(8)) applies to an identification parade in which a *child* appears as a suspect.

24. Receiving a report that a child was used by an adult to commit a crime

- (1) In terms of section 141(1)(d) read with section 305(1)(c) of the *Children's Act*, any adult person who uses, procures or offers a *child* for the commission of any offence listed in Schedules 1 or 2 of the *Criminal Procedure Act*, or attempts to do so, is guilty of an offence.
- (2) In terms of section 92 of *the Act*, a court official or *probation officer* must, if it comes to his or her attention that a *child* has been used by an adult to commit an offence referred to in Schedule 1 or 2 of the *Criminal Procedure Act*, report the information at his or her disposal in this regard, to a police official.
- (3) The person reporting the alleged commission of the offence, normally does so voluntarily (except in the circumstances referred to in subparagraph (2)) and is accordingly normally willing to provide all the information at his or her disposal to the police.
- (4) Any person reporting such information as a result of the legal duty to do so in terms of section 92 of *the Act*, may sometimes do so because of the legal duty on him or her to do so.
- (5) If a person (referred to in subparagraph (4)) reports such knowledge or his or her belief or suspicion to a police official, the *member* receiving the report may under no circumstances turn such a person away. Such a *member* must consider the information and —
 - (a) if the *member* is satisfied that there are reasonable grounds to believe that the offence established in section 141(1)(d) of the *Children's Act* was indeed committed, take an affidavit from the person setting out the information provided by that person, open a docket for the investigation of the offence that was allegedly committed and register the docket on the CAS system; or
 - (b) if the *member* is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed, consult with the Community Service Centre Commander who must make a comprehensive OB entry of the report and the reasons why the Commander is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed and provide the number of the OB entry to the person who made the report. The entry must include sufficient particulars of the person that made the report to enable him or her to be located and be interviewed if this turns out to be necessary.
- (6) Any person who reports the alleged commission of the offence established in section 141(1)(d) of the *Children's Act* to a *member* must be treated in a professional manner and must be reassured that the report is viewed in a serious light and will be thoroughly investigated.

25. Expungement of previous conviction and criminal record of a child

- (1) The Head: Criminal Record Centre may, in writing, authorise any *member* attached to the Criminal Record Centre of or above the rank of Brigadier, to expunge the criminal record of a person who was convicted of an offence while that person was a *child*, upon the receipt of a certificate of expungement issued by —
 - (a) the Director General of the Department of Justice and Constitutional Development; or
 - (b) the Minister of Justice and Constitutional Development.
- (2) The Head: Criminal Record Centre must file every certificate referred to in subparagraph (1) and keep record of the date of the receipt of the certificate, the date upon which the record of the conviction and sentence was removed and the official who removed it.
- (3) The Head: Criminal Record Centre must, upon receipt of a written request from any person whose criminal record has been expunged in accordance with this paragraph, in writing confirm that the criminal record of the *child* has been expunged.

ANNEXURE A

SCHEDULE 1

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R 2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved does not exceed R 1 500.
3. Malicious injury to property, where the amount involved does not exceed R 1 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. Crimen iniuria.
10. Defamation.
11. Trespass.
12. Public Indecency.
13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R 500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

ANNEXURE B

SCHEDULE 2

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, or theft by false pretences, where the amount involved exceeds R 2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved exceeds R 1 500.
3. Robbery, other than robbery with aggravating circumstances.
4. Malicious injury to property, where the amount involved exceeds R 1 500.
5. Assault, involving the infliction of grievous bodily harm.
6. Public violence.
7. Culpable homicide.
8. Arson.
9. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
10. Administering poisonous or noxious substance.
11. Crimen expositio infantis.
12. Abduction.
13. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively, where grievous bodily harm has not been inflicted.
14. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Exposure or display of or causing exposure or display of child pornography or pornography as referred to in sections 10 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Incest and sexual acts with a corpse, referred to in sections 12 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
17. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person ("flashing"), referred to in sections 9 or 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
18. Violating a dead body or grave.
19. Defeating or obstructing the course of justice.
20. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act No. 72 of 1982).
21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
22. Any contravention of section 2 of the Animals Protection Act, 1962 (Act No. 71 of 1962).
23. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R 500 but does not exceed R 5 000 in value.



24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

ANNEXURE C

SCHEDULE 3

1. Treason.
2. Sedition.
3. Murder.
4. Extortion, where there are aggravating circumstances present.
5. Kidnapping.
6. Robbery—
 - (a) where there are aggravating circumstances; or
 - (b) involving the taking of a motor vehicle.
7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
8. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, involving the infliction of grievous bodily harm.
9. Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography, referred to in sections 17, 18 and 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
10. Exposure or display of or causing exposure or display of child pornography or pornography to children referred to in section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, if that exposure or display is intended to facilitate or promote—
 - (a) the sexual exploitation or sexual grooming of a child referred to in section 17 or 18 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or
 - (b) the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography, as provided for in section 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
11. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation referred to in section 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
12. Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom, referred to in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
13. Trafficking in persons for sexual purposes referred to in section 71(1) and involvement in trafficking in persons for sexual purposes referred to in section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).
15. Any offence relating to—
 - (a) racketeering activities referred to in Chapter 2; or
 - (b) the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).
17. Any offence under any law relating to—
 - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
 - (b) the possession of firearms, explosives or armament.
18. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).
19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R 5 000 in value.
21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SAPS/SAPD 583

**INJURIES REGISTER (CHILDREN)
BESERINGSREGISTER (KINDERS)**

Serial no Volgno	Date Datum	Nature of injury / trauma and circumstances surrounding the injury / trauma Aard van besering/trauma en omstandighede rondom die besering/trauma	Signature and particulars of complainant / member reporting the incident Handtekening en besonderhede van klaer / lid wat voorval aanmeld	Nature of medical treatment Aard van mediese behandeling	Initial of Station Commander and date Paraaf van Stasiebevelvoerder en datum

-2-

Date report referred to Cluster Commander Datum waarop verslag verwys is na Groepsbevelvoerder	Instructions by Cluster Commander / Provincial Commissioner Instruksies van Groepsbevelvoerder / Provinsiale Kommissaris	Steps taken as result of the instructions of Cluster Commander / Provincial Commissioner Stappe gedoen na aanleiding van instruksies van Groepsbevelvoerder / Provinsiale Kommissaris

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

**INFORMATION NOTICE TO PERSON TO WHOM A CHILD YOUNGER THAN 10 YEARS IS
HANDED**

(Section 9(1) of the Child Justice Act, 2008 (Act No. 75 of 2008))

Particulars of child:

Full names and surname: _____

Age: _____ Alleged offence committed: _____

The above child, who is younger than 10 years, is alleged to have committed the above-mentioned offence and is hereby handed over to:

Particulars of parent, guardian or appropriate adult to whom the child is handed:

Name and surname: _____

Residential address: _____

Contact number: _____

Relationship with child _____

OR

If the parent or guardian of the child or an appropriate adult is not available, or it is not in the best interest of the child to be handed over to such a person, the child is hereby handed to the following child and youth care centre:

Name and address of Child and Youth Care Centre: _____

Contact particulars of Child and youth Care Centre: _____

Name and surname of person to whom child is handed: _____

Particulars of designated Probation Officer:

Name and surname _____

Contact particulars: _____

The child was handed over on (date) _____ 20 _____ at (time) _____ by (Person

number) _____ (rank) _____ (name and surname) _____

_____ stationed at (name of police station)

_____ contact number _____

Signature: Member _____

Signature of person to whom child was handed _____

VERY IMPORTANT: PLEASE NOTE THE INFORMATION ON THE BACK OF THIS NOTICE

**PLEASE NOTE:**

1. The child is below the age of 10 years and can therefore not be prosecuted in a court of law for the commission of the alleged offence.
2. The child must, as soon as possible, but within 7 days after the issuing of this Information Notice, be assessed by the probation officer (see particulars on the reverse side). The probation officer will contact you to make arrangements to assess the child. You must cooperate with the probation officer to ensure that the child is assessed.
3. After the assessment, the probation officer will decide on how to proceed with the case and will inform you of the next step in the case.
4. The child **MUST** comply with the decision taken by the probation officer. If the child fails to comply with the decision of the probation officer, the matter will be referred to a Children's Court and the child will be dealt with as a child in need of care and protection in accordance with the Children's Act, 2005 (Act No. 38 of 2005).
5. You must cooperate and ensure that the child complies with the decision of the probation officer after the assessment.

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

WRITTEN NOTICE TO APPEAR AT A PRELIMINARY INQUIRY*(Section 18 of the Child Justice Act, 2008 (Act No. 75 of 2008))*

Police station:	CAS/CR No:	Investigating officer of SAPS
Place of Preliminary Inquiry	Room No:	Date of preliminary inquiry

TO:

Full name and surname of child:

Residential address:

Work address /School attended:

Sex	M	F	Nationality:	Age:
ID No:				

You are, in terms of section 18 of the Child Justice Act, 2008 (Act 75 of 2008), called upon to appear at a preliminary inquiry on the date and at the place stated above at 08:30 to consider allegations against you in that on or about

and at or near
in the district of you unlawfully

The original notice was handed today to the aforementioned child personally and in the presence of (name and surname)

OR a copy was handed to

(name and surname) with ID no.

(residential address)

being the child's (state relationship with the child).

The child was warned to appear at the preliminary inquiry on the date, time and place indicated above and the parent, guardian or appropriate adult was warned to bring or cause the child to be brought to the preliminary inquiry on the date, time and place as indicated above

Place

Name and surname of member

Signature: Member

Official Stamp

ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN NOTICE

Signature: Child

Signature: Parent, Guardian or Appropriate adult

Date

Date

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

**WRITTEN REPORT ON DETENTION OF CHILD ARRESTED FOR SCHEDULE 1 OFFENCE
BEFORE APPEARING AT PRELIMINARY INQUIRY**

(Section 22(2) of the Child Justice Act, 2008 (Act No. 75 of 2008))

CAS/CR No: _____

Particulars of child

Full names and surname: _____

Age: _____ Date of birth: _____ Sex: _____

Date of arrest: _____ Time of arrest: _____

Station where the child is detained: _____

Alleged offence(s): _____

Reasons for detention of child

Motivate why the child could not be released from custody:

The parents of the child, an appropriate adult or the guardian of the child could not be located or is not available and all reasonable efforts have been made to locate the parents, appropriate adult or guardian. Explain the steps taken:

OR

There is a substantial risk that the child may be a danger to any other person or to himself or herself. Explain the risks if the child is released: (Attach documentation, if relevant to the risk)

Rank: _____ Persal No: _____

Name and surname: _____

Signature: Member _____

Official Stamp

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

**WRITTEN REPORT ON FAILURE TO NOTIFY A PARENT, GUARDIAN OR APPROPRIATE
ADULT OF ARREST OF CHILD**

(Section 20(3)(d) of the Child Justice Act, 2008 (Act No. 75 of 2008))

CAS/CR No: _____

Particulars of child

Full names and surname: _____

Age: _____ Date of birth: _____ Sex: _____

Date of arrest: _____ Time of arrest: _____

Place where the child is detained: _____

Alleged offence(s): _____

Particulars of parent appropriate adult or guardian (If known)

Full names and surname: _____

Residential address: _____

Contact details: _____

Steps taken to notify parent, guardian or appropriate adult of arrest of the child (including why these were unsuccessful): (Provide details of steps taken, including the manner and time of each attempt) _____

Rank: _____ Persal No: _____

Name and surname: _____

Signature: Member _____

Official Stamp

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

WRITTEN REPORT ON FAILURE TO NOTIFY THE PROBATION OFFICER OF THE ARREST OF A CHILD

(Section 20(4)(b) of the Child Justice Act, 2008 (Act No. 75 of 2008))

CAS/CR No: _____

Particulars of child:

Full names and surname: _____

Age: _____ Date of birth: _____ Sex: _____

Date of arrest: _____ Time of arrest: _____

Place where the child is detained: _____

Alleged offence(s): _____

Particulars of probation officer:

Name and surname: _____

Stationed at: _____

Contact Details: _____

Steps taken to notify the probation officer of arrest of the child (including why these were unsuccessful): (Provide details of attempts made, including the manner and time of each attempt) _____

Rank: _____ Persal No: _____

Name and surname: _____

Signature: Member _____

Official Stamp

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

WRITTEN REPORT ON INJURY SUSTAINED OR SEVERE TRAUMA SUFFERED BY A CHILD
(Section 78 of the Child Justice Act, 2008 (Act No. 75 of 2008))

Police station _____ CAS/CR _____

Injury Register (SAPS 583) no. _____

PART A**(TO BE COMPLETED BY THE MEMBER TO WHOM IT WAS REPORTED OR WHO OBSERVED IT)****Particulars of child**

Full names and surname: _____

Age: _____ Date of birth/ID no: _____

Date and time of arrest: _____

Alleged offence/s committed: _____

Nature of injury / severe psychological trauma

Describe nature of injury / severe psychological trauma: _____

Describe the steps taken to obtain medical treatment and the outcome thereof _____

State the nature of medical treatment received by the child: _____

*(Attach a copy of the medical report to this Report)***OR**

If it is impossible in the circumstances to obtain medical treatment for the child, state the reasons why this was impossible:



STAATSKOERANT, 2 SEPTEMBER 2010

No. 33508 57

State future medical treatment required, if any:

If the complaint of injury or trauma was reported by someone other than the child, the particulars of that person:

Full names and surname:

Residential address:

 Contact number.

Relationship to child:

Signature: Member

Date

PART B
(TO BE COMPLETED BY THE STATION COMMANDER)

Remarks / Instructions

Official Stamp

Signature: Station Commander

PART C
(TO BE COMPLETED BY THE CLUSTER COMMANDER)

Remarks / Instructions

Official Stamp

Signature: Cluster Commander

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

WRITTEN REPORT ON TRANSPORTATION OF CHILD WITH ADULTS*(Sections 33(2)(c) of the Child Justice Act, 2008 (Act No. 75 of 2008))*

CAS/CR No: _____

Particulars of the child:

Full names and surname: _____

Age: _____ Date of birth: _____ Sex: _____

Date of arrest: _____ Place of detention: _____

Alleged offence/s: _____

Particulars of the transportation:

Date of transportation: _____ Time of transportation: _____

Child was transported from (place) _____ to _____
(place)

Particulars of adults transported with the child: _____

State attempts that were made to transport the child separately from adults and the reason why the child was not transported separately from adults: _____

State measures taken to protect the child during the transportation: _____

Signature: Member _____

Official Stamp

Persal no: _____ Rank: _____

Initials and surname of member: _____

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

APPLICATION FOR ACCESS TO CUSTODY REGISTER

(Section 28(4) of the Child Justice Act, 2008 (Act No. 75 of 2008))

To: The Station Commander: _____ CAS/CR No: _____
 _____ Police station

Particulars of applicant

Full names and surname: _____

Identity Number: _____

Capacity: _____

Occupation: _____

Name of employer/ business: _____

Residential address: _____

Contact particulars: _____

Reasons for examining the Custody Register

Explain why you are requesting to have access to the Custody Register:

Signature: Applicant _____

Date _____

DECISION OF THE STATION COMMANDER OR THE PERSON DESIGNATED BY THE STATION COMMANDER

Tick the appropriate box. If access to the Custody Register is refused, state the reasons for your decision below.

Access Granted		Access Refused	
----------------	--	----------------	--

Reasons for refusing access to the Custody Register:

Signature: Station Commander / Designated Person _____

Official Stamp

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

NOTIFICATION OF ERROR REGARDING PLACEMENT*(Section 31 of the Child Justice Act 2008 (Act No. 75 of 2008))*

Case No: _____

To: The Clerk of the Child Justice Court:

Particulars of the child:

Full names and surname: _____

Age: _____ Date of birth: _____

Alleged offence(s): _____

Particulars of the placement order:

Terms of order _____

Date on which order was issued: _____

Particulars of presiding officer who issued the order: _____

Particulars of the Community Service Centre Commander who received the child at the police station in terms of the placement order and who refers the child back

Name and surname: _____

Reasons for referring the child back to the presiding officer: _____

Attach a copy of the warrant authorising the detention of the child

Signature: _____
Community Service Centre Commander

Official stamp

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

INFORMATION NOTICE UPON THE ARREST OF A CHILD*(Sections 20(3)(d) and (if applicable) 27(a) of the Child Justice Act, 2008 (Act No. 75 of 2008))***Particulars of child:**

Full names and surname: _____

Age: _____ Date of birth: _____ Sex: _____

Date of arrest: _____ Time of arrest: _____

Place where the child is detained: _____

Alleged offence(s): _____

(Schedule no: _____)

Date of preliminary inquiry: _____

Place of preliminary inquiry: _____

The above child is alleged to have committed the above-mentioned offence and has been arrested by.

Initial and surname of arresting official: _____

Stationed at: _____

***Child and youth care centre (if the child is detained in a child and youth care centre): (*delete if not applicable)**

To: _____ (Person receiving the child at the child and youth care centre)

The above child has been placed in the centre and you are hereby authorised to detain the child until the preliminary inquiry referred to above. Signature of person receiving the child: _____

Signature: Member _____

Particulars of designated Probation Officer:

Name and surname: _____

Contact particulars: _____

VERY IMPORTANT: PLEASE NOTE THE FOLLOWING INFORMATION:

1. In respect of offences referred to in Schedules 1 or 2 of the Act, the child may be released on bail by a prosecutor. If the child is accused of the commission of an offence referred to in Schedule 3 of the Act, the child may not be released on bail and will remain in custody until his or her appearance at the preliminary inquiry.
2. The child will be assessed by the probation officer (see particulars above). Please contact the probation officer to make arrangements to have the child assessed by the probation officer. You must cooperate with the probation officer to ensure that the child is assessed.
3. After the assessment, the probation officer will decide on how to proceed with the case and will inform you of the next step in the case.
4. The child **MUST** comply with the decision taken by the probation officer. If the child fails to comply with the decision of the probation officer, the matter will be referred to a Children's Court and the child will be dealt with as a child in need of care and protection in accordance with the Children's Act, 2005 (Act No. 38 of 2005).
5. You must cooperate and ensure that the child complies with the decision of the probation officer after the assessment.

NATIONAL INSTRUCTION 6 OF 2014

THE PREVENTION AND COMBATING OF TORTURE OF PERSONS

1. Background

The right not to be tortured is entrenched as a fundamental right in Chapter 2 of the Constitution. The Prevention and Combating of Torture of Persons Act, 2013 (Act No.13 of 2013) criminalises torture and other offences associated with the torture of persons. The purpose of this instruction is to provide clear direction to members regarding their obligations in terms of *the Act*.

2. Definitions

In this document, unless the context otherwise indicates, —

- (a) **“interview”** means the interview by a *member* of a person, who is an accused or suspect, regarding his or her alleged involvement in the commission of an offence or alleged offence, but excludes the interviewing of a person who is not suspected of having been so involved at the time of the interview (it also includes the initial interview by a member of a victim of alleged torture);
- (b) **“the Act”**, the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013);
- (c) **“torture”**, as defined in section 3 of *the Act*, means:
 - “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person —
 - (a) for such purposes as to —
 - (i) obtain information or a confession from him or her or any other person;
 - (ii) punish him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or
 - (iii) intimidate or coerce him or her or any other person to do, or to refrain from doing, anything; or
 - (b) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”; and
- (d) **“transcribed”** means a representation in writing or text of an audio recording.

3. Prohibition against torture

- (1) Section 4 of *the Act* provides that it is an offence for any person to —
 - (a) commit *torture*;
 - (b) attempt to commit *torture*;
 - (c) incite, instigate, command or procure any person to commit *torture*; or
 - (d) participate in *torture*, or conspire with a public official to aid or procure the commission of *torture*.
- (2) Section 4 of *the Act* provides that, despite any other law to the contrary, including customary international law, the fact that a member or employee who is accused of *torture* —
 - (a) is or was a head of state or government, a member of a government or parliament, an elected representative or a government official; or
 - (b) was under a legal obligation to obey a manifestly unlawful order of a government or superior,
 is neither a defence to a charge of committing an offence referred to in section 4 of *the Act*, nor a ground for any possible reduction of sentence, once that person has been convicted of an offence set out in section 4 of *the Act*.
- (3) No member may *torture* any person, permit or instruct anyone else to do so, or tolerate the *torture* of another by anyone. The same applies to an attempt to commit *torture* and to an act by any person which constitutes complicity or participation in *torture*. No exception, such as a state of war or a threat of war, state of emergency, internal political instability or any other public emergency will serve as justification for *torture* - there can simply be no justification for *torture*, ever.

4. Acting upon an order, reporting and complaints regarding acts of torture

- (1) An order by a superior, or any other authority, that a person be *tortured*, is unlawful and may not be obeyed.
- (2) If such an order is given, or if a member or an employee has reason to believe that a person has been *tortured*, he or she must immediately report this to the relevant station commander or unit commander or, in the event that the station commander or unit commander is involved, to the provincial commissioner concerned (if the order has been given to a member or an employee resorting under Head Office, or such member or employee has reason to believe that a person has been *tortured*, he or she must report this to the relevant divisional commissioner).

- (3) A station commander, unit commander, provincial commissioner or divisional commissioner to whom a report set out in subparagraph (2) has been made, must ensure that any allegation or complaint regarding *torture*, is investigated and take steps to protect the member, employee or other person who made the report, against any form of victimization.
- (4) A member or an employee who has reason to believe that a person is being *tortured*, or that an attempt is being made to do so, must immediately take all reasonable steps to put an end thereto.
- (5) If a suspect or person in custody raises a complaint regarding *torture*, the complaint must immediately be reported to the station commander or, where appropriate, the provincial commissioner or divisional commissioner, who must report this to the relevant provincial office of the Independent Police Investigative Directorate: Provided that this does not exclude a person in custody to submit a complaint regarding *torture* directly to the Independent Police Investigative Directorate. An entry of all steps taken must be made in the Occurrence Book (SAPS 10) at the station where the matter was reported.
- (6) If an investigation reveals that a member or an employee committed, attempted to commit or acted as an accomplice in the commission of *torture*, it constitutes serious misconduct and —
 - (a) disciplinary proceedings must immediately be instituted against such a member or employee; and
 - (b) a case must be registered on CAS (the relevant offences are set out in section 4(1) and (2) of *the Act*).
- (7) The commander of a member or an employee, against whom disciplinary proceedings have been instituted due to allegations that he or she committed, attempted to commit or acted as an accomplice in the commission of *torture*, must on a monthly basis report progress to the relevant provincial or divisional commissioner on the disciplinary proceedings against the member or employee. The chairperson of a disciplinary hearing must provide the required information to the commander of such member or employee.
- (8) Every provincial and divisional commissioner must keep record of all disciplinary proceedings instituted on account of allegations of torture and what the outcome of the proceedings was in each case. Every provincial and divisional commissioner must at the end of each month report to the Divisional Commissioner: Personnel Management (who must keep record thereof) all disciplinary proceedings instituted on account of allegations of torture and what the outcome of the proceedings was in each case.

- (9) The commander of a member or an employee, against whom criminal proceedings have been initiated due to the allegation that he or she committed, attempted to commit or acted as an accomplice in the commission of *torture*, must on a monthly basis report progress on the matter to the relevant provincial or divisional commissioner. Every provincial and divisional commissioner must keep record of any criminal proceedings initiated against any member or employee, resorting under him or her, on account of an allegation of torture and the outcome of the matter. Every provincial and divisional commissioner must at the end of each month report to the Divisional Commissioner: Personnel Management (who must keep record thereof) any criminal proceedings initiated on account of an allegation of torture (as set out above) and the outcome thereof.

5. Interviewing of persons in custody

Every member must follow the following instructions when interviewing a person in custody:

- (1) Before the commencement of the interview of a person in custody who has been arrested for the alleged commission of an offence, members conducting the interview must identify themselves and inform the person, in a language which he or she understands, —
- (a) of the offence in respect of which he or she will be interviewed;
 - (b) of his or her right to consult with a legal practitioner of his or her choice or, should he or she prefer, to apply to be provided with the services of a legal practitioner by the state;
 - (c) that he or she has the right to remain silent and that anything he or she says may be used as evidence in a court of law; and
 - (d) of his or her right to apply to be released on bail.
- (This must be recorded on form SAPS 3M(m))
- (2) A suspect who is a child or mentally disabled person may only be interviewed in the presence of a parent, guardian or an appropriate adult and, if the suspect so prefers, a legal practitioner. If a parent, guardian, an appropriate adult or legal practitioner is not present when the child or mentally disabled person is informed as set out in subparagraph (1), the information must be repeated in the presence of such person(s).
- (3) If a suspect indicates his or her willingness to make a confession or to point out anything, and he or she —
- (a) is an adult, he or she must, —
 - (i) once again be informed of his or her right to consult with a legal practitioner of his or her choice or, should he or she

- prefer, to apply to be provided with the services of a legal practitioner by the state; and
 - (ii) be medically examined (at the nearest provincial hospital or, by the district surgeon or, if no provincial hospital or district surgeon is available, by another registered medical professional) before and after making the confession or performing the pointing out; or
 - (b) is a child, the procedure set out in the National Instruction on children in conflict with the law (National Instruction 2 of 2010) must be followed.
- (4) A suspect who is under the influence of intoxicating liquor, drugs, medicine, or who is in a state of shock must not be interviewed, unless the interests of justice require otherwise.
- (5) The following rules apply with respect to the duration of an interview:
- (a) A person in custody must, during every period of 24 hours be allowed an uninterrupted period of at least 8 hours to rest, free from interviewing, travelling or any interruption arising out of the investigation concerned. This should usually be at night and this period may only be interrupted or delayed, if the interests of justice require otherwise.
 - (b) If it is necessary to continue the interview for more than two hours, the person being interviewed must be allowed a rest period of at least ten minutes after the completion of every two hour period of the interview.
 - (c) A person in custody must be afforded a reasonable opportunity to enjoy his or her meal during meal times and may not be interviewed while doing so.
- (6) Not more than two members may be present during the interview of a suspect, and not more than three teams of two members each may conduct the interview of a suspect: Provided that, if the suspect poses a serious escape risk or displays violent behaviour, more than two members may be present during the interview.
- (7) Whenever reasonably possible, a person of the same gender as the suspect, must be present during the interview (preferably a female member or employee should be present when a female suspect is interviewed).
- (8) As far as practicable, interviews must take place in a room or office which must be adequately heated, lit and ventilated.

- (9) A note must be made in the Investigation Diary (SAPS 5) of the fact that the interview has taken place and what transpired during the interview and that it has been recorded electronically (if the interview is recorded electronically), the time, duration and the date and the identification number of the master disk, if applicable.

6. Objections and complaints during an interview

- (1) Any objection raised by a suspect during the interview, must be recorded. After the objections have been recorded, or after the suspect has refused to have his or her objections recorded, the member must turn off the equipment (if the interview is recorded electronically). In such an event, he or she must record that the equipment will be turned off, give the reasons therefor, and turn it off.
- (2) If the suspect lodges a complaint concerning his or her detention or if he or she gives information concerning a matter not related to his or her interview, such complaint or information must be recorded unless the person in custody objects to it being recorded. The decision to continue with the interview is that of the member. If it is continued, the member must inform the suspect that the complaint will be dealt with after the interview. The member must then deal with it as soon as the interview has been concluded or as soon as practicable thereafter.

7. Interruptions and short breaks during an interview

- (1) Should the interview of a person in custody be interrupted, the member conducting the interview must, on the resumption of the interview, once again inform such person as set out in paragraph 5(1). This step must also be duly recorded.
- (2) A short break, in which both the suspect and the member remain in the room, must be recorded. The equipment (if the interview is recorded electronically) may be switched off, but it is not necessary to remove the disk(s). Resumption of the interview must be recorded.
- (3) Whenever there has been a break in the interview, the member conducting the interview must ensure that the suspect is still aware of his or her constitutional rights. If there is doubt, the suspect must once again be informed of his or her constitutional rights as set out in paragraph 5(1) (if the interview is recorded electronically).
- (4) In the event of a failure of equipment (if the interview is recorded electronically) which can be rectified quickly, this must be done and the reason for any break must be recorded and the time when the interview resumes. Where the further use of the equipment is impossible and no

alternative is readily available, the interview may continue without being electronically recorded.

8. Electronic recording

If a system of electronic recording of interviews is available, the system must be used during the interview of a suspect and the following instructions must be adhered to:

- (1) The electronic recording of an interview may only be done after the suspect has been informed that the interview will be electronically recorded and the entire interview (and not just a part thereof) must be recorded.
- (2) When a suspect is brought into the interview room, the member must, without delay, but in sight of the suspect, load the equipment with previously unused disks and set it to record.
- (3) The member must commence the interview by stating –
 - (a) that the interview is being electronically recorded;
 - (b) the name and rank of the member, the name of the interpreter and the name and rank of any other member present;
 - (c) the name of the suspect and any other party present (such as a legal practitioner);
 - (d) the date, time of commencement and place of the interview;
 - (e) inform the suspect as contemplated in paragraph 5(1); and
 - (f) what will happen to the recording after the interview.
- (4) If a suspect refuses to answer questions while the answers are being electronically recorded, but indicates his or her willingness to answer when the answers are not electronically recorded, this refusal and indication of his or her willingness must be recorded and the recording equipment may then be switched off before the interview continues. The member must thereafter again inform the suspect as contemplated in paragraph 5(1).
- (5) If a disk is reaching its end, the member must inform the suspect and round off that part of the interview, remove the disks and insert new disks, which must be opened in the presence of the suspect. The disk must be sealed with a master label and be marked with an identification number (such as the CAS number of the case) immediately after it has been removed from the equipment.
- (6) An interruption of the interview involving the suspect leaving the interview room, must be recorded, together with the reason for it and the duration thereof. The disk(s) must then be removed from the

equipment and be dealt with in the same manner as if the interview had been concluded.

- (7) If a disk is damaged during the interview, it should be sealed as a master disk and marked with an identification number in the presence of the suspect, and the interview should be resumed where it stopped. The undamaged disk (if there is one) should be copied and the original sealed in the usual way. If equipment for copying the undamaged disk is not readily available, both disks must be sealed in the manner set out above, and the interview resumed.
- (8) At the conclusion of an interview, including the taking and reading back of any written statement, the person in custody must be offered the opportunity to clarify anything he or she has said and to add anything he or she wishes to add. The time must then be recorded and the equipment switched off.
- (9) The disk must be used as a master disk, which must be sealed with a master label and marked with an identification number and treated as an exhibit. The member must sign the label and ask the suspect and any third party to sign it as well. If either, or both, refuse to sign the label, a member must be called into the interview room and be asked to sign it.
- (10) The member must explain to the suspect the use of the recording, and the arrangements for obtaining access to it. A transcribed copy of the interview may, at the request of the suspect, be made available to him or her.
- (11) The station commander of every police station is responsible for the safekeeping of the master disks. Seals may not be broken until they have been handed in as evidence at criminal proceedings. The master disks must be booked into the SAPS 13 register and on CAS.

9. Training

Any member who presents training on arrest, detention or the investigation of crime must ensure that every member is fully aware of the prohibition against torture. Every member must be trained to properly deal with persons in his or her custody and how to conduct an interview in a proper manner.

NATIONAL INSTRUCTION 8 OF 2016

MEDICAL TREATMENT AND HOSPITALIZATION OF A PERSON IN POLICE CUSTODY

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1. Purpose and background

It is the responsibility of the South African Police Service to ensure that a *person in police custody* receives medical treatment whenever it is necessary. From the moment of arrest the arresting member, and thereafter, every member who exercises control over a *person in police custody*, is responsible to promptly take the necessary steps to ensure that such person receives medical treatment whenever necessary.

2. Definitions

In this Instruction unless the context otherwise indicates, —

- (a) “*community service centre commander*” means the member in charge of the community service centre and the member in charge of the detention facilities at an office under the control of the Service and includes a member who is performing the functions of a *community service centre commander*;
- (b) “*child*” means a person under the age of 18 years;
- (c) “*medical service provider*” means a medical or health practitioner who is registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974) (including service providers at hospitals or clinics, and pharmacies for the dispensing of medicine);
- (d) “*detention facility*” means a police cell, lock-up or temporary detention facility which is under the control of the Service; and
- (e) “*person in police custody*” means a person who is in the custody of the Service and who has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention.

3. Medical treatment of a person in police custody upon arrest

- (1) Once a person (adult or *child*) has been arrested, the arresting member has a legal duty to take care of the arrested person and to ensure that medical treatment is provided to the arrested person whenever necessary.
- (2) If the arrested person shows any signs that he or she is seriously ill or is seriously injured, irrespective of whether the injury was sustained during the arrest or not, the member concerned must —

- (a) exercise his or her discretion and decide whether the person should be taken for urgent medical treatment even before he or she is taken to the police station; and
 - (b) if the arrested person, in the opinion of the member concerned, needs urgent medical treatment, decide whether the person is fit to be transported by police vehicle or should rather be transported by ambulance, and act accordingly. (Please note paragraph 15 of National Instruction 2 of 2010 with regard to the transportation of children.)
- (3) If a member is in doubt as to whether urgent medical attention is needed, he or she should rather take the necessary steps to arrange for such treatment. Members must enquire from every arrested person before his or her detention whether he or she is currently being treated for a medical condition. If the arrested person is treated with prescription medication (or chronic medication) or indicates that he or she suffers from a chronic condition, arrangements must be made for the collection of the medication (see paragraph 9(4) of this Instruction) or the person must be taken to a *medical service provider* in order for the person to be examined and such medication to be obtained, if applicable.
- (4) The station commander must issue station orders informing the members under his or her command of the applicable *medical service provider* that may be utilised for this purpose.
- (5) If an arrested person is a child and has sustained any injury or suffered severe psychological trauma during the arrest or while in police custody, the member must take the *child* for immediate and appropriate medical treatment. Upon his or her arrival at the police station, the member must complete Part “A” of the Written Report on injury sustained or severe trauma suffered by *child* (SAPS 583(f)) recording the nature of the injuries sustained or severe psychological trauma suffered by the *child* and the steps taken to treat the *child*.
- (6) The *community service centre commander* must —
 - (a) make an entry in the Injury Register (SAPS 583) regarding the injuries sustained or severe psychological trauma suffered by the *child* and the steps taken to treat the *child*; and
 - (b) immediately hand over the Written Report on injury sustained or severe trauma suffered by *child* (SAPS 583(f)), together with a copy of the medical report, if applicable, to the station commander or, if the station commander is not immediately available, ensure that the Written Report on injury sustained or severe trauma suffered by *child* (SAPS 583(f)) reaches the station commander (or the member in charge of the station in the absence of the

station commander) immediately when he or she becomes available.

- (7) The station commander must —
 - (a) speak to the *child*, if the *child* is still in police custody, or, if not, in another way, satisfy himself or herself that the *child* has received sufficient and proper treatment for the injuries sustained or severe psychological trauma suffered by him or her;
 - (b) complete Part “B” of the Written Report on the injury sustained or severe trauma suffered by *child* (SAPS 583(f)) and ensure that a copy of the Report is filed, together with a copy of the medical report, if applicable, under “B” in the docket;
 - (c) submit the Report, together with a copy of the medical report, if applicable, to the Provincial Commissioner concerned; and
 - (d) submit a copy of the Report and medical report, if applicable, to the provincial office of the Independent Police Investigation Directorate.
- (8) The Provincial Commissioner concerned must, after having considered the Written Report and the medical report, if applicable, complete Part “C” of the Written Report on injury sustained or severe trauma suffered by *child* (SAPS 583(f)), and, if he or she is satisfied that —
 - (a) further steps are necessary, issue the necessary instructions to the station commander on further steps to be taken; and
 - (b) no further steps are necessary, submit a copy of the Written Report, together with a copy of the medical report, if applicable, to the Divisional Commissioner: Visible Policing.
- (9) Any instruction given by the *medical service provider* concerning an adult or child must be carried out without delay. If removal to a hospital is ordered, all precautions must be taken to guard the *person in police custody* at the hospital.

4. Obtaining medical treatment for a person in custody during detention at a police station

- (1) If a *person in custody*, on arrival at the police station, shows any injury, appears to be suffering from physical or mental illness, fails to react to sensory stimulation or displays a lack of awareness and such person, in the opinion of the *community service centre commander*, needs medical attention for the injury or illness, the *community service centre commander* must act as set out in subparagraphs (2) and (3) below. This also applies if the *community service centre commander* is in doubt as to whether medical attention is needed.

- (2) If a person needs urgent medical attention, the *community service centre commander* must have the person transported, either by police vehicle or an ambulance, to the nearest provincial hospital or call the district surgeon and, if no provincial hospital or district is available, call the nearest available appropriate *medical service provider*. The station commander must issue station orders informing the members under his or her command of which *medical service providers* to utilise for this purpose. These orders must at all times be available in the community service centre and must be reviewed on a regular basis to ensure effective administration.
- (3) If urgent medical attention is not required but the *community service centre commander* is of the opinion that medical attention is necessary, he or she must make the necessary arrangements to have the person examined at the nearest provincial hospital (or, if not available, by another *medical service provider*). The station commander must ensure that particulars relating to the applicable provincial hospital or other *medical service provider* that may be utilised for this purpose are at all times available in the community service centre.
- (4) All medical consultations must be conducted in private, out of sight and hearing of a member, unless the medical practitioner specifically requests otherwise.
- (5) Any instruction given by the *medical service provider* must be carried out without delay. If removal to a hospital, other than a Correctional Services hospital or sickbay is ordered, all precautions must be taken to guard the *person in custody* at the hospital.
- (6) Medication prescribed by a medical practitioner for a *person in custody* must be administered in accordance with paragraph 9 of this Standing Order.

5. Recording of steps taken

All steps that were taken with regard to medical treatment of a *person or child in police custody* must be fully recorded in the Occurrence Book. The outcome of any medical examination must similarly be recorded, together with the name of the *medical service provider* and where the examination had taken place. If more than one entry be required, the different entries must be cross-linked in the Occurrence Book. The number of the first entry must be recorded in the Custody Register (refer to Standing Order 362 for detailed instructions).

6. Submission of written report concerning torture to station commander

- (1) Whenever a *person in custody* is examined by a medical service provider provided by the state, the medical practitioner must be requested to supply the station commander with a written report, which must include the following:
 - (a) any statements made by the person concerned which are relevant to the medical examination (including the description by the person concerned of his or her state of health and any allegations of *torture* that he or she may have made);
 - (b) a description of the objective medical findings based on the medical examination; and
 - (c) the conclusions of the medical practitioner in the light of subparagraphs (a) and (b).
- (2) Whenever a complaint regarding *torture* is made to a medical service provider by a *person in police custody* and the *medical service provider* is of the opinion that the examination revealed indications which tend to confirm such allegations, the *community service centre commander* or station commander must request the medical practitioner to send a copy of the written report to the nearest office of the Independent Police Investigative Directorate. The *community service centre commander* or station commander must ensure that the matter is reported in accordance with paragraph 4 of National Instruction 6 of 2014 (The Prevention and combating of torture of person).
- (3) The written report received by the station commander must be filed with the remand warrant and body receipts.

7. A request to consult with a specific medical service provider

- (1) Irrespective of whether a *person in police custody* is, in the view of the *community service centre commander*, sick or injured, such person must, if he or she should request to do so, be permitted to consult with his or her *medical service provider* at his or her own expense.
- (2) In such an event, the *community service centre commander* must contact the medical practitioner and inform him or her of the request and that such a consultation will be for the account of the *person in police custody* and that the Service will not pay for such consultation or treatment. The *person in police custody* must be permitted to speak to the medical practitioner. The steps taken with regard thereto must be

recorded in the Occurrence Book and the procedure as set out in paragraph 5 above, must be followed at all times.

- (3) All reasonable instructions from the *medical service provider* must be adhered to. If a member doubts whether a particular instruction is reasonable or not, a *medical service provider* at a provincial hospital may be contacted to verify this. If the *medical service provider* is of the opinion that the instructions are unreasonable and that alternative steps must be taken, he or she must be requested to confirm it in writing and the written instructions must be adhered to.

8. Hospitalization and medical expenses of a person in police custody

(1) Completion of SAPS 70

- (a) Form SAPS 70 must be completed in triplicate when —
- (i) a *person* (adult or child) in police custody is admitted in a hospital for treatment;
 - (ii) a *person in police custody* receives medication or medical assistive devices from a *medical service provider*;
 - (iii) any other medical expenses are incurred in respect of the treatment of a *person in police custody* of the Service;
 - (iv) a *child* detained with his or her mother needs medical treatment;
 - (v) a *child* in police custody, not yet admitted at a place of safety, needs medical treatment;
 - (vi) undocumented person in police custody needs medical treatment; or
 - (vii) a person is in protective custody in terms of National Instruction 4 of 2015 (Prevention and Combating of Trafficking in Persons) and needs medical attention.
- (b) The SAPS 70 must be completed in legible print, using a black pen and the member completing the form must ensure that the applicable block is marked and the following details are completed in full on the form:
- (i) the station name, address;
 - (ii) service providers name;
 - (iii) full name and surname must be completed;
 - (iv) the CAS number (serial number, month and year);
 - (v) the name of the station where the CAS was registered;
 - (vi) the custody register number (serial number, month and year);
 - (vii) the date of arrest must be completed in full;
 - (viii) the charge;

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- (ix) the gender of the person;
 - (x) the nature of the injury or illness must be completed;
 - (xi) the SAPS 70 must be signed (e.g. rank, Persal number and name) of a commander, station commander or authorized person; and
 - (xii) office stamp.
 - (c) A SAPS 70 may only be completed in respect of one person.
 - (d) A SAPS 70 must be issued for each service provider (If a person is however treated at a hospital, one SAPS 70 must be issued for all service providers at that hospital for services like x-rays, anaesthetics, ward fees, surgery. Where services are provided at different service points separate SAPS 70 forms must be issued).
 - (a) A SAPS 70 form is valid for only three months after the date of issuing thereof for the same illness and same service provider.
- (2) **A SAPS 70 form may not be issued for —**
- (a) a person who is not in police custody;
 - (b) awaiting trial detainee who has been transferred to Correctional Services;
 - (c) a person who has been released;
 - (d) innocent person or bystander injured during a police operation or at a scene of a crime;
 - (e) a person referred by a court for observation to a mental institution;
 - (f) for the following medical tests: age determination, drunken driving, DNA, HIV, rape, assault, etc.; or
 - (g) for a victim of crime.
- (3) **Police station issuing a SAPS 70**
- (a) The police station physically detaining the person in police custody is liable for the expenditure linked to a SAPS 70.
 - (b) A SAPS 70 form may only be used by the police station to which it has been allocated.

- (c) In case where police cells are permanently closed or temporally closed, such a police station is not allowed to issue a SAPS 70 until persons can be physically detained.
- (d) A SAPS 70 may only be issued by the police station where the person is detained.
- (e) The SAPS 70 is a serial number controlled form (with face value) and it is therefore the responsibility of the station commander or his or her delegate to inspect the SAPS 70 register on a monthly basis.
- (f) Police stations with cells (detention facilities) are responsible for the capturing of all issued SAPS 70 forms (by a financial clerk on Polfin system). All SAPS 70 form issued must be captured on the Polfin system within 24 hours after the issuing thereof unless the SAPS 70 was issued during a weekend or on a public holiday, in which case it must be capture on the first working day thereafter.

(4) Disposal of SAPS 70

- (a) The original SAPS 70 form and first register copy must be handed to the relevant service provider.
- (b) The original, first register copy or a photocopy of the SAPS 70 form must be attached to the original or copy of the medical invoice or account and the service provider must submit these documents directly to Head Office, Division: Financial Management: Sub-section: Miscellaneous Medical, Private Bag X94, Pretoria, 0001, for payment.
- (c) The second copy of the form must remain in the SAPS 70 register at the relevant police station for inspection and audit purposes.
- (d) The SAPS 70 serial number must be recorded in the appropriate column of the SAPS 14 register (Custody Register) under the heading "Medical particulars".

(5) General

- (a) If, as a result of serious illness or injuries, a *person in police custody* is urgently admitted to a hospital prior to him or her being admitted into police cells, it will be the responsibility of the escort or the member who accompanies the *person in police custody*, to ensure that the form SAPS 70 is completed in triplicate and his or her statement should accompany the SAPS 70 stating that the person received medical treatment before being detained in a police cell.

- (b) After admission to the hospital it is the duty of the escort or member concerned to ensure that the particulars of the *person in police custody* are entered into the Custody Register of the relevant station.
- (c) Admission to a private hospital should preferably be ordered only if appropriate accommodation is not available in a provincial hospital or in an exceptionally urgent case. (A report must be attached to indicate that such accommodation is not available at the provincial hospital or required service is not available and a letter should be obtained from the relevant provincial hospital providing reasons for not accommodating the person or transferring person).
- (d) The member presenting the SAPS 70 form in respect of the treatment of a *person in police custody* must inform the person in charge of admissions at the hospital or the *medical service provider* concerned, that all invoices received for payment regarding the treatment of the person, may be subject to clinical auditing by a professional institution appointed by the South African Police Service.

9. Administering medication

- (1) If a *medical service provider* prescribes medication to be administered to a *person in police custody*, the *community service centre commander* is responsible for the safekeeping of the medicine and to ensure that the *person in police custody* is given the opportunity to administer it as prescribed by the *medical service provider*.
- (2) A *person in police custody* may not, except on the written authority by a *medical service provider*, be supplied with any medication.
- (3) If a person is arrested and is taken into police custody, and has medication, prescribed by a medical practitioner, with him or her, the *community service centre commander* must contact the service provider (normally a pharmacy) that provided the person with the medication and get confirmation that the medication was prescribed by a medical practitioner for that person and how and when it must be administered to the person. The *community service centre commander* must make an entry in the Occurrence Book in which the information provided by the service provider is recorded.

- (4) If a person is arrested and taken into custody and alleges that he or she has medication, prescribed by a medical practitioner, but that the medication is not on his or her person but at another place, the *community service centre commander* must arrange for the medication to be collected and thereafter follow the procedure set out in subparagraph (3).
- (5) If a *person in police custody* is taken to court, the *community service centre commander* must give the medication that must be administered to such person while he or she is at court, to the escort. An entry to this effect must be made in the remarks column of the Medication Form (SAPS 14(c)). At the court the escort must hand the medication over to the responsible member at the court who must ensure that the *person in custody* is given the opportunity to administer it as prescribed by the medical practitioner.
- (6) After the medication was administered, the responsible member at the court must complete a Medication Form (SAPS 14(c)). Medication Forms (SAPS 14(c)) must be provided to all courts for this purpose. After release of the *person in police custody* or transfer to a Correctional Services facility, the completed Medication Form (SAPS 14(c)) must be sent to the police station where the person was originally held in custody.
- (7) If a *person in police custody* is sent to a Correctional Services facility for further custody (after attending court) or to serve his or her sentence, his or her medication must be handed over to the escort of either the Service or Correctional Services who will be responsible for the transportation of the prisoner to that facility.
- (8) When a *person in police custody* is released from custody, the remaining medication must be handed over to him or her, and he or she must sign for the receipt of the medication on the Medication Form (SAPS 14(c)). An entry to this effect must be made in the remarks column of the Medication Form (SAPS 14(c)).
- (9) When medication is administered to a *person in custody* —
 - (a) the Medication Form (SAPS 14(c)) must be completed in black ink;
 - (b) a new Medication Form (SAPS 14(c)) must be completed for every type of medication prescribed to a *person in police custody* (for example: if three types of medication were prescribed, serial no 1, 2 and 3 will be used). The serial number of the Medication Form (SAPS 14(c)) of every *person in custody* to whom medication is prescribed will start with 1 (one); and

- (c) an entry must be made in the Occurrence Book.
- (10) The Medication Form (SAPS 14(c)) of a *person in police custody* must be kept in a lever arch cover. At larger stations the lever arch cover must be kept at the cells, while at smaller stations it must be kept in the Community Service Centre.
- (11) As soon as the last medication has been administered or when the person is released, the Medication Form (SAPS 14(c)) must be removed from the lever arch cover and be filed —
 - (a) numerically according to the Cell Register number and serial number of the form; and
 - (b) in manageable volumes.
- (12) The Medication Form (SAPS 14(c)) must be inspected daily and the responsible person must ensure that —
 - (a) the form is completed properly; and
 - (b) the medication is administered according to this paragraph.

10. Release from custody of a person receiving medical treatment

- (1) If a *person in police custody* is admitted to a hospital the *community service centre commander* must immediately notify the investigating officer concerned of this fact, in order to enable the investigating officer to consider whether such person —
 - (a) could be released on bail;
 - (b) could be released on a written warning;
 - (c) could be released if the charge against him or her could be withdrawn through an arrangement with the public prosecutor; or
 - (d) if the person is still being detained as a suspect, whether he or she could be released because no charge will be brought against him or her.
- (2) If a *person in police custody*, who has been admitted to a hospital is released from police custody —
 - (a) on bail (and the bail has been paid);

on written warning (and the written warning has been handed to him or her);

- (b) after the charge against him or her had been withdrawn through an arrangement with the public prosecutor;
- (c) because no charge will be brought against him or her; or
- (d) because he or she has paid an admission of guilt fine, the station commander must, in writing, —
 - (i) inform the person in charge of admissions at the hospital concerned, that, if the *person in custody* has sufficiently recovered to be discharged, the person must immediately be discharged from the hospital. In such a case the station commander must arrange for the person to receive any prisoner's property (SAPS 22) handed in at the police station;
 - (ii) in the event that the person is treated in a private hospital and cannot be immediately discharged, —
 - inform the person in charge of admissions at the hospital concerned, that, if the *person in police custody* has sufficiently recovered to be transferred to a provincial hospital, the person must immediately be transferred to such a hospital or institution and the station commander must be notified of the transfer and the particulars of the provincial hospital to which he or she will be transferred; or,
 - if the person cannot be immediately transferred to a provincial hospital, request the person in charge of admissions at the hospital concerned, to state when the *person in police custody* is expected to be sufficiently recovered for him or her to be transferred to a provincial hospital;
 - (iii) in the event that the *person in police custody* cannot be immediately discharged, request the person in charge of admissions at the hospital concerned, —
 - to state the medical reasons for the admission of the person and why he or she cannot be immediately discharged;
 - to state the approximate period he or she will still be required to stay in the hospital;

- to confirm that the person will be discharged from the hospital concerned as soon as he or she has sufficiently recovered to be so discharged and that the station commander will be informed of the intended discharge. In such a case the station commander must arrange for the person to receive any prisoner's property (SAPS 22) handed in at the police station; or
- in the event that the person is treated in a private hospital or medical institution, to confirm that the person will be transferred to a provincial hospital or medical institution as soon as he or she has sufficiently recovered to be so transferred and that the station commander will be notified to enable the station commander to arrange for the person to receive any prisoner's property (SAPS 22) handed in at the police station.

(3) Release to attend court hearing for a bail application

If a *person in police custody*, who has been admitted to a hospital, may be released from police custody but only after a court hearing in which a bail application can be considered, the station commander must, in writing, —

- (a) inform the person in charge of admissions at the hospital concerned, that, if the *person in police custody* has sufficiently recovered to be discharged, the person must immediately be discharged from the hospital, in which case the station commander must be informed of the date and time of the intended discharge to enable the station commander to arrange for the *person in police custody* to be transported to court to attend the hearing; or,
- (b) in the event that the person is treated in a private hospital and cannot be immediately discharged, —
 - (i) inform the person in charge of admissions at the hospital, that, if the *person in police custody* has sufficiently recovered to be transferred to a provincial hospital, the person must immediately be so transferred and that the station commander must be notified when the transfer will be effected and the particulars of the provincial hospital or provincial medical institution to which he or she will be transferred, to enable the station commander to arrange

for a member to guard the *person in custody* during the transfer; or,

- (ii) if the person cannot be immediately transferred to a provincial, request the person in charge of admissions at the hospital concerned, to state when the *person in police custody* is expected to be sufficiently recovered for him or her to be so transferred; and
- (c) in the event that the *person in police custody* cannot immediately be discharged, request the person in charge of admissions at the hospital or medical institution concerned, —
 - (i) to state the medical reasons for the admission of the person and why he or she cannot be immediately discharged;
 - (ii) to state the approximate period he or she will still be required to stay in the hospital;
 - (iii) to inform the station commander immediately if the *person in police custody* has sufficiently recovered to be discharged, to enable the station commander to arrange for the person to be transported from the hospital concerned to court for the hearing; and
 - (iv) in the event that the person is treated in a private hospital, to inform the station commander immediately if the *person in police custody* has sufficiently recovered to be transferred to a provincial hospital as soon as he or she has sufficiently recovered to be so transferred, to enable the station commander to arrange for a member to guard the person during the transfer.

(4) May not be released from hospital

If a *person in police custody*, who has been admitted to a hospital may not be released from custody, the station commander must, in writing, —

- (a) instruct the person in charge of admissions at the hospital concerned, that, if the *person in police custody* has sufficiently recovered to be discharged, the person must immediately be discharged from the hospital in which case the station commander must be informed of the date and time of the intended discharge to enable the station commander to arrange for the person to be transported to a police cell or prison; or,

National Instruction 8 of 2016

Medical treatment and hospitalization of a person in custody

- (b) in the event that the person is treated in a private hospital and cannot be immediately discharged, —
 - (i) instruct the person in charge of admissions at the hospital concerned, that if the *person in police custody* has sufficiently recovered to be transferred to a provincial hospital, the person will immediately be so transferred, and to notify the station commander when the transfer will be effected and the particulars of the provincial hospital to which he or she will be transferred, to enable the station commander to arrange for a member to guard the *person in police custody* during the transfer; or,
 - (ii) if the person cannot be immediately transferred to a provincial hospital, request the person in charge of admissions at the hospital concerned, to state when the *person in police custody* is expected to be sufficiently recovered for him or her to be so transferred; and
- (c) in the event that the *person in police custody* cannot be immediately discharged, request the person in charge of admissions at the hospital, —
 - (i) to state the medical reasons for the admission of the person and why he or she cannot be immediately discharged;
 - (ii) to state the approximate period he or she will still be required to stay in the hospital;
 - (iii) to inform the station commander immediately if the *person in police custody* has sufficiently recovered to be discharged, to enable the station commander to arrange for the person to be transported from the hospital concerned to a police cell or prison; and
 - (iv) in the event that the person is treated in a private hospital, to inform the station commander immediately if the *person in police custody* has sufficiently recovered to be transferred to a provincial hospital as soon as he or she has sufficiently recovered to be so transferred to enable the station commander to arrange for the *person in police custody* to be guarded during the transfer.

11. Preventive measures to be taken

- (1) In order to prevent, as far as possible, the spread of tuberculosis or any other infectious disease, members are required, whenever circumstances permit, not to detain a *person in custody* suffering from tuberculosis or any other infectious disease, together with another person in a police cell.
- (2) If the charge against a person with tuberculosis or any other infectious disease is of a petty nature, the possibility of warning him or her by means of a SAPS 496 to attend court, should be considered. If the charge is of a serious nature and he or she cannot be released on bail, he or she should, if at all possible, be detained in a separate cell.
- (3) Persons with tuberculosis are often in possession of documents from the health department of the local authority, indicating that they are receiving treatment for their disease.

12. Notification of next of kin and disposal of body of person who dies in police custody

If a *person in custody* dies or becomes seriously ill, his or her next of kin, if known, must where reasonably possible, be promptly notified. If the body of the deceased is not handed over to the next of kin to be buried, it must be disposed of as provided in the relevant prescripts.

13. Submission of Return: Notification of deaths of persons in custody to the Independent Police Investigative Directorate (IPID)

It is the responsibility of the station commander to ensure that the IPID is notified of all deaths of persons in the custody of the Service. The procedure regarding the submission of a return regarding deaths of persons in the custody of the Service as determined by the Divisional Commissioner: Visible Policing from time to time (currently Head Office's circular 2/26/55 dated 1997-04-01).

14. Payment of Medical Services upon release

- (a) Once a person in police custody is admitted at a hospital and released on bail, written warning to appear in court, the charge was withdrawn, the person was released by means of a J 534 form or he or she paid an admission of guilt fine, he or she from that moment becomes liable for his or her medical costs.
- (b) Once a person is released from custody of the Service, the SAPS 70 is no longer valid and may no longer be used for the medical treatment of such a person.

ANNEXURES

Annexure 3

Independent Police Custody
Visit questionnaire



Independent Police Custody Visits

This app is solely for use by authorised agents and representatives of the SAHRC. All data and information, whether presented or collected, is strictly confidential.

To use this app:

1. Complete each of the questions chronologically. All questions are compulsory unless indicated otherwise.
2. Where necessary or required, please use the cellphone's camera to collect images. No other imaging device may be used or brought on the visit.
3. Once complete, submit the completed questionnaire immediately. Preferably this should be at the station or as soon as practically possible.

In case of emergency, or in instances of serious dispute, prevention of access, or any other considerable concern, please call Mr Tait at 082 852 5772 or Mr Pakati on 078 845 4552.

Police Station Location

*

If the location has not automatically been found below, please enter the street address of the station currently being surveyed:


+

—









 Lat: -30.08336 Lon: 25.11906

Police Station Name *

Manually enter the name of the police station below, followed by the town/suburb in which it is located.

Date of Survey *

10/10/19

Time of Survey *

11:36 AM

Who is designated in command of the station at the time of the survey *

Station Commander



Acting Station Commander



Designated officer in command

Commanding officer on duty *

Provide commanding officer's rank, name, and designation (example: Col Tshabalala, Station Commander)

Further comments

Include any further comments or notes below. If none, please leave blank

1000 

Commanding officer authorisation

Please identify yourself to the commanding officer, and introduce/explain the purpose of your visit. Obtain their confirmation to conduct the visit, and have them sign below.

SECTION A: STATION DETENTION FACILITIES - BASIC INFORMATION

Number of Cells

*

The sum of all the cells or other facilities used for detention at the station, including temporary facilities, court facilities and any other place under the authority of the station (ask a SAPS member)

12³

Number of cells with at least one person inside

*

12³

Number of other detention facilities with at least one person inside

*

12³

Number of cells that are empty

*

12³

Number of other detention facilities that are empty

*

12³

ANNEXURE 3

Of these cells or facilities how many are used only for processing arrestees who have not been charged *

Ask a SAPS member

12^3

Regarding the question above, how many are empty at the time of inspection *

12^3

Of the cells and facilities at the station, how many are only for arrestees who are due to appear in court or are awaiting transfer *

Ask a SAPS member

12^3

Regarding the question above, how many are empty at the time of inspection *

12^3

Of the cells and facilities at the station, how many are only for remand detainees and/or unsentenced prisoners *

Ask a SAPS member

12^3

Regarding the question above, how many are empty at the time of inspection

*

 $\frac{1}{2}^3$

Of the cells and facilities at the station, how many are for undocumented foreigners but who are not in custody on other charges as well

*

As a SAPS member

 $\frac{1}{2}^3$

Regarding the question above, how many are empty at the time of inspection

*

 $\frac{1}{2}^3$

How many cells or facilities at the station are used in a combination of the above or for other purposes

*

Ask a SAPS member

 $\frac{1}{2}^3$

Regarding the question above, how many are empty at the time of inspection

*

 $\frac{1}{2}^3$

Further comments

Include any further comments or notes below. If none, please leave blank

1000 

Is the station located immediately next to a magistrates court and responsible for the management of people who are being held in holding cells at that court

☐ Yes

☐ No

Is the station not immediately next to a court but is currently responsible for providing SAPS members to manage people who are being held in custody at a court nearby

☐ Yes

☐ No

How many people can be held in all of the cells together

*

Ask a SAPS member. What is the maximum number of people that can be held at the station at any given time

12³

What is the total number of detainees currently present in custody facilities at the time of inspection *

Do a head count. Remember this doesn't include detainees who are not currently present i.e. attending court

1²₃

What is the total number of detainees not currently in cells *

This could be for attending court or taken out for investigation or medical BUT currently sleep in cells at the station. Ask a SAPS member.

1²₃

Overcrowding: Are any of the cells currently overcrowded *

Choose one

Section 25(2)a of NI XB of 2019 provides 2,33 m² per person as a guideline for the maximum number of people per cell. This is equivalent to a square area with sides that are each 1,5m in length for each person. Select one or more of the below as appropriate



No



Yes, slightly
overcrowded



Yes, seriously
overcrowded

Do the cells at this station get overcrowded frequently *

Ask a SAPS Member



Rarely or not at all



Occasionally



Frequently

What is being done to address overcrowding

Leave this blank if the station is rarely overcrowded.

If the station is occasionally or frequently overcrowded ask a SAPS what is being done to manage overcrowding and record the answer below

1000 

Are there any of the following currently in custody

Select all categories that are applicable - for instance if there are 'men accused of violent crimes' then you select 'yes' for this category and 'yes' for 'adult males'

*

☐ Male adults

☐ Men accused of violent crimes

☐ Female adults

☐ Women accused of violent crimes

☐ Children being held with their mothers including breast feeding children (Section 37(a) of NI XB of 2019)

☐ Male children under 18 not being held with their mothers

☐ Female children under 18 not being held with their mothers

☐ Remand detainees such as persons awaiting trial who have been denied or are unable to pay bail but are not already serving another sentence

☐ Sentenced offenders

☐ Blind people

☐ Mentally ill or handicapped persons

☐ Other disabled persons

☐ Transgender (people who don't identify with their birth sex) transsexual (involved in changing their sexual characteristics medically) or intersex (don't fit typical definitions of male or female) adults

☐ Transgender, transsexual or intersex children

Of those currently in custody are persons arrested on the same charge separated from each other

Ask a SAPS member. Refer to section 25(1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not Applicable

Of those currently in custody are men separated from women

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Of those currently in custody are sentenced offenders and remand detainees separated from each other

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable**Of those currently in custody are children (apart from those who are with their mothers) detained separately from adults**

Ask a SAPS member. Refer to NI2 of 2010 Section3(4)

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable

Of those currently in custody are mentally ill or mentally handicapped persons kept separate from other persons in custody

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Of those in custody are disabled people kept separately from other people in custody

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019. The NI gives examples such as people in wheelchairs, blind, hearing impaired and, with amputated limbs.

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Of those in custody are men accused of violent crime separated from other male accused

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable**Of those in custody are women accused of violent crime separated from other women**

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable

Of those in custody are transgender or intersex persons detained separately from men or women

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear / Don't know

☐ Not applicable

Of those in custody are persons accused of migration legislation offences detained separately from other persons in custody

Ask a SAPS member. Refer to section 25 (1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Is there anyone in custody with injuries that require medical attention

Ask a SAPS Member. Refer to NI XB 2019

*

☐ Yes☐ No☐ Unclear/ Don't know**Is there anyone in custody suffering from any illness that requires medical attention**

Ask a SAPS member. Refer to Section 3(3) of NI8 of 2016

*

☐ Yes☐ No☐ Unclear/ Don't know

ANNEXURE 3

Is there anyone currently in custody suffering from any illness or condition that requires medication

Ask a SAPS member. Refer to Section 3(3) of NI 8 of 2016

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Is there anyone currently in custody who is visibly under the influence of alcohol or other substance with narcotic effect

Ask a SAPS member. Refer to section 15(2)(e) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Is there anyone currently in custody who is identified as presenting a high risk of escape or danger to other detainees

Ask a SAPS member. Refer to section 30 of NI XBV 2019

*

☐ Yes☐ No☐ Unclear/ Don't know**Is there anyone currently in custody who is identified as a high risk of suicide**

Ask a SAPS member. Refer to section 30 and 39 of NI XB 2019

*

☐ Yes☐ No☐ Unclear/ Don't know**SECTION B: STATION DETENTION FACILITIES - VISUAL INSPECTION****Was a visual inspection the cells allowed**

Select one of the following. If you were not allowed to inspect cells go to Section C.

*

☐ Yes, was allowed to
freely inspect cells☐ Yes, but limited☐ No

Further comments

Include any further comments or notes below especially if you were only allowed limited access to the cells or no access. If no comments leave blank.

1000 

From your visual inspection Do one or more of the cells appear to be overcrowded

Section 25(2)a of NI XB of 2019 provides 2,33 m² per person as a guideline for the maximum number of people per cell. This is equivalent to a square area with sides that are each 1,5m in length for each person. Select one or more of the below as appropriate

☐

Yes - very overcrowded

☐

Yes - slightly overcrowded

☐

Difficult to say

☐

No cells were overcrowded

If the cells appear overcrowded, how many appeared to be very overcrowded

12³

If the cells appear overcrowded, how many appear slightly overcrowded

$1\frac{1}{2}^3$

If you answered yes to the question above. How many people are in the most overcrowded cell

Count or estimate the number

$1\frac{1}{2}^3$

What is the official capacity of the cell

This number is usually on the door above the cell. If not ask a SAPS member.

$1\frac{1}{2}^3$

Further comments

Include any further comments. If none please leave blank.

1000 

ANNEXURE 3

From your physical inspection of the cells are men separated from women

Refer to section 25 (1) of NI XB 2019

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

From your physical inspection of the cells are children (apart from those with their mothers) detained separately from adults

Refer to section 3(4) of NI XB 2010 and section 23 and 37 of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

From your physical inspection of the cells are male children (apart from those with their mothers) detained separately from female children

*

☐ Yes

☐ No

☐ Unclear/Don't know

☐ Not applicable

From your physical inspection of the cells are disabled persons separated from other people in custody

NI XB 2019 gives examples: people requiring wheelchairs; blind; hearing impaired; with amputated limbs.

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

ANNEXURE 3

From your physical inspection of the cells are transgender or intersex adults detained separately from men or women

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

From your physical inspection of the cells are persons detained on immigration law infringements detained separately from others in custody

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

If you answered no to any of the above please provide details or any further comments or notes below.

If none please leave blank

1000

When you were inspecting cells, did you see anyone in the cells who was in restraints (handcuffs, cable ties or leg irons)

*

☐ Yes

☐ No

☐ Unclear/ Don't know

When you were inspecting cells, did you see anyone with bruises or physical injuries, bandages or plaster casts

*

☐ Yes

☐ No

☐ Unclear/ Don't know

ANNEXURE 3

When you were inspecting the cells, did you see anyone who appeared to be obviously ill

*

☐ Yes

☐ No

☐ Unclear/ Don't know

When you were inspecting the cells, did you see anyone who is visibly under the influence of alcohol or other substance with narcotic effect

*

☐ Yes

☐ No

☐ Unclear/ Don't know

When you were inspecting the cells did anyone complain of anything to you

*

☐ Yes☐ No☐ Unclear/Don't know

If you answered yes to any of the above please provide details or any further comments of notes

If none please leave blank

1000



Based on your inspection of cells were most cells clean and sanitary

Refer to 25(2)(d) and (g) of NI XB 2019

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Dont know

Based on your inspection of cells did most cells have adequate lighting

Refer to 25 (2)(b) of NI XB 2019

*

☐

Strongly agree

☐

Agree

☐

Neither agree nor disagree

☐

Disagree

☐

Strongly disagree

☐

Don't know

Based on your inspection of cells did most cells have windows with glass panes

section 25 (2) (b) of NI XB 2019 requires adequate ventilation

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Based on your inspection of cells did most cells have windows that can be opened and closed

Section 25 (2)(b) of NI XB 2019 requires adequate ventilation

*

☐

Strongly agree

☐

Agree

☐

Neither agree nor disagree

☐

Disagree

☐

Strongly disagree

☐

Don't know

ANNEXURE 3

Based on your inspection of cells were there adequate blankets, mats or other bedding materials for persons in custody

Refer to section 25 (2)(c) of NI XB 2019

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Based on your inspection of cells did blankets mats or other bedding materials appear to be clean

Refer to section 25(2)(c) and (h) of NI XB 2019

*

☐

Strongly agree

☐

Agree

☐

Neither agree nor disagree

☐

Disagree

☐

Strongly disagree

☐

Don't know

Further Comments

If you strongly agree or disagree with any of the above please provide further comment as appropriate

1000 

ANNEXURE 3

Based on your inspection of cells did people in custody have access to/use flushing toilet facilities

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All

☐ Some

☐ Few

☐ None

☐ Unclear / Don't know

Based on your inspection of cells did people in custody have access to/ use non flushing toilets

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All☐ Some☐ Few☐ None☐ Unclear/ Don't know

ANNEXURE 3

Based on your inspection of cells are toilets generally clean and usable

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All

☐ Some

☐ Few

☐ None

☐ Unclear/Don't know

Based on your inspection of cells do people in custody have access to running water

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All☐ Some☐ Few☐ None☐ Unclear/ Don't know

Based on your inspection of cells do people in custody have access to water provided by other means

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All

☐ Some

☐ Few

☐ None

☐ Unclear/ don't know

Based on your inspection of cells do people in custody have access to hot running water

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All☐ Some☐ Few☐ None☐ Unclear/ don't know

ANNEXURE 3

Based on your inspection of cells do people in custody have access to hot water by other means

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) of NI XB 2019

*

☐ All

☐ Some

☐ Few

☐ None

☐ Unclear/ don't know

Based on your inspection of cells is there an area where people in custody can get exercise

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) (e) and (9)(b) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/Don'tknow

Based on your inspection of cells is there an area for exercise open to the sky (ie other than bars is it open to the sky)

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) (e). and (9)(b) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know
Based on your inspection of cells could you see people using the exercise area

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) (e) and (9)(b) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/Don't know

Based on your inspection of cells are there any significant visible physical or other defects in the detention facilities

Answers should be based on a visual inspection but you can ask SAPS members to assist in clarifying them. Refer to section 25(3) (e) and (9)(b) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Further comments

Include further comments as appropriate ie if you identified defects in the detention area

1000

Other general comments

Add any other general comments including that people in custody are not being treated properly, facilities that need to be repaired, concerns or examples of good practice that came to your attention

1000

Comments by the commanding officer / officer in charge/ officer in charge of custody including reasons for disagreement

1000 

SECTION C: NOTICE OF CONSTITUTIONAL RIGHTS

Ask to be shown the SAPS 14A register and answer the following

Refer to section 18 and. 19 of NI XB 2019

Is there a Notice of Constitutional Rights register (SAPS14A)

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Did you inspect the register

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Have copies of the register been signed.

They should be signed by the person in custody to whom they have been handed. Refer to Section 19(7) of NI XB 2019)

*

☐ Yes

☐ No

☐ Unclear/ Don't know

Have one or more copies of each notice that have been signed been removed from the register.

One copy should be given the person in custody and one copy is filed in the docket. Refer to Section 19(9) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/Don't know

Further comment

Include any further comments or notes. If none please leave blank

1000 

SECTION D: OCCURRENCE BOOK, SAPS 10 (OB)**Is the Occurrence Book available for examination**

If the OB is neither available or permission was not granted proceed to the next section after providing comment in the the next question below

*

☐

Yes

☐

Permission to view not granted

☐

Not Available

Further Comments

Include any further comment or notes especially if permission was not granted or the OB was not available. If none, please leave

1000 

Does the OB record information about all people in custody

Ask the SAPS

*

☐ Yes

☐ No

☐ Some but not all

☐ Other response

Further Comment

If "No", "Some but not all", or "other response" was recorded provide further clarification if available.

1000 

Do the entries on persons in custody in the OB contain the following information either partially or in full

Refer to section 15(2) of NI XB 2019. Look at at least four entries for people in custody in order to assess this. Answer the next 8 questions

1. The name of the SAPS member effecting the arrest

*

☐ All☐ Some☐ Few☐ Unclear/Don't know**2. The name of the detainee**

*

☐ All☐ Some☐ Few☐ Unclear/ Don't know

3. The age of the detainee

*

☐ All

☐ Some

☐ Few

☐ Unclear/ Don't know

4. The gender of the detainee

*

☐ All

☐ Some

☐ Few

☐ Unclear/ Don't know

5. The reason for the arrest

*

☐ All☐ Some☐ Few☐ Unclear/ Don't know**6. The CAS/CR number**

*

☐ All☐ Some☐ Few☐ Unclear/ Don't know

7. Any recorded injuries, illness or evidence of intoxication of arrestee

*

☐ All

☐ Some

☐ Few

☐ Unclear/ Don't know

8. Any required medication of detainee

*

☐ All

☐ Some

☐ Few

☐ Unclear/Don't know

Further Comment

Include any further comments or notes below. If none please leave blank

1000

Examine the entries in the OB in order to establish how people in custody have exercised their right to consult a legal practitioner

Refer to section 21 of NI XB 2019. Look at **five entries** of people in custody in order to assess this. Answer the next FIVE questions

1. There is no information regarding how people have exercised their right to consult a legal practitioner *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

2. A person in custody has chosen not to consult a legal practitioner and there is an entry in the OB to this effect and signed by the person or another person (section21 (1)(b)) *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

3. There is an entry showing the name of the legal practitioner that the person in custody requested (section21(1)(c)) *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

4. There is an entry showing that the legal practitioner consulted with the person in custody at the station (section 21 (1)(d)) *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

5. There is an entry showing that the person in custody requested to have a legal practitioner appointed by the state (section 21(2)) *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

Further comment

Include any further comments or notes below. If none, please leave blank

1000 

Examine the entries in the OB in order to establish whether and how people in custody have exercised their right to communicate with their next of kin

Refer to section 22 of NI XB of 2019. Look at **five entries** of people in custody in order to assess this. Answer the next FIVE questions

1. There is no information regarding how people have exercised their right to communicate with their next of kin *

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

2. A person in custody has chosen not to communicate with next of kin and there is an entry in the OB to this effect signed by the person or another person (section 22(1))

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

 $\frac{1}{2}^3$

3. There is an entry showing that the person in custody has spoken to their next of kin by phone (section 22(2)(a) and (b))

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

 $\frac{1}{2}^3$

4. There is an entry in the OB showing that other steps were taken to notify next of kin about the person in custody (Section 22(2)(c) and (d))

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

 $\frac{1}{2}^3$

5. Other information about communication with next of kin is provided

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

 $\frac{1}{2}^3$

Further Comment

Include any further comments or notes below. If none, please leave blank.

1000 

Examine the OB in respect of searches of people in custody

Refer to section 24 of NI XB of 2019. Look at **five entries** of people in custody in order to assess this. Answer the next THREE questions

1. There was no information regarding searching people

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

12^3

2. When the person was admitted to custody a search was carried out as reflected in the fact that the name of the person who carried out the search is provided (section 24(1)(b))

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

12^3

3. The OB shows that an intimate search was conducted (section 24(2) states that this must be recorded on form 308(a) but it may possibly be recorded the OB were necessary

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

12^3

Further comment

Include further comments or notes below. If none, please leave blank.

1000

Does the OB indicate that a SAPS member has visited (inspected) the cells at least every hour for the last 12 hours

Refer to section 25(6) of NI XB 2019

*

☐ There are records of at least ten visits over the last 12 hours

☐ There are records of at least five visits over the last 12 hours

☐ There are records of between 1 and 4 visits over the last 12 hours

☐ There are no entries reflecting the fact that SAPS members have visited the cells over the last 12 hours

Further Comment

Include any further comments nor notes below. If none, please leave blank.

1000

Further Comment

Include any further comments or notes below. If none, please leave blank.

1000 

Examine the OB in respect of searches of people in custody

Refer to section 24 of NI XB of 2019. Look at **five entries** of people in custody in order to assess this. Answer the next THREE questions

1. There was no information regarding searching people

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

2. When the person was admitted to custody a search was carried out as reflected in the fact that the name of the person who carried out the search is provided (section 24(1)(b))

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

3. The OB shows that an intimate search was conducted (section 24(2) states that this must be recorded on form 308(a) but it may possibly be recorded the OB were necessary

*

Enter a number for the entries for which there is no entry on this. If all entries have some information on this enter 0

1²₃

Further comment

Include further comments or notes below. If none, please leave blank.

1000

Does the OB indicate that a SAPS member has visited (inspected) the cells at least every hour for the last 12 hours

Refer to section 25(6) of NI XB 2019

*

☐ There are records of at least ten visits over the last 12 hours

☐ There are records of at least five visits over the last 12 hours

☐ There are records of between 1 and 4 visits over the last 12 hours

☐ There are no entries reflecting the fact that SAPS members have visited the cells over the last 12 hours

Further Comment

Include any further comments nor notes below. If none, please leave blank.

1000

ANNEXURE 3

injured sick or intoxicated persons

Taking into account the profile of those currently custody can you confirm the following. Refer to Section 15 (2)(e) of NI XB 2019. Answer the next 3 questions

1. If people in custody are injured is this recorded in the OB

*

☐ Can confirm

☐ Could not confirm

☐ Not applicable

2. If people are sick in custody is this recorded in the OB

*

☐ Can confirm

☐ Could not confirm

☐ Not applicable

3. If people in custody are under the influence of alcohol or other substance with a narcotic effect is this recorded in the OB

*

☐ Can confirm

☐ Could not confirm

☐ Not applicable

Based on the information gathered during the visit is there anyone in custody who is intoxicated from liquor or insensible from another cause

*

☐ Yes

☐ No

☐ Unclear/ Don't know

ANNEXURE 3

If you answered yes to the previous question, does the information the OB indicate that a SAPS member has visited (inspected) people who are insensible at least once every half hour (6 times in the last 3 hours)

Refer to section 25(6)(a)(iii)

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not Applicable (there are no insensible people in custody at the time of the visit)

If any person is being held under restraints (handcuffs, cable ties or leg-irons) in the cells, is this recorded in the OB

Refer to section 8 of NI XB 2019. Select one or more below

*

☐

Not applicable (as far as I know no-one is being held in restraints in the cells)

☐Yes, there is information about the time when a person was placed in restraints in the OB
(section8(2)(a))☐

Yes, there is information about the reason for the restraints in the OB (section 8(2)(b))

☐

Yes, there is information about the types of restraints used in the OB (section8(2)(d))

☐

No, there is at least one person in restraints but it is not recorded in the OB

☐

Unclear/don't know

Further Comment

Include any further comments or notes below. If none, please leave blank.

1000 

ANNEXURE 3

Based on the information gathered during the visit, are there children (less than 18 years) in custody

*

☐ Yes there are children detained with their mothers. Sec37 NI XB 2019

☐ Yes there are children who have been detained linked to allegations of crime. NI2 of 2010

☐ No

☐ Unclear/Don't know

If the answer to the previous question is yes (either options) answer the following questions

The number of male children detained with their mothers (if none insert 0)

12³

The number of female children detained with their mothers (if none insert 0)

12³

The number of male children in custody linked to alleged crimes committed by them (if none insert 0)

12³

The number of female children in custody linked to alleged crimes committed by them (if none insert 0)

1²³

With reference to any of the children in custody indicate whether there is a record of any in the OB

Refer to section 22 and 23 of the NI 2010. Answer the next 6 questions

1. Is there a record of steps taken to inform the child's legal representative that the child wishes to consult with him or her before making a statement or answering any questions

Section 22 (2)

*

☐ Yes

☐ No

☐ Unclear/ don't know

☐ Not applicable (there are no children in custody)

2. Is there a record of steps taken to inform the child's parent, guardian or appropriate adult that the child wishes to consult with him or her before making a statement or answering any questions

Section 22(3)

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable (there are no children in custody)

3. Is there a record showing that the the child indicated that he or she did not want to have a legal representative , parent, guardian or appropriate adult present when making a statement or answering any questions

Section 22 (4)

*

☐ Yes

☐ No

☐ Unclear/Don't know

☐ Not applicable (there are no children in custody)

4. Is there a record of steps taken to inform the child's legal representative that the child wishes to have him or her present during an identity parade

Section 23 (2)

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable (there are no children in custody)**5. Is there a record of steps taken to inform the child's parent, guardian or appropriate adult that the child wishes to have him or her present during an identity parade**

Section 23 (3)

*

☐ Yes☐ No☐ Unclear/ Don't know☐ Not applicable (there are no children in custody)

6. Is there a record showing that the child indicated that he or she did not want to have a legal representative, parent, guardian or appropriate adult present during an identity parade

Section 213 (4)

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable (there are no children ion custody)

Further Comment

Include any further comments or notes below. If none, please leave blank

1000 

Based on the information gathered during the visit is there anyone in custody with injuries requiring medical attention

Refer to NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/Don't know

Based on the information gathered during the visit is there anyone in custody suffering from any illness or condition requiring medical attention

Section 3(3) of NI 8 of 2016

*

☐ Yes

☐ No

☐ Unclear/Don't know

ANNEXURE 3

Where the detainee requires or has required medical attention does the OB record the steps taken to secure the assistance of a medical practitioner

Section 16(1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Where the detainee requires or has required medical attention does the OB record the name of the medical practitioner if a medical consultation has taken place

Section 16(1) of NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Where the detainee requires or has required medical attention does the OB record the location of the examination if a medical consultation has taken place

Section 16(1) on NI XB 2019

*

☐ Yes

☐ No

☐ Unclear/ Don't know

☐ Not applicable

Further comment

Include any further comments or notes below. If none, please leave blank

1000 

Is the information that should be in the OB recorded consistently

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Is the OB up to date and includes entries that have been recorded very recently (for example in the last half-hour or hour before your inspection) *

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Additional further comments

Apart from your responses to the above question are there any further comments regarding the information provided in the OB including whether this is consistently and reliably recorded. If no further comments leave blank.

1000 

Comments by officer in charge

Include any comments by the officer in charge including reasons for any disagreement

1000 

SECTION E: CUSTODY REGISTER (SAPS14)

Is there a Custody Register available for viewing

*

☐ Yes

☐ Permission to view was not granted (if selected proceed to the next section after filling in the comments below)

☐ Not available for another reason (if selected proceed to the next section after filling in the comments below)

Further comments

Include any further comments or notes especially if permission to view is not granted or the Custody Register is not available for another reason. If none, leave blank.

1000 

Do the entries in the Custody Register pertaining to people in custody provide the following information

Look at the 10 most recent entries for people in custody to assess this and answer the next 15 questions

1. Is the name of the detainee recorded

See column 2

*

☐ All or most of the entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

2. Is the age of the detainee recorded

See column 3

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

3. Is the gender of the detainee recorded

See column 4

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

4. Is the CAS number recorded

See column 5

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

5. Is the SAPS 70 number recorded

See column 6

*

☐ All or most entries have this information☐ Some entries have this information (less than half)☐ No entries have this information**6. Has the Notice of Constitutional Rights (SAPS14A) book and notice number been recorded**

See column 7

*

☐ All or most entries have this information☐ Some entries have this information (less than half)☐ No entries have this information

7. Is the time of detention recorded (this should be different from the time of arrest)

See column 8.2

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

8. Has the SAPS 22 receipt number for property confiscated been recorded

See column 8.3

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

9. The OB number for legal representation has been recorded

See column 9

*

☐ All or most entries have this information☐ Some entries have this information (less than half)☐ No entries have this information**10. The OB number for notification of kin has been recorded**

See column 10

*

☐ All or most entries have this information☐ Some entries have this information (less than half)☐ No entries have this information

11. The OB number for investigations has been recorded

See column 11

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

12. The date and time when the suspect was charged is recorded

See column 12

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

13. Is the date, time and reason for discharge recorded

See column 14

*

☐ All or most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information
14. Is the total number of meals supplied and OB number recorded

See column 15

*

☐ All our most entries have this information

☐ Some entries have this information (less than half)

☐ No entries have this information

15. Information identifying the person as a non national and the name of the country is recorded

Refer to Section 35(e). See column 16

*

☐ All or most entries have this information

☐ one entries have this information (less than half)

☐ No entries have this information

Is the information that should be recorded in the Custody Register recorded consistently

*

☐ Strongly agree

☐ Agree

☐ Neither agree no disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Further comments

Apart from your responses to the above questions are there any further comments regarding the information provided in the Custody Register including whether this is reliably and consistently recorded. If none, please leave blank.

1000

Comments by officer in charge

Include any comments by officer in charge including any reason for disagreement

1000

SECTION F: COMPLAINTS BY PERSONS IN CUSTODY AND RESPONSES THERETO

Complaints by persons in custody: What are the most common types of complaints that are received from people in custody

Ask the SAPS officer in charge. Select all responses provided

*

☐ Complaints regarding treatment by police

☐ Complaints regarding custody conditions

☐ Complaints regarding food received in custody

☐ Complaints regarding the conduct/behaviour of other persons in custody

☐ Other (if selected provide details below)

☐ There are sometimes complaints but don't know or find it difficult to say what are the common types

☐ There are no complaints from people in custody

Further comment

Include any further comments or notes including details of other complaints mentioned. If none, please leave blank.

1000 

Have any complaints of torture been made against members working at this station

Ask the officer in charge if any complaints have been received within the past 30 days. Refer to Section 6 of NI 6 of 2014 *

☐ Yes☐ No☐ Unclear / Don't know**Have any allegations of torture against members at this station been reported to IPID**

Ask the officer in charge if any allegations of torture have been referred to IPID in the past 30 days. Refer to section 6 of NI6 or 2014 *

☐ Yes☐ No☐ Unclear / Don't know

Have any disciplinary steps been instituted against a SAPS member/s in respect of allegations of torture

Ask the officer in charge if any disciplinary steps have been instituted against SAPS members on* allegations of torture in the last 30 days. Refer to section 6 of NI 6 of 2014

☐ Yes

☐ No

☐ Unclear / Don't know

Further Comments

Include any further comments or notes. If none, please leave blank.

1000 

SECTION G: FINAL OBSERVATIONS AND COMMENTS

Give your overall impression of the police facilitation of the station visit

SAPS members facilitated the visit in a helpful manner

*

☐ Strongly agree☐ Agree☐ Neither agree nor disagree☐ Disagree☐ Strongly disagree☐ Don't know

Independent custody visitor questionnaire

SAPS members answered questions to the best of their ability

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

SAPS members produced requested materials without unnecessary delay *

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

SAPS members were knowledgeable on the issues on which they were asked to provide information

*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

☐ Don't know

Further comments

Expand on the above answers by providing more details particularly on statements that you disagreed with. If no further comments, please leave blank.


1000 

Any further comments concerns queries, suggestions you would like to add

1000 

Time of completion of inspection

*

 hh:mm

Name of Independent Custody Visitor

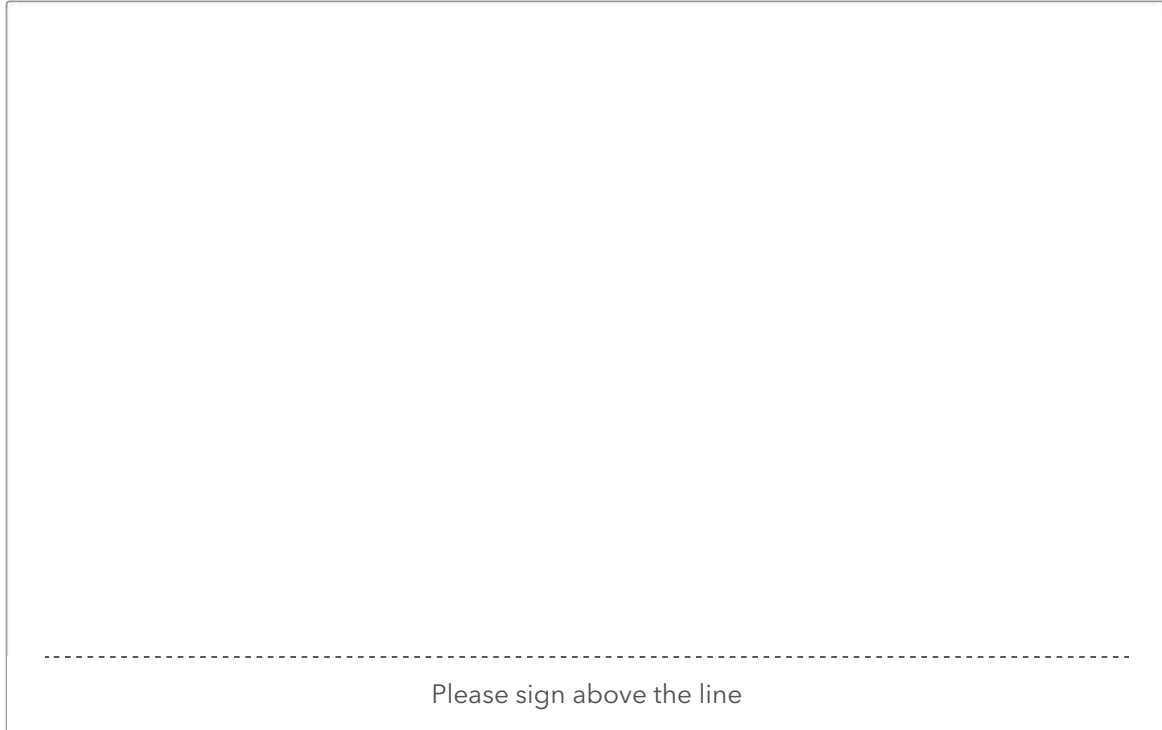
*

Independent custody visitor questionnaire

Signature of Independent Custody Visitor

Signature of Officer in Charge

*



Please sign above the line

Independent custody visitor questionnaire

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