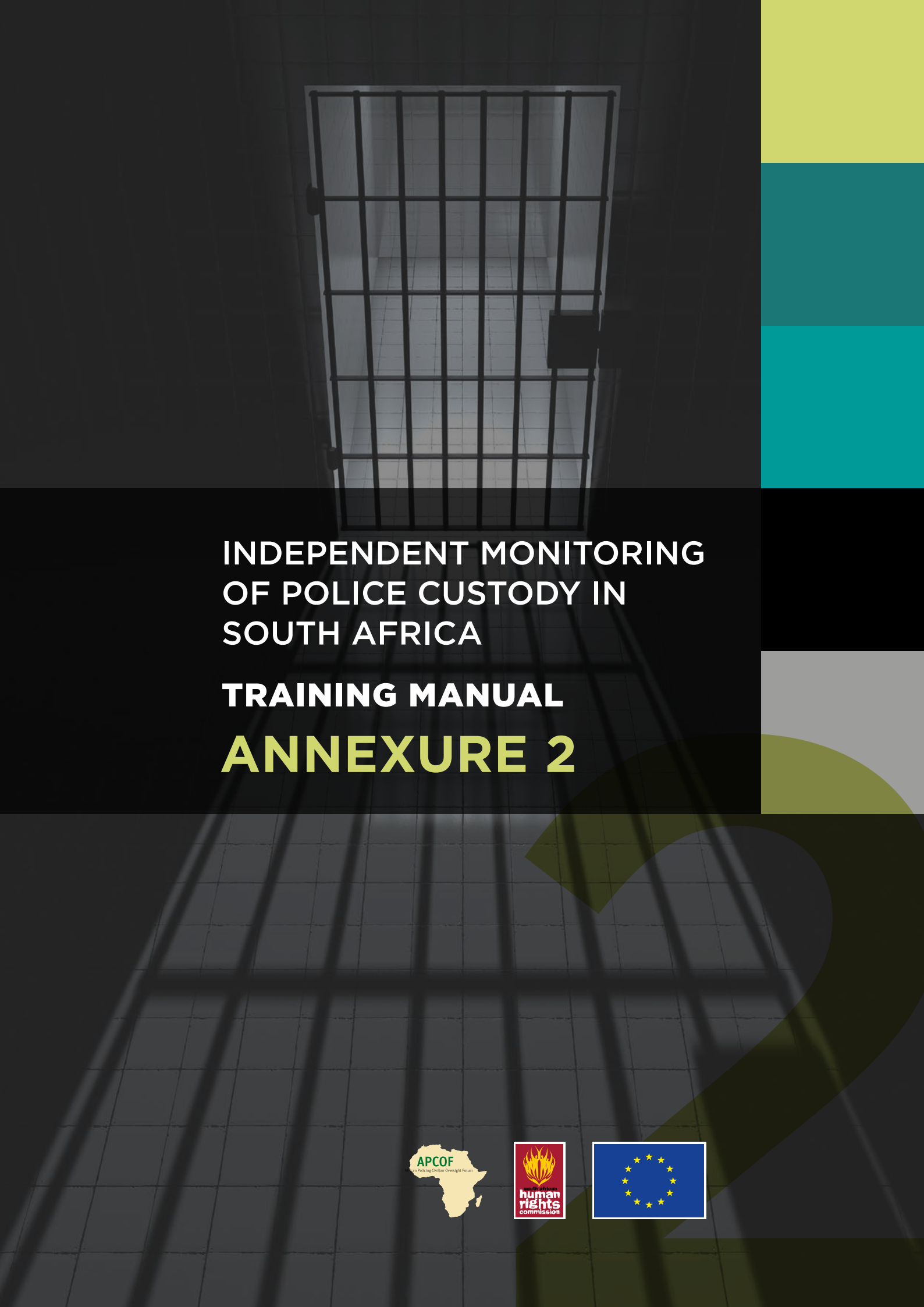




INDEPENDENT MONITORING OF POLICE CUSTODY IN SOUTH AFRICA

TRAINING MANUAL **ANNEXURE 2**



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ANNEXURE 2

- 1 National Instruction 11 of 2019:
Arrest treatment and transportation of
an arrested person



NATIONAL INSTRUCTION 11 OF 2019
ARREST, TREATMENT AND TRANSPORTATION OF AN
ARRESTED PERSON

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1. Background

- (1) In terms of section 12(1) of the Constitution of the Republic of South Africa, 1996, everyone has the right to freedom and security of the person, which includes the right —
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Arrest, by definition, constitutes a serious restriction of an individual's freedom of movement, and can also affect his or her dignity and privacy. Therefore, arrest is fully regulated by legislation. It follows that an arrest is lawful only when effected in accordance with the relevant statutory provisions. The object of an arrest must be to bring the arrested person before a court to be charged, tried, and then either convicted or acquitted.
- (3) This Instruction *inter alia* deals with the arrest and treatment of an arrested person until such person is handed over to the Community Service Centre Commander. The management of persons in the custody of the Service terms of National Instruction 13 of 2019. Medical treatment and hospitalization of a person in custody of the Service is dealt with in terms of National Instruction 8 of 2016. The treatment of illegal foreigners while in the custody of the Service is dealt with in terms of National Instruction 12 of 2019.

2. Purpose

The purpose of this Instruction is to regulate —

- (a) the arrest and treatment of an arrested person until such person is handed over to the Community Service Centre Commander; and
- (b) transportation of an arrested person.

3. Scope

This National Instruction is applicable to all members of the South African Police Service (including reservists).

4. Governance framework

This National Instruction is *inter alia* informed by the following:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Correctional Services Act, 1998 (Act No.111 of 1998);
- (c) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (d) Firearms Control Act, 2000 (Act No.60 of 2000);
- (e) Immigration Act, 2002 (Act No. 13 of 2002);
- (f) South African Police Service Act, 1995 (Act No. 68 of 1995);
- (g) South African Police Service Discipline Regulations, 2016;
- (h) National Instruction 2 of 2010 (Children in conflict with the law);
- (i) National Instruction 1 of 2016 (The use of force in effecting an arrest);
- (j) National Instruction 4 of 2016 (The Firearm Permit System and Firearm Training); and
- (k) National Instruction 8 of 2016 (Medical treatment and hospitalization of a person in custody).

5. Definitions

- (1) In this National Instruction, unless the context otherwise indicates —
- (a) “*Community Service Centre Commander*” means a member in charge of the community service centre or a 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) “*Correctional Centre*” means a detention facility as contemplated in the Correctional Services Act, 1998 (Act No.111 of 1998);
 - (c) “*child*” means a person younger than 18 years, irrespective of the nationality of the child;
 - (d) “*custody commander*” means any member of the Service appointed as the commander of a police detention facility;
 - (e) “*detention facilities*” means a police cell, lock-up or temporary detention facility which is under the control of the Service;
 - (f) “*escort*” means any member who has been assigned the responsibility of transporting a person in custody to any relevant destination or securing a person in custody while so transported;
 - (g) “*First Schedule*” means the First Schedule to the Criminal Procedure Act 1977 (Act No. 51 of 1977);

- (h) *“minibus”* means a vehicle that is utilised to transport passengers and consists of at least three rows of seats and includes an armoured vehicle for purpose of this Instruction;
- (i) *“patrol van”* means a light delivery vehicle (LDV) equipped with a canopy at the back in order to accommodate persons and the secure canopy is able to be locked with a padlock;
- (j) *“person in custody”* means a person who has been arrested and is in the custody of the Service and has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention;
- (k) *“remanded detainee”* means a person detained in a remand detention facility awaiting the finalisation of his or her trial, whether by acquittal or conviction, provided such a person has not commenced serving a sentence or is not already serving a prior sentence;
- (l) *“restraining measures”* means handcuffs, cable ties or leg irons, or any other device approved and issued by the Divisional Commissioner: Supply Chain Management to restrain a person while in the custody of the Service after arrest;
- (m) *“sentenced offender”* means a person detained in a Correctional Centre established under the Correctional Services Act, 1998 (Act No. 111 of 1998); and

(n) “*sedan motor vehicle*” means a light motor vehicle, including a sport utility vehicle (SUV).).

- (2) In this National Instruction “*reasonable suspicion or grounds*” must be interpreted to mean that a member will have “***reasonable suspicion or grounds***” to believe or suspect something or that certain action is necessary if —
- (i) he or she really ‘believes’ or ‘suspects’ it;
 - (ii) his or her belief or suspicion is based on certain facts from which he or she has drawn an inference or conclusion; and
 - (iii) any reasonable person would, in view of those facts, also have drawn the same conclusion.

6. 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. Arrest is never an obligation, irrespective of the offence.
- (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* (currently, R 5000.00), 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. If the person must be taken to the police station to be issued with a J 534, such person must be taken immediately to the police station. Pocket Book and Occurrence Book entries must be made in all these instances.

- (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. Members must ensure that this process is finalised at the police station in the shortest possible time in order to refrain from keeping such a person unnecessarily at a police station. Pocket Book and Occurrence Book entries must be made in all these instances.

7. 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 under no circumstances arrest a person in order to punish, scare or harass such person or to teach him or her a lesson.

(2) Exceptions to the general rule

There are circumstances where the law permits a member to arrest a person without warrant of arrest although the purpose of 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. The following exceptions are applicable:

(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 escape, 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 fingerprints, buccal sample or bodily appearance as provided for in the Criminal Procedure Act, 1977; 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, 2002 (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 address

In the circumstances provided for in section 41(1) of the Criminal Procedure Act, 1977, a member may request a person to furnish 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 (12) 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

A person may be arrested in terms of any legislation if 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.

8. The requirements for a lawful arrest

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

- (1) The arrest (with or without a warrant) must have been properly authorised. There must be a statutory provision authorising the arrest. (See paragraphs 9(1) and (2) below).
- (2) The member who effected the arrest must exercise physical control over the person who has been arrested. (See paragraphs 10(1) and (2) below).
- (3) 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 10(4) below).
- (4) The person who has been arrested must be brought to the appropriate place as soon as possible. (See paragraph 11(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 National Instruction 13 of 2018.

9. 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.
- (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 with regard to the commission or suspected commission of any

offence, to furnish his or her full name and address. This information must firstly be recorded in the Pocket Book of the member, together with all relevant aliases.

- (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 (the contravention of section 41(2) of the Criminal Procedure Act, 1977) and should be charged with the offence in the normal manner.

10. 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 according to the departmental disciplinary proceedings and the relevant criminal law.

- (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. (See National Instruction 1 of 2016 on the use of force in effecting an arrest).

(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 or 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), 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.
- (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. The person must, in all circumstances, acknowledge that the information in subparagraph (a) was conveyed to him or her by signing in the member's pocket book.
- (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. The services of the applicable interpreter for the relevant language must be obtained.

- (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 (4)(a).

11. 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 set out in paragraph 10(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 (1)(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 before or during the arrest or not, the member must follow the instructions as set out in National Instruction 8 of 2016

- (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 sustained prior or during the arrest to the community service centre commander upon arrival at the community service centre. If the arrested person requires medical treatment, National Instruction 8 of 2016 must be complied with.

(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, 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 sex.

(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 or restraint by means of the prescribed cable ties and 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 National Instruction 13 of 2019.
- (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 holding 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 in control of his or her employer's property or business, the member must take reasonable steps to inform the employer of the arrest of the employee and take reasonable steps to ensure that the employer's property and interests are safeguarded.

(7) Initial transportation of the arrested person

- (a) 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 –
 - (i) a police station; or
 - (ii) in the case of an arrest by warrant, to the place stipulated in the warrant.
- (b) The member, transporting the arrested person must drive with the necessary caution to ensure that arrested the person is not injured in

any manner and must take the safest and shortest possible route to the police station or any other place specified in the warrant. Unnecessary driving around with arrested persons is not allowed.

(8) Handing suspect over to the community service centre commander

- (a) 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:
 - (i) the name of the member who has arrested the person;
 - (ii) the name of the person arrested;
 - (iii) the reason for the arrest;
 - (iv) the date, time and place of arrest;
 - (v) the risk profile of the person arrested (risk of escaping, injuring others or him-or herself; and
 - (vi) whether the arrested person sustained any injuries prior to or during the arrest (see subparagraph (3)(c) above).
- (b) The member must also, upon arrival at the police station, complete the Arrest Statement (SAPS 3M(i)) referred to in subparagraph (9) below.
- (c) The detention of a person is a serious infringement upon his or her freedom of movement and must be limited to the minimum period of time that may be necessitated by the *interests of justice*. Based on the information provided and subject to the conditions set out in National Instruction 3 of 2016 (Bail and the release of Persons), the arresting member, community service centre commander or the senior member in charge may release a person —
 - (i) on written warning (section 72 of the Act) [SAPS 496];

- (ii) on written notice (section 56 of the Act) [J 534];
 - (iii) on bail (sections 59, 59A and 60 of the Act) [J398 or J399];
 - (iv) after a charge has been withdrawn through an arrangement with the Public Prosecutor; or
 - (v) if he or she was detained as a suspect, but is released from detention before the expiry of the 48-hour period because no charge is brought against him or her (section 50(1)(c) of *the Act*) [SAPS 328].
- (d) The community service centre commander or the senior member in charge may overrule the decision of the arresting member to detain a person if it is in the interests of justice.
- (e) If a person has been arrested on suspicion of the commission of an offence 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.

(9) Completion of Arrest Statement (SAPS 3M(i))

- (a) The Arrest Statement (SAPS 3M(i)) must be completed after the arrest of every suspect by the member who effected the arrest. If the arrest was made by someone other than a member, the member to whom the arrested person was handed over to, must complete the statement. In such an event a statement must also be taken from the person who effected the arrest.
- (b) 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 subparagraph (3)(c) above).

- (c) The instructions, printed at the beginning of the Arrest Statement (SAPS 3M(i)), must be strictly adhered to.
- (d) After the Arrest Statement (SAPS 3M(i)) has been completed, it must be filed under part "A" of the docket.
- (e) A person should not be detained if an arrest statement has not been made (the motto is: "**No arrest statement, No detention.**").

12. Transporting of persons in custody

- (1) The risk profile for every person in custody must be assessed before the person is transported.
- (2) If a *person in custody* is being taken to a vehicle, the *member* must follow at an angle behind the *person in custody* to ensure that any suspected movement on the part of the *person in custody* can be acted upon immediately.
- (3) If it is known that a *person in custody* is to be transported by a motor vehicle, especially if he or she is suspected of having committed a serious offence or if he or she has already been convicted and sentenced in respect of such an offence, a specific transport vehicle or patrol van that secures the custody of the person in transit must, if possible, be used.
- (4) When persons in custody are loaded or off-loaded at a police station, *correctional services facility* or court, the loading must be performed in a loading zone (if it is available). The loading zone must be properly secured before the loading and off-loading commence. The necessary safeguarding measures must be instituted when persons in custody are loaded or off-loaded and no loading zone is available (escorting of persons to and from vehicle).

- (5) The following transport arrangements must be complied with:
- (a) When it is necessary to transport one *person in custody* with a sedan motor vehicle, the driver must always be accompanied by a second member, who is to sit in the back seat, right behind the driver, with the *person in custody* whose hands must be handcuffed behind his or her back and the seatbelt must be fastened. The second member must be alert and watchful to prevent any attempt by the *person in custody* to escape or to overpower the driver. The doors of the sedan motor vehicle must at all times be locked and the child lock mechanism (safety catch) must be activated to prevent the opening the door from the inside of the vehicle. If the vehicle is not equipped with a child lock (safety catch), the door may be secured by tying a rope or other device around the door handle or door frame to prevent a *person in custody* from opening the door and escaping. If it is necessary to convey a second *person in custody*, assistance by radio or telephone must be requested. (See subparagraph (b) below);
 - (b) if it is necessary to convey more than one person in custody, a patrol van must be used. A *person in custody* must not be handcuffed in the back of a patrol van to any part of the vehicle, as he or she may be injured. The patrol van must be equipped with a secure canopy at the back to accommodate persons in custody. The canopy must be equipped with a padlock/s and must at all times, be locked with the padlock(s) when persons are being transported;
 - (c) if it is necessary to convey more than one *person in custody* with a *minibus*, each *person in custody* must be accompanied by a member. Every *person in custody* must be handcuffed at the back and the seatbelt must be used. The accompanying members must

always be alert and watchful to prevent any attempt by the *persons in custody* to escape or to overpower the driver; and

- (d) if *persons in custody* are to be conveyed by means of a train or private bus, each *person in custody* must be accompanied by an escort or member. The escort or member must always be alert and watchful to prevent any attempt by the *person in custody* to escape or to overpower the driver, escort or member. Every *person in custody* must at all times be handcuffed at the back except during mealtimes or during the visit to bathroom facilities. Appropriate restraining measures must be used in order to prevent escapes from lawful custody.

- (6) The transport vehicle must be thoroughly searched before a person in custody is transported. The search must focus on removing unwanted articles, objects, instruments or items which can cause harm to a person or which can be used to escape.
- (7) If it is necessary to transport a child in conflict with the law, National Instruction 2 of 2010 must be complied with.

13. Escorting a person in custody

- (1) If a *person in custody* is being escorted, the first consideration must be his or her safeguarding. Any *escort* must at all times be alert, from the time he or she takes over control of the *person in custody* until he or she delivers the *person in custody* at his or her destination and obtains a receipt for such person and his or her property.

- (2) The escort must at all times consist of at least two members. Since much depends on the character of a *person in custody*, the offence(s) for which he or she is charged, the risk of escaping, the surrounding circumstances, no fixed rules can be determined in respect of the number of members (exceeding the minimum of two) to be utilized for *escort* duties. Commanders must use their discretion in determining the number of members required to escort a *person in custody* in accordance with his or her risk profile.
- (3) The *community service centre commander* or the *custody commander* and the *escorts* must determine whether or not handcuffs, cable ties, leg-irons or any other means of restraint should be used on a *person in custody*. The circumstances of every particular case must guide them in terms of which *restraining measure* to be utilised.
- (4) If a *person in custody* escapes through the negligence (including a lack of proper precautions taken) by an escort, his or her commander must take disciplinary steps against such escort.
- (5) The member in charge of an *escort* must always before departure, receive written instructions, with the names of the *person(s) in custody*, their destination and the route which must be followed. Any additional instructions considered necessary must be endorsed on the itinerary.
- (6) If there is reason to believe that a *person in custody* is dangerous or likely to attempt to escape, every member of the *escort* must be informed of this risk, which is to be embodied in such additional instructions referred to in subparagraph (5).

- (7) While a *person in custody* is being escorted, he or she must be subjected to a minimum exposure to the public.
- (8) Every member on *escort* duty must be armed with a side-arm and ammunition and be in possession of the required restraining equipment such as handcuffs, cable ties, leg-irons etc. If a dangerous *sentenced offender* is being escorted, a combination of handcuffs, cable ties and leg-irons must be used.
- (9) Firearms and other weapons must be carefully guarded and never be left within reach of a *person in custody*.
- (10) Before taking over a *person in custody*, the *community service centre commander* or *custody commander* must ensure that the *person in custody* is searched in his or her presence and that he or she receives the necessary warrant or other proper written authority for the custody. In every case, the *escorts* and the *Community Service Centre Commander* or *Custody Commander* must thoroughly peruse the warrant or authority to ensure that it is signed, that the particulars therein correspond with those of the *person in custody* and that any rail warrants, etc., are in order.
- (11) The private items (eg money, tobacco, keys, knives and other small articles) of persons sentenced to detention in a retreat or rehabilitation centre, must be removed before escorting them from the police premises. These items must be handed over to an official at the retreat or rehabilitation centre immediately on arrival, as provided for in National Instruction 8 of 2017. Property receipts must be issued to the *person in custody* for any personal property or other articles removed from them.

When property or articles are handed over to the retreat or rehabilitation centre officials, a proper receipt must be obtained by the escort.

- (12) Exhibits of value or importance entrusted to an *escort* must, whenever possible, be properly secured and sealed so that it cannot be tampered with.
- (13) If a *person in custody*, or any other person under escort has no blankets of his or her own for use during the journey, the Service must provide the necessary blankets. These blankets must be returned to the relevant police station by the *escort*, except in the case of blankets supplied to persons escorted to any other medical treatment centre regarding contagious diseases, which blankets must be handed over with them to the institution to which they are sent and a receipt obtained therefore. The receipt must be handed over to the *community service centre commander* or *custody commander* in order to ensure that these items are removed from the moveable government property responsibility code of the station.
- (14) *Persons in custody* must, as far as possible, be fed at police stations in order to prevent possible escape or attack on members. The escort must ensure that rations, where necessary, are provided to the *person in custody*. *Persons in custody* not yet sentenced, may be allowed to buy food at their own expense.
- (15) If, however, the *person in custody* is fed during transportation, his or her hands must be handcuffed in front of the body to enable him or her to eat. *Escorts* must, however, take precautionary measures to prevent an escape or attack on members. After having completed the meal, the

person in custody's hands must be handcuffed behind his or her back again.

- (16) *Escorts* must avoid questioning or interviewing *persons in custody* in respect of the offences with which they are charged.
- (17) Great care must also be taken that a *person in custody* does not take advantage of overcrowding in passages at courts, at railway stations or other places, by mingling with the crowd and thereby escaping.
- (18) If it is necessary to transport a *person in custody* by rail for a trial, the necessary rail warrant must be issued at the station sending the *escort*, and the itinerary endorsed to that effect.
- (19) In the event of a *sentenced offender* wishing, while being escorted to a *detention facility*, to pay a fine imposed as an alternative sentence to imprisonment, he or she must be taken back to the clerk of court or to the police *detention facility* to enable him or her to do so unless it is impracticable owing to the *person in custody* being one of a group proceeding by rail or road or owing to the distance already travelled.
- (20) Children in need of care and protection (irrespective of their age), must be placed in temporary safe care.

14. Implementation and review

- (1) Every Provincial Commissioner must monitor compliance and where a member acted in contravention of the National Instruction and ensure that the commander of the member institutes disciplinary steps and criminal charges, where applicable, against the member.

- (2) The Divisional Commissioner: Visible Policing may issue Standard Operating Procedures regarding any aspect relating to the National Instruction and may develop and implement measures to monitor and evaluate compliance with the National Instruction.
- (3) This National Instruction must be reviewed at least every three (3) years from the date of its approval.

ANNEXURE 2

2 National Instruction 12 of 2019: Arrest and treatment of illegal foreigners



NATIONAL INSTRUCTION 12 OF 2019

ARREST AND TREATMENT OF ILLEGAL FOREIGNERS

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1. Background

- (1) The Immigration Act, 2002 (Act No. 13 of 2002) places obligations on members of the *Service* when dealing with undocumented persons (*illegal foreigners*).
- (2) This Instruction is intended to provide clear direction to a member on how to deal with undocumented persons (*illegal foreigners*).
- (3) A member who performs his or her duties in terms of the *Immigration Act*, must follow an approach which is conducive to conciliation and problem solving and avoid a confrontational approach and take action without delay.
- (4) South African law does not require the detention of asylum seekers and refugees as *illegal foreigners* (Refugees Act, 1998 (Act No. 130 of 1998) and the *Immigration Act*). The Children's Act, 2005 (Act No. 38 of 2005) requires that unaccompanied minors, even if in the country illegally, be placed in temporary places of safety and not in detention centres, e.g. Lindela.
- (5) Members must act in accordance with the provisions of the empowering legislation when they use force to arrest a person. Every member must comply with the provisions of National Instruction 1 of 2016 when using force to arrest a person.
- (6) The arrest and treatment of an arrested person until such person is handed over to the *community service centre commander* is dealt with in terms of National Instruction 11 of 2019. Medical treatment and

hospitalization of a person in custody of the Service is dealt with in terms of National Instruction 8 of 2016.

- (7) The reporting of the detention, death or complaint of a foreign national involved in a criminal offence is regulated by National Instruction 5 of 2014.

2. Purpose

The purpose of this Instruction is to regulate the arrest, treatment and detention of an *illegal foreigner*.

3. Scope of application

This National Instruction is applicable to all members of the *Service* (including reservists).

4. Regulatory framework

This National Instruction is *inter alia* informed by the following:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Children's Act, 2005 (Act No. 38 of 2005);
- (c) Correctional Services Act, 1998 (Act No.111 of 1998);
- (d) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (e) Extradition Act, 1962 (Act No. 67 of 1962);
- (f) Firearms Control Act, 2000 (Act No.60 of 2000);
- (g) Immigration Act, 2002 (Act No. 13 of 2002);
- (h) Refugees Act, 1998 (Act No. 130 of 1998);
- (i) South African Police Service Act, 1995 (Act No. 68 of 1995);
- (j) South African Police Service Discipline Regulations, 2016;
- (k) National Instruction 2 of 2010 (Children in conflict with the law);

- (l) National Instruction 3 of 2010 (The care and protection of children in terms of the Children's Act);
- (m) National Instruction 5 of 2014: Reporting the detention, death or complain of a foreign national;
- (n) National Instruction 1 of 2016 (The use of force in effecting an arrest); and
- (o) National Instruction 8 of 2016 (Medical treatment and hospitalization of a person in custody).

5. Definitions

In this National Instruction, unless the context otherwise indicates —

- (a) “*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*;
- (b) “*Constitution*” means the Constitution of the Republic of South Africa 1996;
- (c) “*correctional centre*” means a detention facility which is under the control of the Correctional Services Act, 1998 (Act No. 111 of 1998);
- (d) “*detention facility*” means a police cell, lock-up or temporary detention facility which is under the control of the *Service*;
- (e) “*DHA*” means the Department of Home Affairs;

- (f) “*extraordinary rendition*” means the transfer, without legal process, of a detainee to the custody of a foreign government for purposes of detention and interrogation;
- (g) “*illegal foreigner*” means a foreigner who is in the Republic in contravention of the Immigration Act (the same meaning is assigned to “*illegal foreign national*” or “*undocumented person*”);
- (h) “*Immigration Act*” means the Immigration Act, 2002 (Act No. 13 of 2002);
- (i) “*immigration officer*” means an official appointed by the Director-General of the Department of Home Affairs to perform the functions of either the permitting office, port of entry or inspectorate as contemplated in the Act;
- (j) “*Service*” means the South African Police Service; and
- (k) “*the Regulations*” means the Immigration Regulations, 2014.

6. The requirements for a lawful arrest

The principles as set out in National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person) must be applied when arresting an *illegal foreigner*. The DHA is responsible to repatriate or deport an *illegal foreigner* and a member of the *Service* may not on his or her own accord perform such repatriation or deportation.

7. Arrest, detention and deportation of an illegal foreigner by an Immigration Officer

- (1) An *immigration officer* may with or without a warrant arrest a suspected

illegal foreigner or cause him or her to be arrested. The immigration officer can, irrespective of whether such foreigner is arrested, deport or cause him or her to be deported. Pending such deportation, he or she may detain the *illegal foreigner* or cause him or her to be detained in a manner and at a place determined by the Director-General of the *DHA*.

- (2) The *immigration officer* must request identification or proof of status and conduct a preliminary interview to obtain the correct information of the suspected *illegal foreigner*.
- (3) If the suspected *illegal foreigner* confirms that he or she has no status to be in the Republic of South Africa, he or she must be informed of his or her arrest and constitutional rights in terms of section 35(1) of the *Constitution* and a statement must be obtained from him or her.
- (4) If the suspected *illegal foreigner* confirms that he or she has documents to prove his or her status at a residential place, the suspected *illegal foreigner* must be accompanied to obtain the documents. Should the residential place mentioned be outside the jurisdiction of the arresting officer, the *immigration officer* must assist him or her to contact a relative or friend to bring the documentation.
- (5) If an *immigration officer* deems it necessary to verify the system of the *DHA* the suspected *illegal foreigner* must be informed that he or she will be detained further after which an arrest statement reflecting date, time and reason for arrest is compiled.
- (6) An *immigration officer* must issue a warrant [(Form 33) (DHA – 1710) (Warrant of Detention of Person suspected of being an *Illegal foreigner*)]

ordering the *Service* to detain a person pending an investigation to verify his or her identity or status.

- (7) A Notice of Constitutional Rights (SAPS 14A) must be issued to the suspected *illegal foreigner* at the police station where he or she will be detained.
- (8) An A1 statement stating the reason of arrest and where possible, supporting documents from *DHA* systems proving that the person is an *illegal foreigner* and that no records exists on departmental systems or letter confirming that the permit is fraudulent or has been withdrawn, must be handed to the police official who is receiving the suspected *illegal foreigner* at the police station for detention. The *immigration officer* must request the police official to open a case docket and record it on the Crime Administration System (CAS) in terms of National Instruction 3 of 2011 in order to obtain a CAS number.
- (9) The detained suspected *illegal foreigner* must be brought before a court within 48 hours and the *immigration officer* must attend the court proceedings on the first appearance.
- (10) If the suspected *illegal foreigner* is detained in terms of the *Immigration Act* [Form 28 (DHA – 1725) (Detention Warrant)], an *immigration officer* must take him or her to court in order to obtain a confirmation of detention [Form 30 (DHA – 1725)].
- (11) *Illegal foreigners* must be detained in a manner and at the police stations (as promulgated in the Government Gazette and circulated by Division: Visible Policing) and *DHA* facilities determined by the Director-General of

the *DHA* whilst pending deportation, provided that –

- (a) if a suspected *illegal foreigner* has been detained for 20 days (detained in terms of a warrant issued in terms of Regulation 33 of the *Regulations*) following the arrest of the suspected *illegal foreigner*, the station commander must notify the relevant *immigration officer* or local *DHA* that the person will be released if the *immigration officer* does not provide a warrant issued by a court for the further detention of the person before the expiry of the 30 day period. The station commander must ensure that the Notice in respect of the detention of an *illegal foreigner* is completed and delivered or send electronically by means of email to the relevant *immigration officer* or local department of Home Affairs. An Occurrence Book (SAPS 10) must be made regarding the notification;
- (b) if an *illegal foreigner* is detained in terms of a warrant issued by an *immigration officer* and such foreigner requests that his or her detention for the purpose of deportation be confirmed by a warrant of a court, the station commander or the community *service centre commander* must notify the relevant *immigration officer* or local *DHA* of such request. If a copy of such warrant is not provided to the *community service centre commander* within 48 hours of such request, the foreigner must be released. An Occurrence Book (SAPS 10) must be made regarding the notification; and
- (c) the suspected *illegal foreigner* must be held in detention in compliance with minimum prescribed standards protecting his or her dignity and human rights.

8. Arrest and detention of an illegal foreigner by a police official

- (1) Any person may be requested by a member of the *Service* to identify himself or herself as a citizen, permanent resident or foreigner, and if on

reasonable grounds the member is not satisfied that such person is entitled to be in the Republic, the following is applicable:

- (a) the person must be interviewed about his or her identity or status;
 - (b) the person must be arrested without a warrant;
 - (c) the person must be assisted in verifying his or her identity or status;
 - (d) the person must, if necessary be detained in terms of section 34 or 49 of the *Immigration Act*.
- (2) If a person is detained as set out in subparagraph (1), the member must take the following steps in order to verify the identity or status of the person:
- (a) when an arrested person is unable to speak or understand English, the arresting officer should try to establish what language he or she is able to speak and should make arrangements for an interpreter;
 - (b) access relevant documents that may be readily available in this regard (for example Passport, Identity Document of relevant Identity papers, Visas, etc.);
 - (c) contact details of relatives or other persons who could prove such identity and status;
 - (d) access departmental records at the *DHA* in this regard; and
 - (e) provide the reasonable necessary means for the person to obtain the documents that may confirm his or her identity and status.
- (3) An arrest and detention of the *illegal foreigner* effected by a member of the *Service* must be reported to the local *DHA*. The following is of importance:
- (a) the local *DHA* must be contacted by telephone immediately after the arrest by the arresting official, informing the department that a suspected illegal foreigner has been arrested;
 - (b) a corresponding Occurrence Book entry, containing the details of the

- official contacted at *DHA*, must be made; and
- (c) the *DHA* official is requested to visit the suspected illegal foreigner in order to determine citizenship.
- (4) The member must open a criminal case against the arrested person and a docket must be registered in terms of the National Instruction 3 of 2011. An offence code 505010 “Movement of and control over individuals” must be used and section 49(1)(a) of the Immigration Act must be selected when registering the case of an *illegal foreigner* on CAS or ICDMS.
- (5) The member must ensure that the suspected *illegal foreigner* is taken to court within 48 hours. In instances where the citizenship is not yet determined by *DHA*, the court will remand the case for further investigation and issue the relevant detention warrant (J7). If after making the enquiries as set out in subparagraph 8(2) it is evident that the person is in fact legally present in the Republic, he or she must be released from custody because no charge can be brought against him or her. Form SAPS 328 (Release of a Suspect) must be completed upon his or her release.
- (6) Upon receiving of an arrested *illegal foreigner* in the Community Service Centre (CSC) the *community service centre commander* must do the following:
- (a) Make an Occurrence Book (OB) entry, containing the following:
- (i) particulars of the person detained;
 - (ii) monthly serial number of the Custody Register (SAPS 14);
 - (iii) Notice of the Constitutional Rights (SAPS14A);
 - (iv) particulars of the CAS number and the charge;

- (v) the fact that he or she is on reasonable grounds suspected to be an undocumented person;
 - (vi) details of the police official or *immigration officer* who effected an arrest;
 - (vii) legal representative and next of kin, if any;
 - (viii) interpreter needed or not; and
 - (ix) well-being of arrested person.
- (b) Complete the Custody Register (SAPS 14) as set out in National Instruction 13 of 2019. The fact that the person is an *illegal foreigner* must be recorded in red ink in the remarks column 16 by writing: "The station, CAS number, country of origin and Home Affairs detention warrant serial number must be indicated. Children as indicated in NI 02/2010".
- (c) Obtain an A1 statement from the arresting official and register the case on CAS or ICDMS (complete also the nationality field on CAS or ICDMS by selecting the relevant country), open docket and file statement in accordance with National Instruction 3 of 2011.
- (d) Detain the *illegal foreigner* in a facility which is determined in terms of section 34(1) of the *Immigration Act* and which is in compliance with the standards protecting his or her human rights and dignity and in accordance with National Instruction 13 of 2019.
- (e) Inform the local *DHA* about such arrest and detention of an *illegal foreigner*.
- (f) Ensure that the detained suspected *illegal foreigner* is brought before a court within 48 hours and the *immigration officer* must be informed during the physical assessment of citizenship to attend the court proceedings with the first appearance. An Occurrence Book entry to

this effect must be made.

- (7) When a person is arrested for any other crime and it is found that the arrested person is an *illegal foreigner*, the person must be charged with the original crime and alternatively charged in accordance with par 8(4) above.
- (8) In instances where an *illegal foreigner* has been arrested for a petty crime and sentenced for a short period in prison, such person must, upon release, not be detained in any *detention facility* of the Service, but handed to *DHA* in order to detain and deport the *illegal foreigner*.

9. Responsibilities of a Station Commander and Community Service Centre Commander

- (1) The Station Commander must ensure that the human dignity of every detained *illegal foreigner* is respected at all times, including the provision of adequate accommodation, nutrition, reading material and medical treatment.
- (2) The Station Commander must ensure that every detained *illegal foreigner* is allowed to communicate with and have visits from a spouse, partner, next of kin, religious counselor and medical professional.
- (3) The Station Commander must foster a good relationship with the head of the local Home Affairs Office and discuss the obligations of the Service in that station area.
- (4) The Station Commander must liaise with the head of the local Home Affairs Office to obtain the contact particulars of the relevant office and officials on standby. A list of contacts at the local Home Affairs Office must

be compiled and maintained (updated quarterly). The said list must be available in the Community Service Centre.

- (5) The Station Commander must ensure that a file is maintained where all warrants issued by an *Immigration officer* for the detention of *Illegal foreigners* at that station is kept.
- (6) Upon receipt of a warrant (DHA form 33), the *community service centre commander* must allocate an annual serial number to the warrant and endorse it on the right upper corner of the warrant (e.g. DHA warrant 1/2017) and file the warrant in such a file.
- (7) The Station Commander or *community service centre commander* must inspect the Custody Register (SAPS 14) on daily basis to ensure that persons are not unlawfully detained.
- (9) The Station Commander or *community service centre commander* may release an *illegal foreigner* detained on a warrant into the custody of an *immigration officer* should the *immigration officer* provide a written authorization (Form 35) (DHA – 515) (Warrant for removal of a detained *illegal foreigner*) and Form 36 (DHA – 557) (Warrant for release of the detained *illegal foreigner*) of such person. The authorization must be filed together with the relevant warrant issued in respect of the person.

10. Conditions of detention facilities for detaining an illegal foreigner

- (1) Every arrested and detained *illegal foreigner* must be held in a detention facility which is in compliance with the standards protecting his or her

human rights and dignity.

- (2) Only the police stations which are determined by the *DHA* as places for detention of *illegal foreigners* (pending deportation or transfer to Lindela Holding Facility for purposes of deportation) must be used to detain *illegal foreigners*. The aforesaid places of detention is published in the *Government Gazette* and circulated to all by the Division: Visible Policing. Station Commanders must ensure that the *detention facilities* comply with the following minimum standards:
 - (a) An *illegal foreigner* must be treated in accordance with the instructions as set out in National Instruction 13 of 2019;
 - (b) if an *illegal foreigner* detained by the *Service* is in need of medical attention, he or she must be dealt with in terms of National Instruction 8 of 2016 (Medical Treatment and Hospitalization of a Person in Police Custody);
 - (c) the best interest of the child must be taken into account when dealing with a child. If a woman, who is accompanied by a child, is taken into custody it may be necessary to detain the child with the mother. An unaccompanied (illegal) foreign child (or if the child's parents are detained in police custody in terms of the *Immigration Act*) must be regarded as a child in need of immediate emergency care and protection and must be dealt with as set out in National Instruction 3 of 2010 (The Care and Protection of Children in terms of the *Children's Act*);
 - (d) if it is necessary to detain a child, the child must be detained separately from adults and boys separately from girls and in conditions which take into account the child's particular vulnerability and which will reduce the risk of harm to the child (must be dealt with as set out in National Instruction 2 of 2010); and

- (e) if the *community service centre commander* or member responsible for the *detention facilities* has reason to believe that a detainee is suffering from an infectious disease and could infect other detainees, he or she must send the person for immediate and appropriate health care in accordance with the procedure set out in National Instruction 8 of 2016. Should the medical practitioner release the person from the health care facility and indicate that the person is suffering from an infectious disease, he or she must be detained separately.

11. Requirements of the minimum standard of police cells to detain an illegal foreigner

The Station Commander where an illegal foreigner is detained must ensure that —

- (a) every detainee is kept in a clean and tidy *detention facility*;
- (b) detainees keep their clothing, bedding and cells clean and tidy;
- (c) detainees are provided accommodation with adequate space, lighting, ventilation, sanitary installations and general health conditions and access to basic health facilities;
- (d) every detainee is provided with a cell mat and at least one blanket;
- (e) male and female detainees are kept separate from each other;
- (f) detained unaccompanied minors (children), where applicable, are kept separate from adults and in accommodation appropriate to their age;
- (g) minors (children) who are arrested with their parents, are detained with the parents in a separate cell;
- (h) detainees of a specific age, falling in separate health category or security risk category, are kept separate;

- (i) every detainee is provided with an adequate balanced diet and in accordance with the standard menu provided by each police station as provided for in National Instruction 13 of 2019.
- (j) the diet makes provision for nutritional requirements of children, pregnant women and any other category of detainees whose physical condition requires a special diet;
- (k) prepared meals are served at intervals as provided for in National Instruction 13 of 2019;
- (l) clean drinking water is available at all times to every detainee; and
- (m) detainees access ablution facilities (showers and toilets) with hot and cold water.

12. Extradition

- (1) If an *illegal foreigner* is arrested for an offence other than an offence provided for in section 49(1) and (11) of the *Immigration Act*, the principles as set out in National Instruction 11 of 2019 must be applied. If no charge can be brought against him or her, the local *DHA* must be informed of the detention of such a person and the arresting official must make arrangements with the local *DHA* for the further detention and deportation of the person.
- (2) If another State (country) requires the surrender of such a person, the procedures set out in the Extradition Act, 1962 (Act No. 67 of 1962) must be followed. No *extraordinary rendition* is permitted.
- (3) If an *illegal foreigner* is arrested and detained by the *Service*, his or her particulars must be checked by the investigating official on the e-ASF

database (this includes his or her passport, should it be found) to ensure that there is no outstanding warrant from another State eg red notice in respect of the person. The *illegal foreigner* may be recorded on the Interpol Notice System. In most instances, these checks may be conducted on the I24/7 system available at stations with mainframe access (also see “Mind / Find” under the Interpol logo on the SAPS Intranet). If not possible, the checks should be conducted by Interpol NCB Pretoria and the investigation office must be informed of the outcome of such checks.

- (4) If there is such a foreign warrant, the investigating official must inform Interpol NCB Pretoria to facilitate close liaison with INTERPOL in order to ensure a formal request for extradition and to ensure compliance with the Extradition Act, 1962.
- (5) If a person sought by another country on a warrant, and the person is deported instead of being dealt with under the Extradition Act, 1962, it will be regarded as an *extraordinary rendition* (unlawful deportation) and may have a huge negative impact on international relations, human rights compliance, especially in countries where the death penalty is still in force or whom is known to torture suspects.
- (6) Both criminal and disciplinary steps will be taken against members involved in an *extraordinary rendition*.

13. Implementation, monitoring and review

- (1) Every Provincial Commissioner must monitor compliance and where a member acted in conflict with the National Instruction, institute disciplinary

steps and criminal charges, where applicable, against the member.

- (2) The Divisional Commissioner: Visible Policing may issue Standard Operating Procedures regarding any aspect dealt with in this National Instruction and institute any measures to monitor and evaluate compliance with this National Instruction.
- (3) This National Instruction will be reviewed at least every three (3) years from the date of its approval.

ANNEXURE 2

- 3 National instruction 13 of 2019:
Management of persons in custody of
the South African Police Service



NATIONAL INSTRUCTION 13 OF 2019

MANAGEMENT OF PERSONS IN CUSTODY OF THE SOUTH AFRICAN POLICE SERVICE

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Chapter 1: Background

1. Introduction

- (1) This National Instruction regulates the management of persons in the custody of the Service.
- (2) Members must act in accordance with the provisions of the empowering legislation when they use force to arrest a person and when bail is granted or when a person is released. Every member must comply with the provisions of National Instruction 1 of 2016 (The use of force in effecting an arrest) and National Instruction 3 of 2016 (Bail and the release of Persons).
- (3) The arrest and treatment of an arrested person until such person is handed over to the *community service centre commander* is dealt with in terms of National Instruction 11 of 2019. Medical treatment and hospitalization of a *person in custody* of the Service is dealt with in terms of National Instruction 8 of 2016. *Illegal Foreigners* is dealt with in terms of National Instruction 12 of 2019.

2. Purpose

The purpose of this Instruction is to regulate the —

- (a) use of *restraining measures*;
- (b) handling of a *person in custody* of the Service from their arrival at the police station;
- (c) Custody Register (SAPS 14), pocket book and prisoner's property;
- (d) preventing persons in custody from escaping and deaths in custody;
- (e) report for Correctional Services of a *sentenced offender* and *sentenced offender* released on probation; and
- (f) transfer of *sentenced offenders*.

3. Scope of application

This National Instruction is applicable to all members of the South African Police Service (including reservists while on duty).

4. Governance framework

This National Instruction is *inter alia* informed by the following:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Correctional Services Act, 1998 (Act No.111 of 1998);
- (c) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (d) Immigration Act, 2002 (Act No. 13 of 2002);
- (e) South African Police Service Act, 1995 (Act No. 68 of 1995);
- (f) National Instruction 2 of 2010 (Children in conflict with the law);
- (g) National Instruction 1 of 2016 (The use of force in effecting an arrest);
- (h) National Instruction 3 of 2016 (Bail and the release of Persons);
- (i) National Instruction 13 of 2016 (Duties of a Station Commander);
- (j) National Instruction 8 of 2016 (Medical treatment and hospitalization of a *person in custody*);
- (k) National Instruction 8 of 2017 (Property and Exhibit Management);
- (l) National Instruction 11 of 2019 (The arrest and treatment of an arrested person until such person is handed over to the Community Service Centre Commander);
- (m) Standing Order (General) 256 (Duties of the Commander of a Relief and the Investigation of Charges); and
- (n) Standing Order (General) 291 (Mental Health Care Act).

5. Definitions

In this National Instruction, unless the context otherwise indicates —

- (a) “*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 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;

- (b) “*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;
- (c) “*correctional centre*” means a detention facility which is under the control of the Correctional Services Act, 1998 (Act No. 111 of 1998);
- (d) “*child*” means a person younger than 18 years of age irrespective of the nationality of the child;
- (e) “*Constitution*” means Constitution of the Republic of South Africa, 1996;
- (f) “*Consul-General*” means an official appointed by a foreign state to protect the interests of that state and its nationals in South Africa;
- (g) “*detention facility*” means a police cell, lock-up or temporary detention facility which are under the control of the Service;
- (h) “*disabled person*” means a person who has a physical or mental impairment that has a substantial and long-term adverse effect 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.;

- (i) “escort” means any member who has been assigned the responsibilities of transporting a *person in custody* to any relevant destination;
- (j) “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 (an “illegal foreigner” is an individual who is in the Republic in contravention of the Immigration Act, 2002 (Act No. 13 of 2002));
- (k) “intersex” means a person who is born with reproductive or sexual anatomy that does not fit the typical definitions of female or male. Some intersex persons may also have different variations of hormones or chromosomes (the natural chemical or genetic make-up of our bodies). Intersex persons are not born with two complete sets of genitalia;
- (l) “intellectual disability” means a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self-care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care;
- (m) “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;
- (n) “mentally ill person” means a person who, from the personal observation of a member or from information obtained from a health practitioner, is suffering from mental illness and is likely to cause death to himself or herself or others, inflict serious harm to himself or herself or others or

cause serious damage to or loss of property belonging to him or her or others;

- (o) *“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;
- (p) *“refugee”* means a person who is outside his or country of citizenship, because he or she have well-founded grounds for fear of persecution on the basis of his or her race, religion, nationality, membership of a particular social group or political opinion, and is unable to obtain sanctuary from his or her home country or, owing to such fear, is unwilling to avail him- or herself of the protection of that country; or in the case of not having a nationality and being outside his or country of former habitual residence as a result of such event, is unable or, owing to such fear, is unwilling to return to his or country of former habitual residence. Such a person may be called an "asylum seeker" until considered with the status of "refugee" by the Contracting State where he or she formally make a claim for sanctuary or right of asylum;
- (q) *“remanded detainee”* means a person detained in a remand detention facility awaiting the finalisation of his or her trial, whether by acquittal or sentence, if such a person has not commenced serving a sentence or is not already serving a prior sentence;
- (r) *“restraining measures”* means handcuffs, cable ties or leg irons, or any other device approved and issued by the Divisional Commissioner: Supply Chain Management for the purpose of restraining a person;

- (s) “*sentenced offender*” means a person detained in a *correctional centre* established under the Correctional Services Act, 1998 (Act 111 of 1998;
- (t) “*suckling*” means any baby or young *child* who is still drinking from his or her mother;
- (u) “*suspect*” means a person arrested and not yet charged;
- (v) “*transgender*” means a person whose gender identity is different from their biological identity (for example, a biological male who will describe himself as a woman trapped in a man’s body or *vice versa*;
- (w) “*transsexual*” means a person who had pursued medical assistance (for example, sex reassignment surgery) to change their sexual characteristics, but in respect of which a gender reassignment has not been done by the Department of Home Affairs;
- (x) “*LGBTI person*” means lesbian, gay, bisexual, *transgender*, *intersex* person; and
- (y) “*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*; 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.

Chapter 2: Restraining measures

6. Use of restraining measures

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.

7. 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 or detention facility.
- (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 precautions by the member, he or she may face a disciplinary hearing for contravening regulation 5(3) of the South African Police Service Discipline Regulations, 2016.

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

- (a) *Restraining measures* may be used when a person is —
 - (i) being detained in a police cell or any other detention facility; or
 - (ii) 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 or *detention facilities* (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*.

8. 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 (SAPS 10);
 - (b) the person must be visited half-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;
 - (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 (in accordance with the risk profile of the person as set out in paragraph 30).
- (5) An Occurrence Book entry must be made if the person is injured due to restraining measures. A comprehensive entry should be made as to why, who, when, where and how the injury occurred due to restraining measures that was applied. The injury must be reported to the *community service commander* (or senior member in the CSC), who must assess the injuries and provide instruction, guidance as to ensure that the person is

medically attended to as set out in National Instruction 8 of 2016 (Medical treatment and hospitalization of a person in custody). 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 Occurrence Book entry must be recorded in the Custody Register. Proper record keeping of any injury due to restraining measures applied, will assist with prevention of civil liability against Service in this regard.

9. 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.

10. 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 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. The person must be handcuffed with the hands in front of his or her body.
- (2) Subject to paragraph 9(3) and 10(1)(b)(ii) (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 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 for temporary restraint.

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

- (1) When persons are transported with a sedan vehicle, other than a patrol van, the following is applicable:
 - (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.

- (c) 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.
 - (d) Should it become necessary to arrest a second or third person and the member is alone, the member must use his or her discretion and where reasonably possible, summon assistance by radio or telephone.
- (2) 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.
 - (3) 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 (the restraining of the person depends on the risk profile of the *person in custody*, see paragraph 30). Such person may however not be handcuffed to any part of the vehicle, to prevent him or her from being injured.

12. 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 according to the risk profile of the respective person.

- (2) The relevant 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.

13. 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 or put in leg-irons (or both), where reasonably possible.

14. 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:

- (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 a —
 - (i) medical practitioner;
 - (ii) district surgeon;
 - (iii) registered psychiatrist; or
 - (iv) psychiatrist in the service of the state.

Chapter 3: Arrival of an arrested person at the Police station

15. Recording of arrival of arrested person 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 (General) 303.
- (2) This entry must contain the following:
 - (a) The name of the member who arrested the person;
 - (b) the name, age and gender of the arrested person;
 - (c) the reason for the arrest (including, if already available at this stage, the CAS number);
 - (d) whether the person should be detained and reasons therefor (why the person cannot be released); and
 - (e) 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. The following information must also be recorded in the Occurrence Book:
 - (i) detailed description of how the arrested person got injured, including a detailed description of all visible injuries;
 - (ii) if the person in custody got injured during arrest, in transit (transport) or whilst in police custody, detailed information relating to the incident must be recorded, including the SAPS 70 number, details of members/persons involved, type of visible injuries and general medical condition of the person;
 - (iii) the date and time the injured person in custody was transported or taken to a hospital or a medical practitioner for medical

treatment, including the details of the person or member who transported the injured person in custody;

- (iv) type of injury, illness or discomfort;
- (v) type and quantity of medication for the illness, including dosage of the medication; and
- (vi) if under the influence of intoxicated liquor or any other substance with a narcotic effect, the level of intoxication (such as unconscious, be able to walk without support, or any other applicable state of the person), including if the person is vomiting, struggle to breathe, be able to speak understandably or not understandably and any other relevant observation on the well-being of the intoxicated person in custody.

- (3) The necessary particulars must also be recorded in the appropriate columns of the Custody Register (see paragraph 34 and 35).

16. 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 National Instruction 8 of 2016 (Medical treatment and hospitalization of a *person in custody*), 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 Occurrence Book entry must be recorded in the Custody Register.

- (2) See National Instruction 8 of 2016 (Medical treatment and hospitalization of a *person in custody*) 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.
- (3) If a person in custody got injured during arrest, in transit (transport) or whilst in police custody, the following minimum administrative process is applicable:
 - (a) an official registration file with reference 37/1/13 must be opened;
 - (b) the following documents must be placed on the file:
 - (i) copy of statement from arresting official;
 - (ii) copy of Pocket Book entry;
 - (iii) copy of the SAPS 70
 - (iv) all relevant medical reports relating to the injuries;
 - (v) copy of SAPS 14 Register entries;
 - (vi) copy of SAPS 14 (a);
 - (vii) copy of Occurrence Book entry; and
 - (viii) particulars of witnesses who witnessed the injury.
- (4) If a person, whilst in custody, reports any type of sickness/discomfort, the procedures as incorporated in National instruction 8 of 2016 must be followed.

17. Arrest statement

- (1) 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 National Instruction 11 of 2019. 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 and be recorded in a register at the Community Service Centre for this purpose. The following is of importance:

- (a) the statements in this file at the Community Service Centre must be filed in a monthly order in the sequence of the SAPS 14 numbers;
- (b) the relief commander must, when visiting the cells, certify that copies of the arrest statements are filed in the case dockets or in the file and recorded in the register kept at the Community Service Centre;
- (c) the investigating officer must upon collection of the arrest statement acknowledge receipt of the statement by signing the register ⁹he or she must make an entry to that effect in the Investigation Diary (SAPS 5) and file the statement in the relevant case docket) ;
- (d) the relief commander must verify whether the arrested person is lawfully arrested and in custody;
- (e) if it is found that the person is unlawfully arrested or detained, the person must be released immediately and disciplinary proceedings must be instituted with immediate effect; and
- (f) the file and register must be inspected monthly by the Station Commander to verify that all the statements are filed and a corresponding entry must be endorsed on the file (and register) and an entry made in the Occurrence Book.

18. 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 member who effected the arrest or 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 19.

19. Procedure with regard to the Notice of Constitutional Rights

- (1) The reason for the person's detention must be inserted by the member who effected the arrest on the Notice.
- (2) The member who effected the arrest 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 member who effected the arrest 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,

subparagraph (19)(3)(ii)(aa) must be complied with. For the purpose of this paragraph, the translations of the Notice into the official languages of the Republic which appear in the beginning of the Notice book, must be utilised.

- (b) If the language is not one of the official languages of the Republic the member who effected the arrest 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 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, subparagraph (19)(3)(ii)(aa) must be complied with.
- (c) An entry must be made in the Occurrence Book of any steps taken in terms of subparagraphs 19(3)(a)(ii)(bb) or 19(3)(b)(ii)(bb).

- (4) If it is not possible 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 member who effected the arrest is able to communicate and which such member suspects that the *person in custody* may understand. An appropriate entry to this effect must be made in the Occurrence Book.
- (5) The member who effected the arrest 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 member who effected the arrest 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.
- (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

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.

20. Special groups of persons in custody

(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 25(1)(d) of this Instruction regarding the separation of categories when detaining *children*). The National Instruction on Children in Conflict with the Law (National Instruction 2 of 2010) must also be adhered to.

(3) Mentally ill or intellectually disabled persons

- (a) If a *person in custody* appears to be mentally ill, mentally handicapped, appears to be suffering from a mental disorder or is *intellectually disabled*, 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 (General) 291 which specifically deals with the obligations of members in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002)).
- (b) If the *appropriate adult* is already at the police station when information, as required in paragraph 18, 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 or *intellectually disabled*. 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 signature is required (for example the Notice of Constitutional Rights referred to in paragraph 18), 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 be given the opportunity, when requested, to be assisted to communicate with the representative of such State, country or officials from the Department of Home Affairs.

(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 effect and the member who effected the arrest 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.
- (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 19 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.

(7) Persons who are unconscious or experiencing a sickness whereby they cannot respond

When a person is arrested and the person is, for whatever condition, unconscious or is not able to respond to any official due to a possible medical condition, such a person must be taken immediately to a medical practitioner and dealt with in accordance with National Instruction 8 of 2016. The recordings as per par 15(2)(e) are applicable.

(8) Illegal foreigner

Illegal foreigners are dealt with in terms of National Instruction 12 of 2019.

21. 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 18 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*.
- (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 a secured environment. 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 to prevent the person from escaping. 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 stationary 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.
- (f) Member(s) guarding the *person in custody* should ensure that after the person in custody consulted his or her legal practitioner that the provided stationary (e.g. pens or unused paper) are collected and ensure that the person in custody do not take it into the cells. This is recommended to ensure that such is not used to commit offences or endanger other *persons in custody*.
- (g) Attorneys or legal practitioners are not allowed to visit the detention facilities on own accord to solicit or canvass for clients.

(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 with an entry in the Occurrence Book. (With regard to more than one entry of this nature it must also be recorded in the Custody Register).

(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 21(3)(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.
- (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 21(3)(b) 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.

22. 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 26(1)(c) 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 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 21(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 paragraph 34(h)).

23. Precautionary measures to detain children in Police detention facilities

- (1) *Children* must not, if it is at all possible to accommodate them in any other approved place, be detained in *detention facilities*. If it is unavoidable that a *child* be so detained by the Police in accordance with the Warrant of Detention (J7), the *community service centre commander* must immediately complete SAPS 583(i) (wrong placement) and sent it back to the court in order to amend the J7 to the relevant place of detention. However, if the *child* must be detained the strictest precautionary measures are to be taken to prevent *children* from coming into contact with adult *persons in custody*. (See National Instruction 2 of 2010).

- (2) The *children* detained in paragraph 23(1) above must be detained as follows:
- (a) detained separately from adults and boys separately from girls;
 - (b) 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*;
 - (c) the *child* must be allowed the opportunity to 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*;
 - (d) the *child* is cared for in a manner consistent with the special needs of *children*, including the provision of –
 - (i) immediate and appropriate health care in the event of any illness, injury, or severe psychological traumas in accordance with the procedure set out in National Instruction 8 of 2016;
 - (ii) visiting of the *child* as set out in National Instruction 2 of 2010;
 - (iii) adequate food, water, blankets, bedding; and
 - (iv) sanitary towels (if required by girls).

24. 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 24(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. As far as a *transgender, transsexual or intersex person*, the person should be affording the opportunity to indicate the gender of the member to search him or her (an Occurrence Book entry or pocket book entry must be made to this effect).
- (d) Where available, mechanical search methods, such as metal detectors, may also be used for general searches upon arrest and before and after transportation of *persons in custody*. Where x-rays devices are available and used, such devices must be operated by qualified and trained personnel.

(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.
- (b) An *intimate search* must be conducted by a registered medical practitioner or a registered nurse.
- (c) A form SAPS 308(a) must be completed for an intimate search to be conducted.

(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 as prisoner's property (SAPS22) 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) when the property is regarded as evidence of the commission of an offence which will be handed in as an exhibit.
- (b) The *person in custody* must be informed of the reason why anything is taken for safekeeping.
- (c) Property which is not allowed to be entered into the SAPS 22 (such as vehicles, exhibits, firearms, bulky property, cellular telephones, liquor or other valuable property, etc.) found in possession of a *person in custody* must be entered in the Property Register [SAPS 13]. Apart from exhibits, the reference number of the entry in the SAPS 13 must be entered in the SAPS 22 under the heading "Other Property". (See National Instruction 8 of 2017).
- (d) The following items are not allowed in a cell and must be handed in as prisoner's property:
 - (i) waist belts, shoe laces or any other material which can be regarded as dangerous to strangle another person or to commit suicide;
 - (ii) cigarettes and matches/lighters;
 - (iii) razor blades/razors;
 - (iv) knives, forks, spoons, nail clippers, nail files, etc.;
 - (v) money, bank cards, shopping cards, cellular phones, watches and jewellery;
 - (vi) medication;
 - (vii) liquor and drugs;
 - (viii) firearms and ammunition;
 - (ix) keys, purses hand bags and make-up;
 - (x) key rings, chains and bracelets;

- (xi) radio's and CD players;
 - (xii) tools, such as screw drivers, hammers, pliers, etc.;
 - (xiii) heaters or electric blankets; and
 - (xiv) any item which can cause injury to any person or which can be used to escape from police custody.
- (e) When an article of clothing has been seized in terms of paragraph 24(4)(a), the *community service centre commander* must ensure that the *person in custody* is issued with suitable replacement clothing.
- (f) All SAPS 22 property must be securely stored. (See National Instruction 8 of 2017).

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

- (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 outside must be shaken out, food supplied must be examined, visitors must be searched, etc.).
- (c) Any article, for example food or clothing, given to a *person in custody* by a visitor, must be searched.
- (d) Persons in custody must be searched at least once in 24 hours and a corresponding entry must be made in the Occurrence Book. Apart from searching the person, blankets and cell mats must also be searched. Any prohibited item must be confiscated and booked into the SAPS 13 where after the disposal process must be instituted.

- (e) A person in custody must, after every visit, including visits by legal practitioners, be searched in order to determine if he or she is not in possession of prohibited items which can be used to injure other persons or members or assist the person to escape. Prohibited items must be seized, booked into the SAPS 13 and a criminal case opened against the visitor(s).

(6) Prisoners property (SAPS 22)

- (a) A form SAPS 22 must be completed in triplicate in respect of each *person in custody*. The original SAPS form 22 must be completed using a black ballpoint pen, and carbon paper must be used for the second and third copies. If the *person in custody* is literate or not under the influence of alcohol or any other substance, he or she must be requested to acquaint him or herself with the content of the completed form SAPS 22 and, in acknowledgement, thereafter sign it. If he or she is illiterate, the content must be read to him or her and his or her thumb print obtained and the signature of a witness must be obtained. If the person is intoxicated or incapacitated, see paragraph 24(6)(h).
- (b) The form SAPS 22 must be accurately completed and if an entry needs to be changed, it must be initialed and dated on the original, as well as on both copies. The change must be neatly done, so as to leave the original text still legible.
- (c) If a mistake is made regarding the name or the amount of the money (words or figures), the original and both copies must be cancelled in red ink, with the words "CANCELLED" in capital letters right across the front of the form and the copies and left in the SAPS 22 Register. Full official signature including name, rank and date to be endorsed

on all cancelled copies. A new form SAPS 22 must then be completed.

- (d) If a *person in custody* is —
 - (i) in possession of cash, the amount of money must be reflected in words, as well as in figures. The numbers of notes and the individual values of the notes and coins must not be stipulated separately;
 - (ii) not in possession of cash, but is in possession of other property, the column "Amount in Words" must not be left blank. The word "NIL" must be entered opposite the column heading;
 - (iii) not in possession of property, but is in possession of cash, the column "Other Property" must not be left blank. A diagonal line must be drawn from the bottom left corner to the top right corner, through the column. The word "NIL" must be entered below the column heading;
 - (iv) in possession of property, the number of items must be reflected in words, e.g. "one", "two", "three". Full description of the property must be reflected. It must be shown whether a watch, cellular phone, etc. is in working order or not. Any damages, how insignificant it may be, to any valuable property such as a watch, cellular phone, jewelry, pocket knives, etc. must be recorded.
- (e) The Cell Register [SAPS 14] reference number must be entered on the form SAPS 22.
- (f) The official date stamp is to be placed in the space provided thereon, on the original form, as well as on the copies.
- (g) The original form must be handed to the *person in custody* before he or she is taken to the cells, and he or she must be told that he or she will have to produce the receipt when he or she is released.

- (h) In the case of an intoxicated or incapacitated *person in custody*, the original receipt must not be handed to him or her or placed in his or her possession until he or she is in a sober or accountable state. For this purpose the original receipt must be kept with the *person in custody's* property as an interim measure until it can be handed over to him or her. When the original receipt is eventually handed to him or her, an entry must be made in the Occurrence Book to the effect that this has been done. The procedure outlined in paragraph 24(6)(a), must then be followed.
- (i) The duplicate copy remains with the *person in custody's* property bag as long as he or she is in police custody.
- (j) If the *person in custody* is released on bail or otherwise at the station, the property is returned to him or her on his or her signing the receipt on the triplicate copy.
- (k) If a *person in custody* is in possession of cash and periodical payments are made to the *person in custody*, a receipt must be obtained on the reverse side of the SAPS 22, which must be signed by the *person in custody* and the *community service centre* commander. An Occurrence Book entry must be made of the payment and the date, time and Occurrence Book reference number must be reflected at the bottom of the receipt.
- (l) If a *person in custody* is transferred to another police station, the property [referred to in paragraph 24(4)(d)] and the duplicate copy of the receipt will accompany him or her. The *escort* must sign the triplicate copy in the space provided therefor as proof that he or she took over the property.
- (m) If a *person in custody* is sent to a correctional services facility, the property [except that referred to in paragraph 24(4)(c)], must be handed over to him or her. The *person in custody* must be informed

to claim his or her property recorded in the SAPS 13 Register when he or she is released at court or when sentenced, to provide authority to any other family member or person to claim the property on his or her behalf.

- (n) If a *person in custody* is taken from the *detention facilities* to any court for his or her trial, the property [except that referred to in par 24(4)(c)] must be taken against the signature of the *escort* and must be safeguarded by the responsible police officers at the respective court. Once the person is remanded in custody and taken to the correctional facility as per the J7 as a *remanded detainee*, the property must accompany the person to the correctional facility.
- (o) Particulars of the property of a *person in custody* who escapes from police custody, or who dies whilst in police custody, must be transferred from the SAPS 22 to the SAPS 13 Register for the relevant disposal procedures.

Chapter 4: Custody Management

25. Safe custody and handling of persons in custody

(1) Separation of categories of persons in custody

- (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 as far as reasonably possible 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 the said Instructions are strictly adhered to.
- (e) A mentally ill or *intellectually disabled 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*.
- (h) Whenever reasonably possible, a *transgender*, *transsexual* or *intersex* person must be detained in separate *detention facilities* at the police station in the area where the person was arrested. In the event of a separate detention facility not being available at the police

station in the area where the arrest was effected, the *transgender*, *transsexual* or *intersex* person must be transported and be detained at another *detention facility* in the vicinity. An arrested *transgender*, *transsexual* or *intersex* person must be recorded in the gender column of the Custody Register (SAPS 14) with a red pen as “T”.

- (i) A lesbian, gay or bisexual person will be detained in accordance with their biological gender or sex.
- (h) Persons must be detained in accordance with their risk profile (see paragraph 30).

(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 a secure office or the *detention facilities* at a neighbouring station. A *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 comply with the specifications as determined by Division: Supply Chain Management. A *person in custody*, who is kept in custody overnight, must be provided with a cell matt and blankets of a reasonable standard. The station commander must make the necessary arrangements to ensure that the cell mats and blankets are in good order when issued and changed and washed

often enough to ensure its cleanliness. No dirty or torn blankets or cell mats may be issued.

- (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) The *detention facilities* must comply with the provisions of the Occupational Health and Safety Act. The designated SHE Manager must inspect all the cells at least once a month in order to ensure compliance with the provisions of Health and Safety.
- (g) *Persons in custody* 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 serving that cell, room or place, or the occupants thereof or of any articles or objects of similar use.
- (h) Bedding (cell mats and blankets) must be rotated to ensure that clean blankets and mats are provided to persons in custody. Dirty blankets and cell mats must be stored separately from clean bedding. Dirty bedding must be cleaned/washed frequently and the relevant entries regarding the handing out of clean bedding and washing of dirty bedding must be recorded in the Occurrence Book.

(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 include both hot and cold water).

- (b) Where the flush toilets of the *detention facilities* are not in working order, the station commander must ensure that the persons are detained at other police stations with the required facilities.
- (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, or, if possible, detain them in cells at any other police station which has hot/running water.
- (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 and after exercising, the persons in custody must again be locked in the police cell (no *person in custody* is allowed to stay in the exercise area without direct supervision by a member).

(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 as soon as possible. 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 paragraphs 25(2) and 25(3) 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.
- (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. Reading material must meet the age restrictions and must be thoroughly searched for any unwanted items, articles or objects.
- (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.
- (e) Care must be taken that reading material does not pose a fire risk or is set alight in the cell facilities.

(6) Visiting of cells

- (a) At a station where there are persons in custody, the *persons in custody* are to be visited by the *community service centre commander*, relief commander or members on the relief, as follows:

- (i) an ordinary *person in custody* - at least every hour;
 - (ii) a *person in custody* under restraint - at least every half-hour and the restraining measure must be lifted as soon as his or her condition or behaviour justifies it;
 - (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; and
 - (iv) A *person in custody* who is vulnerable, for example a *disabled person*, an elderly person or a person with severe abnormalities - at least every half-hour.
- (b) Under no circumstances, except in extreme cases such as flooding or fire breakout where lives are seriously at risk, 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 persons cannot be detained for 24-hour per day at a police station, the station commander must make suitable arrangements for the detention of these persons to be detained at appropriate *detention facilities* at nearby police stations. Visits to the detention facility of the station without 24 hours

persons in custody must still be performed when persons are in custody in order to ensure the safe and secure detention.

- (d) Visits to female *persons in custody* must be made by a female member or, where a female member is not available, another 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 and an Occurrence Book entry made to this effect.
- (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* reports 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 not allowed to entry the *detention facilities*.

(7) 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 be made and the expenditure involved reported to the Provincial Head Office and Division Financial Management and Administration.
- (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.

(8) Drinking water and food

- (a) Meals are provided in accordance with the menu as determined by the Division: Visible Policing, under reference number 37/1/17.
- (b) A *person in custody* must have ready access to drinking water and be provided with nutritious food three times per day in accordance with the prescribed menu. 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
- (c) 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. If the meal provided, was for whatever reason, not

according to the prescribed menu, and entry to this effect must be made in the Occurrence Book. Steps must be implemented to ensure that the prescribed menu is served.

- (d) *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. *Persons in custody* with specific dietary requirements, such as persons with diabetes, must be provided with the relevant meal and the relevant Occurrence Book entries made in such cases.
- (e) 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.
- (f) 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 a private concern.
- (g) If meals are, owing to special circumstances, supplied by the station commander, full particulars must be submitted to the Divisional Commissioner: Supply Chain Management, for approval.
- (h) The provisioning and payment of meals is furthermore regulated by Standing Order (Financial) 63.
- (i) A supply of Epsom salts must be kept at hand for use, at their request, by *persons in custody*.
- (j) 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;
 - (iii) adhere to the requirements for meals and the menu for detainees as determined by Division: Visible Policing;
- (k) 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); and
- (l) 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. No member is allowed to receive any money from any person in custody to purchase food. The following is of importance:
 - (i) The person providing the food must produce his or her identity document, passport or driving licence whereby the particulars of the visitor is verified and recorded in the Visitors Register and Occurrence Book;
 - (ii) the type of food must be recorded in the Occurrence Book; and
 - (iii) the food must be thoroughly inspected and searched to ensure that no drugs or any other prohibited items are provided to the persons in custody.
- (m) A *person in custody* must, as far as possible, be provided with his or her meals at the police station where he or she is detained and when

such person is taken to court, lunch must be provided at the relevant court.

- (n) A *person in custody* of the Service who has not yet been sentenced is allowed to purchase his or her own food at his or her own expense on condition that the food is properly searched before providing it to the person. The relevant entries to this effect must be made in the Occurrence Book.

(9) General rules

- (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*. No cigarettes, tobacco or matches or lighters are allowed in the cells.
- (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 (see paragraph 25(3)(e)).
- (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.

26. Regulating visits to a person in custody by members of the family, relatives or any other person

(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 after verification of the visitor by means of producing an Identity Document/Passport/Drivers Licence in the Visitors' Register and an Occurrence Book entry to this effect must be made. This includes the particulars of the religious counsellor which visits the *person in custody*.

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

27. 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) The posting of hospital guards must be performed in accordance with the risk profile of the *person in custody* as per paragraph 30.
- (3) 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.
- (4) 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*.
- (5) Guarding must be performed by members from the police station where the person in custody originates. If the aforesaid is not practically possible (for example long distances), the relevant station commander must issue the relevant station orders to regulate this.

- (5) If the *person in custody* is transferred from one hospital to another hospital outside the police station area, the person must be entered in the SAPS 14 Register of the other police station for rendering the guarding services.

28. 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) on written warning (section 72 of *the Act*) [SAPS 496];
 - (b) on written notice (section 56 of *the Act*) [J 534];
 - (c) on *bail* (sections 59 or 59A *the Act*) [J398 or J399];
 - (d) after a charge has been withdrawn through an arrangement with the public prosecutor; or
 - (e) if he or she was detained as a *suspect*, but is released from detention before the expiry of the 48-hour period because no charge is brought against him or her (section 50(1)(c) of *the Act*) [SAPS 328].

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* 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.
 - (5) In terms of a warrant of detention, issued by a court of law for the detention of a charged person to be detained at a *correctional centre* awaiting court appearance, the person must be sent to a *detention facility* pending his or her appearance in court when due to long distances to the *correctional centre*, the time factor or any other sufficient reason, it might be more economical or convenient to keep the *person in custody* at the *detention facility* at the police station.
 - (6) The release of a *person in custody* after 48 hours does not exempt him or her from prosecution, should sufficient evidence subsequently become available, nor from being re-arrested on a warrant.
 - (7) Members of the Service are allowed to detain an arrested person in a police cell during the initial 48-hours as described in subparagraph (1) above. If the case of the person is not finalised at the first court appearance, the court may postpone the case and order that the remand

detainee remain in custody until next court appearance and issue a Warrant for Detention (J7). The remand detainee is should not be in a police cell for a period longer than seven days, from the day the J7 was issued. The remand detainee must be detained at a remand detention facility (prison). The remand detainee must be detained at the place of detention as indicated on the J7.

29. Behaviour of persons in custody

- (1) All the rights of a *person in custody* are subject to the Human Rights as set out in the *Constitution*.
- (2) No *person in custody* is allowed to misbehave or be a nuisance to other persons in custody. Any such ill-behaviour will be treated by the *community service centre commander* in accordance with the applicable cautioning and if necessary, the institution of relevant criminal charges.

30. Risk profile of persons in custody

- (1) A risk profile must be compiled of each *person in custody* of the Service in order to prevent them from escaping or to pose a danger to others, including to him- or herself. An entry to this effect must be made in each case docket and in the Occurrence Book.
- (2) Specific measures must be implemented to ensure the secure and safe custody of every person in the Service, including when he or she is in hospital, in transit and at court.
- (3) The risk profile will determine if additional guard or *escort* services are needed under the relevant circumstances to ensure secure and safe custody. The relevant *restraining measures* must also be utilised to secure

a person with a high risk of escaping or violent behaviour which can pose a threat to other persons in custody or to him- or herself.

31. General matters applicable to a person in custody

- (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 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 (General) 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 or member of the media 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.
- (7) The marriage ceremony of a *sentenced offender* may, in terms of the Correctional Services Act (Act No. 111 of 1998), be performed in a *correctional centre*. No marriage ceremony of a *person in custody* may be performed at a police station, while the person is in the custody of the Service.

32. 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 (General) 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 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 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.

33. Administering a Custody Register (SAPS 14)

- (1) A Custody Register (SAPS 14) must be kept at all police stations, irrespective if they do not have *detention facilities*.

- (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, the SAPS 22 and Occurrence Book daily to ensure that the provisions of this Order are complied with.

34. Particulars of *persons in custody* to be entered into the SAPS 14

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 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.

35. Recording particulars in the SAPS 14

- (1) 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.
- (2) 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 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 CAS number must be recorded in red ink in the remarks column.

- (ii) When a person is not charged after the expiry of 48 hours, the *person in custody* must be released and SAPS 328 must be completed. The word "Not Charged" must be written in column 5.4 of the Custody Register.
- (iii) 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.
- (iv) 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.

(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) Reason for release (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 "Release". The reason for release 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 released (discharged) 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 Release".
- (iii) Once a person who was taken into custody has been released (discharged) by reason of him or her paying his or her fine, the words "FINE PAID" must be entered as the reason for release column. The serial number of the receipt that is issued (Z 263A) must also be entered in the "Reason for Release" 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 Release" column.

(d) Hospitalisation

- (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 National Instruction 8 of 2016 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 35(2)(d)(i)}.

(e) Remarks - Entry relating to *foreigners*

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: “NAME OF COUNTRY”.

(f) Remarks – General Remarks

This column may be used for any general remarks. The following serves as examples:

- (i) A *suspect* who is detained and not yet charged, the particulars of the station and CAS number must be entered in red ink; and
- (ii) reference to the *suckling’s* particulars who is in detention with the mother must be entered in red ink.

36. Particulars brought forward from a previous month in the SAPS 14

- (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.

37. Particulars of a child detained with his or her mother in the SAPS 14

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*) —
 - (i) a new entry with regard to the *suckling* is made in the Custody Register; and
 - (ii) the word "*SUCKLING*" is written in red ink in the remarks column, after the particulars of the mother as per paragraph 35(2)(f)(ii);
- (b) If the *child* is not breast-fed —
 - (i) 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 this instruction as per par 25(8)(k) and the cost of feeding is recovered from the responsible department in terms of Standing Order (Financial) 63; and
- (iii) if the mother is released from custody, the words "MOTHER RELEASED/RELEASED WITH MOTHER" must be entered in the "Reason for Release" column in red ink as the reason for the release of the *child*.

38. Entries relating to meals in the SAPS 14

- (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 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.

39. Preventing persons in custody from escaping from or death in police custody

- (1) The custody commander, or the *community service centre commander* at a police station without a dedicated custody commander, is responsible to ensure the safe and secure custody of all persons in police *detention facilities*.

- (2) Once a *person in custody* is taken from the *detention facilities* at the police station and transported to court, *correctional facility*, hospital, clinic or doctor or for purpose of further investigation, the transporting official is responsible for the safe and secure detention of the *person in custody* in transit.
- (3) When a *person in custody* is handed over to the court cell commander or court orderly, the court cell commander or court orderly is responsible for the safe and secure detention of the *person in custody* in the court cells and court dock. When the person(s) in custody might escape from the court dock (in accordance with the risk profile in paragraph 30), the court orderly must arrange for additional guards to guard the person(s) appearing in court.
- (4) The searching of police cells, court cells, the *person in custody*, visitors, food provided to persons in custody and vehicles transporting persons in custody must be performed thoroughly in order to seize any unwanted object, article or instrument which can be used to enable the person(s) to escape.
- (5) A *person in custody* who appeared in court must, upon returning from the court dock, be properly searched.
- (6) When a *person in custody* is released at the police station or at court, the member releasing the person must verify whether the person can be released and is not awaiting trial in any other cases.

- (7) Loading zones at police stations, courts and prisons must be secured and sufficient members must be present to safeguard the persons in custody to be loaded from transportation.
- (8) Cell visits must be performed in terms of this National Instruction and the members who perform the cell visit must confirm during every visit that the number of persons in custody correspond with the number of persons registered in the SAPS 14 register. Furthermore, the *detention facilities* must be thoroughly checked every time during a cell visit in order to ensure that the facility is secure.
- (9) The station commander must issue a Station Order regulating the prevention of escapes from and deaths in police custody.

40. Release of a remand detainee by the Remand detention facility to the Service for early arrival at court

In instances where the circumstances make it difficult for the police station to ensure that remand detainees arrive in time for court (for example long distances), the following is applicable:

- (1) The station commander and the Head of the *correctional facility* where the person is remanded must reach an agreement on the early release of the remand detainee a day before the court appearance and for his or her return a day after the court appearance.
- (2) A remand detainee must be detained for this purpose at the police station in close proximity of the court.

Chapter 5: Sentenced offenders

41. Report for Correctional Services of a sentenced offender (SAPS 62) and sentenced offender released on probation

The provisions of National Instruction 3 of 2016 (Bail and the release of Persons) must be complied with regarding managing the reporting of persons to a police station as a condition of bail or probation. In order to comply with its obligations in terms of the *Constitution* and international agreements, the Service has certain obligations in terms of the release of *sentenced offenders* on probation and the completion of the SAPS 62 form for every *sentenced offender* sentenced to Correctional Services for two years or longer irrespective whether two or more shorter sentences imposed on such an offender have been combined. The following steps must be followed:

(1) Completion of SAPS 62 after the imposing of a sentence and submission to Correctional Services

- (a) A report [SAPS 62 form] must be completed (if reasonably possible, on the same day the person is sentenced) by the investigating officer in all cases where a sentence of Correctional Services or detention, including a joint sentence of twelve months or longer is imposed. The investigating officer must make four copies of the completed SAPS 62 form which must be distributed as follows:
 - (i) Two copies must immediately be despatched to the *correctional centre* or detention facility concerned;
 - (ii) one copy must be despatched to the Divisional Commissioner: Forensic Services; and
 - (iii) one copy must be filed under part B of the docket. This measure will ensure that the docket can be closed in terms of SAPS procedures.

- (b) If a joint sentence is twelve months or longer, as a result of two or more shorter sentences imposed on a *sentenced offender*, the Correctional Service authorities will request the Service to submit the SAPS 62 form.
- (c) When completing the SAPS 62 form, all the parts of the form must be completed with regard to the *sentenced offender* and the crime on which he or she was sentenced.
- (d) It is also important that the impression the *sentenced offender* made upon the investigating officer be mentioned, as well as any other particulars concerning the *sentenced offender* which may possibly have a bearing on his or her sentence(s).

(2) Application for re-arrest of a *sentenced offender* released on probation

An application for the re-arrest of a *sentenced offender* released on probation, and who has breached the conditions of his or her probation, must be forwarded by the Department of Correctional Services to the Service.

42. Transfer of Sentenced Offenders

The Service is obliged to take certain steps with regard to the transfer of persons in custody to a *detention facility* or to a *correctional centre* or a hospital or medical treatment centre. The steps that must be followed with regard to the transfer of persons in custody, are outlined below:

- (1) The transfer of a *sentenced offender* to a *detention facility*, another *correctional centre*, a hospital or medical treatment centre who is detained to be tried for another offence, or to give evidence at a criminal trial, or is required for further investigation, may be obtained on an order signed by the Prosecuting Authority, or on a warrant issued by a court or judicial

officer under one or other provision of the law. Such an order or warrant must be sent to the commander of the *correctional centre* or Head of the other detention facility concerned.

- (2) During his or her transfer, such a *sentenced offender* must, as a rule, be in the custody of a member or special warder of Correctional Services, but he or she may be in the custody of a member of the Service. In the latter case, a receipt for the *sentenced offender* must be issued to the *correctional centre* and as soon as the *sentenced offender* is returned to the *correctional centre* the receipt must be collected again.
- (3) If a *sentenced offender* is transferred from a *detention facility* to a *correctional centre* within the serving area of that police station or to another detention facility, the Service must provide the *escort(s)*. Any expenditure connected with such a transfer is debited against the budget of the Service.
- (4) When a *remanded detainee* is to be removed for trial to a place other than that where he or she was arrested, the members at the police station at the place where he or she has been arrested, must under the provisions of the Police Service Act, provide the *escort(s)*. The warrant may be posted or faxed where necessary. If in any case a member is to proceed from the place of trial to the place of arrest as an identifying witness, he or she must at the same time, when possible, also act as an *escort*.
- (5) If a *person in custody* is referred to a psychiatric institution for mental observation, the Service must transfer the person to such institution and provide the guarding duties of such person at the psychiatric institution. If the aforesaid person just be transferred to any other institution for medical treatment, the Service must transfer such person. It is important to take

note that the Service is not responsible to transfer a *sentenced offender* who is in a psychiatric institution to any other facility for detention. If a *person in custody* whose trial has been remanded, is under *escort* to a *correctional centre*, it must be ensured that the *escort* is in possession of the warrant for further detention [J 7] or a written order [SAPS 82].

Chapter 6: Implementation, monitoring and review

43. Implementation, monitoring and review

- (1) Every Provincial Commissioner must monitor compliance and where a member acted in conflict with the National Instruction, institute disciplinary steps and criminal charges, where applicable, against the member.
- (2) The Divisional Commissioner: Visible Policing may issue Standard Operating Procedures regarding any aspect dealt with in this National Instruction and institute any measures to monitor and evaluate compliance with this National Instruction.
- (3) This National Instruction will be reviewed at least every three (3) years from the date of its approval.

ANNEXURE 2

4 National Plan to prevent escapes from and deaths in police custody: 2019/2020



SUID-AFRIKAANSE POLISIEDIENS**SOUTH AFRICAN POLICE SERVICE**

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Navrae	: Lt Gen SJ Jephtha
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**DIVISIONAL COMMISSIONER
VISIBLE POLICING
HEAD OFFICE**

- A. The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
- B. **ALL DIVISIONAL COMMISSIONERS**
- C. **ALL REGIONAL COMMISSIONERS**
- D. **ALL PROVINCIAL COMMISSIONERS**
- E. The Head
CORPORATE COMMUNICATION
- F. All Heads
HEAD OFFICE
- G. All Section Heads
HEAD OFFICE
- H. All Commanders
SAPS ACADEMY AND TRAINING CENTRES
- I. **ALL DEPUTY NATIONAL COMMISSIONERS**
- J. The Chief of Staff
MINISTRY OF POLICE

**PRISONERS AND PRISON AFFAIRS: ESCAPES AND OTHER OFFENCES BY
PRISONERS: NATIONAL PLAN TO PREVENT ESCAPES FROM AND DEATHS
IN POLICE CUSTODY: 2019/2020**

- D.1. The Annual Performance Plan (APP) of the South African Police Service (SAPS) requires that the number of persons who escape from SAPS and number of persons who died in SAPS custody should be reduced.

2

PROSONERS AND PRISON AFFAIRS: ESCAPES AND OTHER OFFENCES BY PRISONERS: NATIONAL PLAN TO PREVENT ESCAPES FROM AND DEATHS IN POLICE CUSTODY: 2019/2020

2. The prevention of escapes from and deaths in police custody is one of the priority key performance areas of the National Commissioner as well as all Provincial Commissioners of the SAPS and has been identified as a key risk within SAPS.
3. Although SAPS has achieved the target in the APP for escapes during 2018/2019 financial year, SAPS did not achieve the target to reduce deaths in custody during the same reporting period. It is evident that members are negligent and do not comply with the existing Standing Orders and Instructions regulating this environment. A National Plan has been developed to prevent escapes from and deaths in SAPS custody and is attached as Annexure A.
4. The Provincial Commissioners should ensure that as of date of this National Plan, the following is performed:
 - 4.1. The attached plan should be incorporated into a Provincial Plan and disseminated via a Provincial Order to all Clusters, Regions and Station Commanders at Police Stations for strict compliance before **2019-07-15**.
 - 4.2. All Clusters, Regions and Station Commanders to acknowledge receipt thereof and submit a certificate to your office by not later than **2019-07-31**.
 - 4.3. All operational/functional members at police station to acknowledge receipt of the Provincial Plan and Provincial Order and a copy of the acknowledge receipt is filed on their personal files before **2019-08-15**.
 - 4.4. A copy of the Provincial Plan and a certificate, certifying that Provincial Plan and Provincial Order were received by all Clusters, Regions and Station Commanders, to be submitted to Colonel Ratombo or Lieutenant Colonel Simelane to email RatomboM@saps.gov.za or SimelaneDE@saps.gov.za not later than **2019-08-30**.
5. Your kind cooperation is always appreciated.

A-C&E-J. For your information.



**LIEUTENANT GENERAL
ACTING DIVISIONAL COMMISSIONER: VISIBLE POLICING
SJ JEPHTA (SOEG)**

Date: 2019-06-21

BACKGROUND

The Annual Performance Plan (AOP) of the South African Police Service (SAPS) requires that the number of escapes from and deaths in SAPS custody must be reduced. The prevention of escapes from and deaths in police custody is one of the priority key performance areas of the National Commissioner as well as all Provincial Commissioners of the SAPS and deaths in custody has been identified as a national risk. It is therefore necessary to implement a National Prevention Plan to reduce escapes from and deaths in police custody as well as to provide guidance to Provincial Commissioners in order to align their Provincial Plans and Station Orders accordingly.

One of the core objectives of SAPS [as set out in Section 205(3) of the Constitution (Act 108/1996)] is to prevent, combat and investigate crime, to maintain public order, **to protect and secure the inhabitants of the Republic** and their property, and to uphold and enforce the law.

The Code of Conduct also stipulates the following:

"I commit myself to creating a safe and secure environment for all people in South Africa"

Escapes from police custody are not only an embarrassment to the South African Police Service, but also to South Africa as it receives extensive media coverage. Although escapes take place due to various reasons, non-compliance by members to existing instructions and pure negligence by members are contributing to the majority of escape incidents.

The following aspects contribute directly to the escapes by persons from police custody:

- Persons in custody of the Service are not properly searched and cells are not being properly inspected;
- Members are not vigilant when performing cell visits to persons in custody of the Service;
- Persons in custody are left unattended in the exercise area;
- Arrested persons are left unattended in the Community Service Centres, processing offices, in the courts and whilst receiving medical treatment;
- Insufficient or no escorts when transporting high risk detainees;
- Police vehicles and court trucks which are used to transport persons in custody are not properly inspected before transporting persons in custody;
- Visitors to police cells, including visits by attorneys and police officers are not properly documented and they are not thoroughly searched for prohibited items;
- No proper verification is performed when releasing persons which are in custody from courts or at police stations to ensure the person released is the correct person and not awaiting trial on any other cases;
- No risk profiles are being performed to determine the risk of a person to escape from custody;
- Adequate restraining measures such as leg irons, cable ties and handcuffs are not utilised in accordance with the risk profiles;
- The loading of persons in custody at police stations and courts are not always performed in proper secured loading zones;
- Members posted at the court loading zones are not operational ready to safeguard the remand detainees;
- Persons in custody who are hospitalised are not adequately guarded;
- Inadequate or non-serviceable court cells to safeguard persons in custody at courts;
- The doors of canopies on LDVs are not locked with padlocks when persons in custody is transported.

The following table provides a breakdown of the circumstances whereby persons escaped from police custody during 2018/2019:

Circumstances of Escape from police custody incidents	Number of escape incidents	Number of persons escaped
From police station cells	73	191
In transit	30	60
From Community Service Centre (<i>not holding cells</i>)	52	54
From court cells	36	53
From courts at docks, rooms or passages)	51	53
Wrongful release at courts and police stations	38	43
During further investigation	39	42
From CSC holding cells	37	41
From hospitals	35	35
From police station loading zones	28	32
From court loading zones	17	24
During arrest (before taken to police stations)	18	18
From CSC fingerprint office	7	8
From CSC consultation rooms (Home Affairs, etc)	2	2
TOTAL	463	656

The safety and well-being of persons in custody of the Service is of great importance. The reality is that persons die whilst in custody of the Service. Deaths in custody occur due to various reasons such as injuries sustained before or during arrest, injuries whilst in custody, natural causes and suicides.

The following aspects contribute directly to the deaths in police custody:

- Cells are not visited and inspected for any damages in accordance with the instructions in the relevant governance;
- Cells are not searched for prohibit items which can be used to cause injury or the commit suicide with such as shoe laces, belts, strings in clothing, etc.;
- Emergency medical treatment is not performed immediately on persons injured before/during arrest;
- Persons in custody who are injured are not immediately taken for medical treatment;

No proper risk assessment is done of persons in custody.

The following table provides a breakdown of circumstances and incidents of death in police custody during 2018/2019:

Circumstances		Provinces									
		EC	FS	GP	KZN	LIM	MP	NW	NC	WC	TOTAL
Suicide hanging	with belt	0	1	1	1	0	0	0	0	2	5
	with shoe lace	1	0	2	1	0	1	0	1	1	7
	with blanket	5	4	7	5	0	2	1	0	3	27
	with clothes	3	4	9	4	3	0	4	1	7	35
	with other instrument	0	2	6	2	2	2	1	0	2	17
Natural causes		9	2	4	3	9	3	6	0	4	40
Injuries sustained prior to in custody		7	3	19	19	10	7	8	1	4	79
Assault by inmates		2	0	0	1	3	0	0	0	1	6
Total		27	16	48	36	27	15	20	3	24	216

The Plan to prevent escapes from and deaths in police custody includes proactive and reactive measures to address the escapes from and deaths in police custody. It makes provision for emergencies, including a contingency plan that serves as a guideline to be followed when an incident of escape from or death in custody takes place until an operational plan is compiled to manage the incidents.

1. PURPOSE:

To provide guidance in order to prevent escapes from custody and deaths in custody of persons who are in the custody of the Service.

2. OBJECTIVES:

- 2.1 To ensure that relevant directives are in place in order to prevent / reduce escapes from and deaths in SAPS custody;
- 2.2 To ensure that all Provincial Commissioners have a Provincial Prevention Plan and a Provincial Order to prevent escapes from and deaths in custody of the Service;
- 2.3 To ensure that all police stations have a Station Order in place in order to prevent escapes from and deaths in custody of the Service;
- 2.4 To ensure that command and control and the relevant monitoring mechanisms are in place in terms of compliance to governance and directives on escapes from and deaths in SAPS custody; and
- 2.5 To ensure compliance in terms of SAPS Discipline Regulations, 2016 once a person has escaped from or died in SAPS custody.

3. APPLICABLE DIRECTIVES:

Constitution of the Republic of South Africa, 1996;
 Child Justice Act, 2008 (Act No. 75 of 2008);
 Correctional Services Act, 1998 (Act No. 111 of 1998);
 Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 Dangerous Weapons Act, 2013 (Act No. 15 of 2013);
 Domestic Violence Act, 1998 (Act No. 116 of 1998);
 Firearms Control Act, 2000 (Act No. 60 of 2000);
 Immigration Act, 2002 (Act No. 13 of 2002);
 Inquest Act, 1959 (Act No. 58 of 1959);
 Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);

Mental Health Care Act, 2002 (Act No. 17 of 2002);
 National Instruction 2/2010: Children in Conflict with the Law;
 National Instruction 3/2010: The Care and Protection of Children in terms of the Children's Act;
 National Instruction 1/2014: Protection of Older Persons;
 National Instruction 3/2011: Registration of Case Dockets on the Crime Administration System (CAS);
 National Instruction 3/2016: Bail and the Release of Persons;
 National Instruction 8/2016: Medical Treatment and Hospitalisation of a Person in Custody;
 National Instruction 13/2016: Duties of the Station Commander;
 National Instruction 8/2017: Property and Exhibit Management;
 National Road Traffic Act, 1996 (Act No. 93 of 1996);
 Regulation of Gatherings Act, 1993 (Act No. 205 of 1993);
 South African Police Service Act, 1995 (Act No. 68 of 1995);
 Standing Order General 252: The Pocket Book (SAPS 206);
 Standing Order General 256: Duties of the Commanders on a Relief and the Investigation of Charges;
 Standing Order General 271: Court and Court Orderly Duties;
 Standing Order General 291: Mental Health Care Act, 2002 (Act No. 17 of 2002);
 Standing Order General 301: Registers, Books and Forms;
 Standing Order General 303: Occurrence Book (SAPS 10);
 Standing Order General 308: Warrants of Arrest and Register (SAPS 266);
 Standing Order General 341: Arrest and the Treatment of an Arrested Person until such person is handed over to the Community Service Centre Commander;
 Standing Order General 343: Circulation of Wanted Persons;
 Standing Order General 345: Transportation of Persons in Custody of the Service and related matters;
 Standing Order General 346: Report for Correctional Services of a Sentenced Offender (SAPS 62) and Sentenced Offenders Released on Probation;
 Standing Order General 347: Transfer of Sentenced Offenders;
 Standing Order General 350: Use of Restraining Measures;
 Standing Order General 361: Handling of Persons in the Custody of the Service from their Arrival at the Police Station;
 Standing Order General 362: Custody Register (SAPS 14);
 Standard Operating Procedure (SOP) for Arrest and Detention of Illegal Foreigners (Version 2/2018);
 Standard Operating Procedure (SOP): Vulnerable children in South Africa;
 Standard Operating Procedure (SOP) on Courts and Court Orderlies;
 Standard Operating Procedure (SOP): Respect, Protect and Promote the Rights of Lesbian, Gay, Bisexual, Transgender, Intersex, plus persons;
 JCPS Protocol on the temporary release of remand detainees to SAPS for further investigation and early arrival in court;
 JCPS Protocol on referral of terminally ill or severely incapacitated remand detainees to court;
 JCPS Mental Observation Protocol; and
 JCPS Protocol for the transportation of remand detainees.

4. DEFINITIONS

4.1 **Escape:**

An escape is defined in Section 51 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) that any person who have been arrested and being in police custody but have not yet been detained in any detention facility, correctional centre, treatment centre or holding facility, escapes or attempts to escape from such custody, shall be guilty of an offence and liable on conviction to the penalties prescribed in Section 117 of the Correctional Services Act, 1998 (Act No. 111 of 1998).

4.2 **Escape from police custody:**

Means when a person is in the custody of the Service and the person escape in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). The following escape incidents are not regarded as escapes from police custody:

- when a person is under the control of any other law enforcement agency (for example Metropolitan and Municipal Police/Traffic Officer/Military Police/Park Rangers, etc.); and
- when a person is under the control of any other department (for example Justice and Constitutional Development, Correctional Services, Health, Home Affairs, Social Development, Education, etc.).

4.3 **Correctional Centre:**

Means a detention facility which is under the control of the Correctional Services Act, 1998 (Act No 111 of 1998).

4.4 **Remand Detention Facility:**

Means a place established under the Correctional Services Act, 1998 (Act No. 111 of 1998), as amended by the Correctional Matters Amendment Act, 2011 (Act No. 5 of 2011) as a place for the reception, detention or confinement of a person liable to detention in custody, and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of detention, protection, treatment or otherwise, and all quarters used by correctional officials in connection with any such remand detention facility, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up.

4.5 **Remand detainee (RD):**

The term "Remand Detainee" (RD) was adopted in the Correctional Services Act, 1998 (Act No. 111 of 1998), as amended by the Correctional Matters Amendment Act, 2011 (Act No. 5 of 2011) and means a person detained in a remand detention facility awaiting the finalisation of his/her trial, whether by acquittal or sentence. The definition by its nature excludes sentenced offenders as well as state patients and involuntary mental health care users (where a decision by a court has already been made), persons awaiting deportation and persons in custody of the Service who has not appeared before a court.

4.6 **Detention Facility:**

Means a police cell, lock-up or temporary detention facility which is under the control of the Service.

4.7 **Person in Custody:**

Means a person who has been arrested and who is in the custody of the Service and who has not yet appeared in a court and issued with a J7 (Detention Warrant) to be handed over or handed back to the Department of Justice or Correctional Services or any other institution for detention.

4.8 Restraining Measures:

Means handcuffs, cable ties or leg irons or other relevant devices which are issued and approved by the Service to restrain an arrested person.

4.9 Death in Police Custody

Means the death of any person which occurs during a period from the arrest of such a person and ending when the person leaves police custody, either legitimately or by escaping from custody. In the case of a person who is arrested by someone who is not a member of the Service, the period shall commence at the delivery of such person into police custody.

4.10 Involuntary mental health care, treatment and rehabilitation services

Means the provision of health interventions to people incapable of making informed decisions due to their mental health status and who refuse health intervention but require such services for their own protection or for the protection of others.

4.11 Listed health establishment

Means the hospitals, clinics, community health and rehabilitation centres and psychiatric hospitals listed by the heads of provincial health departments and supplied to the Service as the places where mentally ill persons must be taken after their apprehension.

4.12 Mental health care practitioner

Means a psychiatrist, registered medical practitioner, registered nurse, occupational therapist, psychologist or social worker who has been trained to provide prescribed mental health care, treatment and rehabilitation services.

4.13 Mentally ill person

Means a person who, from the personal observation of a member or from information obtained from a health practitioner, is suffering from mental illness and is likely to cause death to himself or herself or others, inflict serious harm to himself or herself or others or cause serious damage to or loss of property belonging to him/her or others.

4.14 Person with a disability

Means persons with disabilities, including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

4.15 Determined detention facility

Means a police cell, lock-up or temporary detention facility identified by the Director-General of the Department of Home Affairs which are under the control of the Service.

5. CIRCUMSTANCES**5.1 The following circumstances are applicable to escape incidents:**

- escape during arrest (before taken to police station);
- escape from police station cells;
- escape from Community Service Centre;
- escape from Community Service Centre temporary holding facilities;
- escape from Community Service Centre processing office/fingerprint office;
- escape from consultation rooms/offices at police station;
- escape from station loading zone;

- escape from court loading zone;
- escape whilst in-transit (during transporting of persons in custody);
- escape from court cells;
- escape from court facilities (court dock, room, passage, consulting rooms);
- escape during further investigation;
- escape from a hospital, clinic, treatment centre or any other medical facility; and
- wrongful release of persons in custody at court or at police station.

5.2 The following circumstances are applicable when persons die in custody:

- injuries sustained whilst person is in custody;
- suicide whilst person was in custody;
- injuries sustained by person prior to arrest; and
- natural causes.

6. RESPONSIBILITIES:

6.1 Division: Visible Policing:

- 6.1.1 To continuously revise the relevant governance, procedures and guidelines applicable to Custody Management in order to prevent / reduce escapes from and deaths in police custody.
- 6.1.2 To perform assessment visits to stations where more than one escape incident and death in custody took place or multiple escapees escaped from police custody as well as the stations which were determined by Director General of Department of Home Affairs to detain illegal foreigners.
- 6.1.3 To conduct work session at Clusters and Police Stations with regard to secure detention management.
- 6.1.4 To assess Provincial Custody Management Plans and Provincial Orders in order to provide guidance where necessary to prevent escapes from and deaths in police custody.
- 6.1.5 To continuously monitor compliance in terms of the governance, procedures and guidelines in order to ensure proper Custody Management (that no person in custody of SAPS escape or die).
- 6.1.6 To continuously update the relevant databases (one for escapes and one for deaths in police custody) to provide monthly, quarterly and annual information to SAPS management on statistics, trends and tendencies;
- 6.1.7 To ensure that non-complying members are disciplined in terms of SAPS Discipline Regulations, 2016;
- 6.1.8 To implement precautionary measures in order to ensure that the number of escapees are reduced by 2% and number of deaths are reduced by 5%—during 2019/2020 financial year (as indicated in the Annual Performance Plan of SAPS for 2019/2020 and the National Risk Register)

6.2 Provincial Commissioner and Cluster Commander:

- 6.2.1 To compile and maintain a Provincial Custody Management Plan and relevant Provincial Order to prevent escapes from and deaths in police custody.
- 6.2.2 To compile and issue a Provincial Prevention Plan in line with the National Prevention Plan and the national Impact Assessment of the Detention Management Annual Plan to prevent escapes from and deaths in police custody.;
- 6.2.3 To implement precautionary measures in order to ensure that the number of escapees are reduced by 2% and number of deaths are reduced by 5 during 2019/2020 financial year.
- 6.2.4 To ensure that a tracing team is established at Cluster or Police Station level once an escape from police custody occurred to trace the escapee(s) in order to ensure achievement of 35% 29% of escapees re-arrest within 24hours.

- 6.2.5 To ensure that escapee(s) who are re-arrested within 24 hours are immediately charged on CAS/ICDMS.
- 6.2.6 To ensure that all members at station level are aware and strictly comply with all relevant National Instructions, Standing Orders and relevant National Directives.
- 6.2.7 A certificate, signed by the relevant Station Commander, indicating that all members under his/her command have been informed and are aware of the relevant directives must be forwarded to the relevant Cluster Commander. Each Cluster Commander must certify to the Provincial Commissioner that each station under his/her command have been informed and are aware of all the relevant National Instructions, Standing Orders, national directives, Provincial Plans/Orders and Station Orders. Certificates must be provided by each Provincial Commissioner to Division: Visible Policing that the national and provincial plans have been distributed to each police station under their command.
- 6.2.8 To ensure that disciplinary proceedings are instituted at station level in all incidents of escapes from and deaths in police custody in terms of regulation 8(1) of the SAPS Discipline Regulations, 2016 where the member may have committed misconduct under regulation 5(3) of the Discipline regulations.
- 6.2.9 To institute disciplinary proceedings in terms of the SAPS Discipline Regulations, 2016 for non-compliance by Station Commanders regarding the reporting of escapes from and deaths in police custody as well as for non-compliance or negligence by members in terms of an escape from and deaths in police custody. **All incidents of escapes and deaths must be investigated** departmentally (and where applicable, criminal cases to be registered) against the relevant Station Commanders/member(s) and the relevant sanction to be recommended in cases of negligence, omission or corruption in terms of the SAPS Discipline Regulations, 2016. The disciplinary proceedings instituted must be registered on PERSAL (function 4.12). (Should a member not be suspended where disciplinary proceedings were instituted, a reason for a member not being suspended must be provided to the Provincial Commissioner).
- 6.2.10 To ensure that Station Commanders forward Disciplinary Register (DR) numbers and particulars of the member(s) involved to this office within seven days (7) after each incident of escape from and death in police custody was reported.
- 6.2.11 Monthly statistics on the status of disciplinary (outcome of proceedings) and criminal cases emanating from each escape and death incident must be kept, updated and reported monthly to the office of the Divisional Commissioner: Visible Policing.
- 6.2.12 Each Provincial Commissioner must submit a monthly return of all reported escapes and deaths to the office of the Divisional Commissioner: Visible Policing not later than 7 days after each month.
- 6.2.13 The Provincial Commissioner must ensure that the findings and recommendations contained in the station visit reports from Division: Visible Policing get the relevant attention in order to address the challenges/shortcomings.
- 6.3 Station Commander:**
 - 6.3.1 To compile Station Order to address escapes from and death in police custody, including the prevention thereof with regard to the unique circumstances at the station. A copy thereof must be kept in the CSC (addressing the well-being and safe keeping of persons in custody) and made available to all members.
 - 6.3.2 Compile and issue a Station Prevention Plan in line with the National and Provincial Prevention Plans and the national Impact Assessment Plan to prevent escapes from and death in police custody.
 - 6.3.3 To ensure that each member at station level signs a certificate to confirm that they are aware of the relevant Station Order, Station Prevention Plan, Impact Assessment Annual Plan and applicable directives and this certificate must be filed in their personal files.
 - 6.3.4 To ensure that all functional members are equipped with functional handcuffs with the correct keys as well as their own functional padlocks with the correct keys, bullet

- resistant vest, pocket book and pepper spray to be utilised when required. Note that equipment issued must be replaced immediately when losses/damages are reported.
- 6.3.5 To ensure that all drivers of patrol vehicles are issued with an additional set of functional padlocks and the correct keys as well as any other relevant devices such as flexible handcuffs (plastic double loop cable ties) which are issued and approved by the Divisional Commissioner: Supply Chain Management as restraining measures. This equipment must be handed over to each new driver in terms of the prescribed handing over procedures.
 - 6.3.6 To ensure that functional leg irons are available if needed in the Community Service Centre and the courts.
 - 6.3.7 To ensure that all Relief Commanders and Community Service Centre Commanders conduct proper On- and Off Duty parades in order to ensure that each member is in possession of the required equipment to deal with any person in custody of the Service before any shift commences. [See SO (G) 256].
 - 6.3.8 To ensure that all Relief Commanders and Community Service Centre Commanders conduct regular visits to the detention facilities as prescribed by Standing Order (G) 361.
 - 6.3.9 Visit the detention facilities in person- see National Instruction 13/2016, par 3 (3) (s).
 - 6.3.10 To ensure that procedures are implemented to report any defects (broken windows, doors, locks, burglar bars, etc.) for speedy repairing thereof in order to prevent escapes from or death in custody as a result thereof. Structural defects must be reported to Physical Resource Management / Department of Public Works for urgent attention. Using of facilities/structures with defects which were reported but not yet repaired must immediately be discontinued in order to prevent possible escapes.
 - 6.3.11 Custody Management must be incorporated in the PEP documents of all employees who perform functional / operational duties.
 - 6.3.12 To ensure that the Station Duty Officer perform the visits according to National Instruction 2/2015, par 3(1) (e) and 3(2).
 - 6.3.13 The Information Management Centre (IMC) at station level must draw a CAS report once an escape from or death in custody occurred, provide it to the Station Commander in order to ensure that the escapes from and deaths in police custody have been reported as prescribed via the required Notification Forms (separate forms for escapes from and death in police custody). All the escape incidents and death in custody must be captured and a detailed description of the incident must be entered in the field of CAS function 8.1.1.1. The correct crime codes and charge must be utilised when registering an escape incident.
 - 6.3.14 All incidences of escapes from and death in police custody must be investigated to determine the possible reasons / causes in order to update their prevention plans to reduce or prevent escapes from and death in police custody. **All incidents of escapes from and death in custody must be investigated departmentally. Disciplinary Register (DR) number with the particulars of the member(s) involved must be forwarded to this office within seven days (7) after each incident of escape from police custody was reported.** (Where applicable, criminal cases to be registered) against the relevant member(s) and suspension to be recommended in cases of negligence, omission or corruption in terms of the SAPS Discipline Regulations, 2016. The death in police custody incident will be investigated by the Independent Police Investigative Directorate (IPID).
 - 6.3.15 Institute disciplinary proceedings in terms of the SAPS Discipline Regulations, 2016 for not reporting escapes from and deaths in police custody as well as for non-compliance or negligence by members in terms of an escape from or death in police custody.
 - 6.3.16 To implement specific mechanisms at the CSCs to ensure that all escapes from and death in police custody are reported **within 12 hours** to the office of the relevant Provincial Commissioner/Cluster Commander as well as to the Divisional Commissioner: Visible Policing via the prescribed Notification Forms.

- 6.3.17 To regularly update the Station Prevention Plan and Station Order in order to accommodate and address the latest trends and circumstances of escapes and deaths (modus operandi).
- 6.3.18 To continuously communicate the different types of modus operandi in terms of escapes and deaths to all employees during station lectures, information sessions and Station Orders.
- 6.3.19 To ensure that sufficient manpower are always available during transporting and loading of persons in custody (members from TRT may be utilised if the person in custody is at risk to escape).
- 6.3.20 To ensure that a person in custody is properly restrained in accordance with SO (G) 350 when taken out of a police cell.
- 6.3.21 To ensure that all members are sensitised that the child lock of the rear doors on motor vehicles are properly working and activated before transporting persons in custody of the Service to prevent these doors to be opened from the inside.
- 6.3.22 To ensure that members comply with the detention aspects as contained in Section 5(2)(b) of the Correctional Services Act, 1998 (Act No. 111 of 1998), as amended by section 3(b) of the Correctional Matters Amendment Act, 2011 (Act No. 5 of 2011) and that all the persons in police stations detention facilities are detained according to J7 (Warrant of Detention) as directed by the court (remand detainees are not allowed to be detained in police cells for longer than 7 days);
- 6.3.23 To ensure that members comply with the detention aspects as contained in Section 34(1) of the Immigration Act, 2002 (Act 13 of 2002) when arresting and detaining illegal foreigners.
- 6.3.24 To ensure that the members comply with the detention aspects as contained in the Standard Operating Procedure (SOP) (version 2/2018) of arrest and detaining of undocumented person illegal foreigners when arresting and detaining undocumented persons.
- 6.3.25 To ensure that the detention of illegal foreigners is only taking place to the police stations which are determined in terms of the Immigration Act, 2002 (Act 13 of 2002) as places of detention pending deportation or transfer to Lindela Holding Facility.
- 6.3.26 To ensure that the determined police stations comply with requirements of the minimum standard of police cells to detain illegal foreigners.
- 6.3.27 To conduct continuously a risk assessment of all persons in custody of the Service in order to ensure that the proper safety measures are implemented in order to prevent an escape from or death in SAPS custody.
- 6.3.28 To regular inspect the cells and ensure that the detention facility is in a safe condition to be used for detention purposes. Vehicles which are used to transport persons in custody must also be inspected continuously to ensure that they are also safe to be used for transportation of persons in custody.
- 6.3.29 Establish as a matter of urgency a tracing team to search and re-arrest the persons in custody who escaped.

6.4 Provincial Management Intervention:

- 6.4.1 Inspecting officials must ensure that the procedures as stipulated above as well as all relevant Standing Orders, National Instructions, national directives and Provincial / Station Orders are strictly complied with during their inspections at station level.
- 6.4.2 Non-compliance to the relevant Standing Orders, National Instructions, national directives and Provincial / Station Orders must be reported immediately to the relevant Provincial Commissioner in order to introduce remedial/corrective action.

6.5 Members:

- 6.5.1 To ensure that they continuously update themselves with all the relevant Standing Orders, National Instructions, Provincial and Station Orders in terms of Custody Management.
- 6.5.2 To ensure that they continuously acquaint themselves with the different types of modus operandi in terms of escapes.

- 6.5.3 To ensure that all incidents or activities including arrests, time of arrest, rights of the suspect and any injuries sustained whether before or during arrest, are recorded in the member's pocket book and Occurrence Book (OB).
- 6.5.4 To ensure that they are always vigilant and alert when they are handling a person in custody of the Service.
- 6.5.5 All members must comply with all the relevant Standing Orders, National Instructions, Provincial and Station Orders in terms of Custody Management.

7. ACCOUNTABILITY (CONSEQUENCE MANAGEMENT):

- 7.1 Members must be held accountable in all incidents of escapes from and death in police custody.
- 7.2 The Station Commander must ensure that the relevant disciplinary proceedings are instituted as mentioned in par 6.3 above to ensure that the relevant consequences are instituted against members, especially in instances where non-compliance to National Instructions, Standing Orders or directives are applicable or when members were negligent whilst performing their duties.
- 7.3 Every member who were involved with/present during the escape incident must provide reasons why he/she should not be suspended whilst the outcome of the Disciplinary Proceedings is awaited.
- 7.4 Non-compliance by Station Commanders to institute disciplinary proceedings must be regarded as serious misconduct and the Provincial Commissioners must institute the appropriate disciplinary proceedings when Station Commanders do not comply.
- 7.5 Station Commanders must deal vigorously with escape incidents and the appropriate sanction must be imposed on members who are found to be non-compliant or negligent to existing instructions which contributes to the escape incidents.

8. RISK ASSESSMENT AND MONITORING OF PERSONS IN CUSTODY

The risk assessment is an on-going process and must be reviewed throughout the period of detention of a person. The risk that a detainee may pose to themselves and others (a risk to escape, injure himself/herself/others or try to commit suicide), may alter when a detainee is charged, refused bail or released on bail and, therefore, the Relief Commander, CSC Commander and Custody Commander must review the risk at these stages and prior to release or transfer of a person in custody. A record must be kept in the Occurrence Book each time that a risk assessment is carried out on a person in custody of the Service.

The risk assessment should be as objective as possible and assumptions should never be made when assessing the risk of a person in custody of the Service. Police custody is stressful for most persons and for some it is traumatic. The sudden detention of a person in a police cell may immediately raise the category of risk for a person to try to escape or cause harm to himself/herself and other persons in custody or the community.

The Relief Commander/CSC Commander/Custody Commander must be informed of identified risks or changing circumstances that may lead to additional risks. The relevant commander must ensure that those risks are documented and the relevant precautionary measures implemented/applied to prevent a person from escaping from police custody or to ensure the well-being of the person in custody.

The Relief Commander/CSC Commander/Custody Commander must ensure that all members who are responsible for the custody of persons in the Service are briefed about the risks and the measures put in place to address the relevant risks.

9. PRIORITY RISKS RELATING TO ESCAPES FROM AND DEATHS IN POLICE CUSTODY

9.1 Five priority risks relating to escapes from police custody:

- 9.1.1 Use of restraining measures;
- 9.1.2 Secure transportation and escorting;
- 9.1.3 Cell security (Police Stations);
- 9.1.4 Secure detention at Courts; and
- 9.1.5 Medical treatment and hospitalisation of persons in custody.

9.2 Five priority risks relating to death in police custody:

- 9.2.1 Injuries sustained prior to or during arrest;
- 9.2.2 Use of restraining measures;
- 9.2.3 Secure transportation and escorting;
- 9.2.4 Cell security (Police Stations and Courts); and
- 9.2.5 Medical treatment and hospitalisation of persons in custody.

10. FOCUS AREAS FOR SECURE CUSTODY IN THE SERVICE:

10.1 Restraining measures:

10.1.1 Restraining measures (when taken to police cells):

- 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.
- 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.
- 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 or a reasonable standard of comfort and cleanliness must, where reasonably possible, be removed. A person in custody may not be questioned unless adequate clothing has been offered to him or her.

10.1.2 Restraining of persons in custody when appearing in court:

- It is sometimes necessary for a person in custody to appear in court under restraint (see risk assessment).
- 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.

10.1.3 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 reasonable possible.
- A person who is restrained in a hospital must under no circumstance be left unattended. Two members must be posted as guards to ensure that when one member is for whatever humanitarian reason not available, the person in custody will always remain safeguarded to prevent an escape from police custody.

10.1.4 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:

- the person must be handcuffed and be kept under surveillance; and
- because there are various sedatives which could be utilised to bring a mentally ill person under control a member must, where reasonably possible, immediately obtain the help of:
 - an available physician; or
 - a district surgeon; or
 - a registered clinical psychologist in the service of the state; or
 - a private doctor.

10.2 Transportation and escorting

- 10.2.1 If a person in custody is being taken to a vehicle, the member must follow at an angle behind the person in custody to ensure that any suspected movement on the part of the person in custody can be noticed immediately. If it is known that a person in custody is to be transported by a motor vehicle, especially if he/she is charged with a serious crime or if he/she has already been sentenced on such a charge, a specific transport vehicle or patrol van that secures the custody of the person in transit must, if possible, be used.
- 10.2.2 When it is necessary to transport one person in custody with a sedan motor vehicle, the driver must always be accompanied by a second member of the Service, who is on the back seat with the person in custody whose hands must be handcuffed behind his/her back and the seatbelt must be fastened. The second member must always be alert and wary to prevent any attempt by the person in custody to jump out of the sedan motor vehicle or to overwhelm the driver. The door of the sedan motor vehicle must at all times be locked and the child lock mechanism (safety catch) must be activated to prevent opening the door from the inside.
- 10.2.3 When it is necessary to convey more than one person in custody, a patrol van must be used. The persons in custody must not be handcuffed in the back of a patrol van to any part of the vehicle, as he/she may be injured. The patrol van must be equipped with the prescribed canopy at the back to accommodate persons in custody. The canopy must be able to be locked with at least one padlock and those canopies which have two locking mechanisms, two padlocks must be used.
- 10.2.4 When it is necessary to convey more than one person in custody with a minibus, each person in custody must be accompanied by a member. Each person in custody must be handcuffed at the back and the seatbelt must be used. The accompanying members must always be alert and wary to prevent any attempt by the persons in custody to jump out of the vehicle or to overwhelm the driver.
- 10.2.5 If necessary to transport a child who is alleged to have committed an offence, the instruction as stipulated in National Instruction 2/2010 must be complied with.
- 10.2.6 If a person in custody is being escorted, the first priority is his/her secure detention in transit. Any escort must at all times be very alert, from time of taking over the person in custody until the person is delivered to the destination.
- 10.2.7 The escort must at all times consist of at least two members who are properly informed of the risk profile of the person/s to be escorted.
- 10.2.8 The Community Service Centre Commander or the Custody Commander and the escorts have the discretion to determine whether or not to make use of handcuffs, leg-irons or any other means of restraint on a person in custody. The specific circumstances (risk profile) of each case must guide them in terms of which restraining measure to be utilised. Sufficient leg-irons and handcuffs must be available at the station for members to restrain a person in custody of the Service.
- 10.2.9 All court trucks and police vehicles transporting multiple persons in custody who have committed serious crimes, must be escorted by an extra police vehicle with at least two members. In the case of dangerous persons in custody of the Service which are being escorted, a combination of handcuffs and leg-irons must be used.
- 10.2.10 All vehicles which are used to transport persons in custody must be properly inspected before used to ensure that there are no items that can be used to endanger the safety of the members or to commit escapes from lawful custody.

- 10.2.11 Persons in custody must be searched thoroughly before transported to ensure that there are no items in their possessions that can be used to endanger the safety of the members and other detainees or to commit escapes from lawful custody.
- 10.2.12 Command and control must be exercised over all members to ensure that members perform their duties in accordance to SAPS instructions and preventative measures are communicated to all members of the station during On- and Off duty parades.

10.3 Detention in facilities:

10.3.1 Facilities and related matters:

- It is the responsibility of each Station Commander to ensure that the detention facilities are in a good state and working order. Weekly inspections must be conducted at station level to determine defects of walls, roofs, doors, burglar bars, steel grills, etc. and procedures must be instituted to repair any damage immediately and to ensure the proper maintenance thereof.
- Detention facilities must, for the safekeeping of persons in custody, be searched and cleaned daily.
- The keys of the detention facilities must be kept in a safe place in the community service centre or other designated place and proper control measures over the keys must be instituted.
- No smoking and eating are allowed in the cells (only in a demarcated area, such as in the exercise area).
- Ensure the number of detainees accommodated in a cell is reasonable in relation to the size;
- Ensure that cells have adequate light and ventilation;
- Provide detainee to be kept overnight with clean cell mattress/ mat and blankets;
- Allow detainee to use toilet facilities with constant supply of toilet paper;
- Offer detainee washing facilities including hot and cold water;
- Offer open air exercise daily whenever possible;
- Supply detainee with meals three times per day during the prescribed times.

10.3.2 Manage visiting of cells by officials:

- Ensure that the member who visit is unarmed and accompanied by another armed member;
- Ensure visit to normal/ordinary detainee at least every hour;
- Ensure that female detainee is visited by a female member, or other suitable woman accompanied by a male member;
- A person in custody under restrain must be visited at least every hour and the restraining measure must be lifted as soon as his or her condition or behaviour justifies it, and
- A person in custody intoxicated from liquor any another cause must be visited at least every half-hour until he or she has regained consciousness. He or she must be roused on each visit unless he or she is breathing regularly.
- Under no circumstances, 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 visit is accompanied by another member to avoid the danger of an attack on police officials and other persons and/or escaping from custody.
- If a 24-hour 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;
- Allow visitors to visit (according to visitors schedule) and ensure visitors are thoroughly searched;
- No visitors allowed inside the cells (only in demarcated visiting facility).

10.3.3 Categories for detention:

- Detain detainees on same charge or involved in same case separately;
- Detain males and females separately;
- Disabled persons and persons who are vulnerable, such as the elderly, must be detained separate;
- Detain sentenced persons separately from remand detainees;
- Detain children (those allowed to be detained) separately from adults; and
- Detain dangerous/violent persons separately from others.

10.3.4 Secure detention facilities:

- Report defects to police cells without delay to relevant Supply Chain Management offices;
- Report any defects at court cells to the relevant Court Manager;
- Monitor and pursue progress of repairs and upgrading; and
- Do not detain persons in a police cell/court cell which is not adequately secured.

10.4. Health of persons in custody of the Service:**10.4.1 Medical treatment:**

- It is the responsibility of the Service to ensure that a person in custody receives medical treatment whenever it is necessary. From the moment the arresting member, and thereafter, every member who exercises control over a person in custody, is responsible to promptly take the necessary steps to ensure that such person receives medical treatment whenever necessary.
- 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:
 - 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
 - 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.
- All steps that were taken with regard to medical attention to a person in custody, including the steps taken in requesting to consult with a specific medical practitioner, must be fully recorded in the Occurrence Book.
- The outcome of 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 Occurrence Book. The number of the first entry must be recorded in the Custody Register.
- SAPS 14C to be utilised in order to ensure that medication is given. An appropriate OB entry to be made to that effect.
- Any person in need of medical treatment in police custody must be allowed the opportunity for treatment to the cost of the State (See SAPS 70 for medical treatment). If the person in custody prefers his/her own private doctor for medical treatment, it must be allowed but to the cost of the person and not the State.

10.4.5 Injuries sustained prior or during arrest:

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

- The member concerned should take all reasonable precautions to ensure that the person will not be injured further and will not die before arrival at the police station;
- If 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 should follow the instructions as set out in National Instruction 8 of 2016; and

- The member who effects an arrest which results in the arrested person being injured, should 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 should be included in the case docket. He or she should also report any injuries which the arrested person had prior or during arrest.

B. MEASURES TO ENSURE COMMAND AND CONTROL

1. The following measures are applicable to ensure proper command and control with regard to preventing escapes from and deaths in SAPS custody:
 - 1.1 Compliance to all relevant national directives (National Instructions, Standing Orders, etc.) must be enforced.
 - 1.2 Regular visits to the detention facilities must be conducted to ensure proper maintenance and securing of the facilities.
 - 1.3 Commanders to ensure that members have adequate equipment to ensure secure detention and transport of persons in custody.
 - 1.4 Commanders must ensure that On- and Off duty parades are conducted to ensure that members are properly informed and equipped with the necessary equipment and means to prevent escapes from and deaths in custody. The risk profile of persons in custody of the Service must be communicated at the parades.
 - 1.5 All incidents of escapes and deaths must be regarded as serious incidents and **the relevant disciplinary proceedings must be instituted for each escape incident** and where applicable, disciplinary steps must be instituted when a person dies in custody.
 - 1.6 The responsibility to ensure compliance of all directives, orders, instructions etc. relating to custody management is the responsibility of the Station Commander and all members under his/her command. First level inspections must be enforced in order to ensure compliance to the aforesaid. (For example, CSC Commanders or Relief Commanders must institute the necessary steps to prevent an escape from and death in SAPS custody and when an escape or death occurred, to act according to the directives).
 - 1.7 Proper recording of all aspects relating to custody management activities must be entered and inspected in all relevant registers.

C. PROCEDURES TO ENSURE DATA INTEGRITY

1. The following procedures are applicable after an escape from or death in SAPS custody:
 - 1.1 An escape from and death in police custody must be communicated immediately to the relevant Station Commander/Station Duty Officer and provincial Duty Officer.
 - 1.2 All escapes and deaths must be reported via the prescribed Notification Forms within 12 hours after the escape or death occurred to the office of the relevant Provincial Commissioner as well as to the office of the Divisional Commissioner: Visible Policing. (In case of death in custody the instructions regarding the reporting procedure to IPID must be complied with).
 - 1.3 All Notification Forms received at Division: Visible Policing serves as the source documents for audit purposes by the Auditor General.
 - 1.4 A copy of the Notification Form of the escape or death must be filed in Part B of the relevant case docket (the docket relating to the escape or death charge).
 - 1.5 A Criminal case must be opened for each person who escaped during an incident. Correct and detailed completion of the relevant fields on CAS must be performed when an escape occurs. It is important to take note that **in instances where more than one person escaped during an incident, a case docket must be opened for each escapee and accordingly registered on CAS.** The relevant information regarding the multiple escapes must be entered in the appropriate field of CAS under function 8.1.1.1.
 - 1.6 A disciplinary proceeding must be instituted and registered on PERSAL (function 4.12).

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- 1.7 Monthly reports on the status of disciplinary cases and criminal cases emanating from escape or death incidents must be sent to the relevant office of the Provincial Commissioner by the Station Commanders for monitoring purposes.
- 1.8 Circulation of Wanted persons: Obtain a J50 (warrant of arrest) from the local Magistrate for the escapee. Each and every escapee's particulars (profile) must thereafter be circulated immediately via the SAPS 55 in order to assist in the re-arrest of the wanted person (escapee). {See Standing Order (G) 343}. The Wanted person must be placed on the priority Wanted list of the relevant province.
- 1.9 Station Commanders must ensure that the data verification mechanisms, once case dockets are registered on the CAS, are in place (see National Instruction 3/2011).

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D. PRACTICAL MEASURES TO PREVENT / REDUCE ESCAPES FROM AND DEATHS IN SAPS CUSTODY

Focus Area	Guidelines	Applicable Directives	Monitoring Instruments
Escape from and death in CSC / temporary holding facilities	• Ensure that more than one member guard suspects in the CSC and temporary holding facility. • Use restraining measures (handcuffs, leg-irons etc.) where necessary. Dangerous suspected persons must always be restrained effectively using the most effective restraining measure such as handcuffs, leg irons etc. in the CSC or temporary holding facility. • Ensure that all exits of the CSC, temporary holding facility and backyard are guarded or properly closed and locked. • Under no circumstance must a person in custody be left unattended, if he or she is not locked up in the detention facility. • Ensure that shoelaces, belt and any other private property is removed and placed into prisoners property (SAPS 22), valuable items to property register (SAPS 13). • Ensure that injured persons arrested receive immediately the relevant medical treatment and institute the relevant measures to ensure the safety and well-being of the person (transport to doctor or hospital for the relevant treatment and ensure that guard duties are performed when a person is hospitalised).	SO (G) 256 SO (G) 350 SO (G) 361 NI 8/2016 NI 8/2017	Risk assessment. Standing Agenda point on PCCF/CCCF/SCCF meetings. Monitoring the handling of persons in custody by all commanders. Modus operandi of escapes from CSC and temporary holding facilities must be communicated. On- and Off Duty parade inspections of members' equipment and an Occurrence Book entry must be made thereafter. CCTV cameras
Escape from and death in police station detention facilities	• Perform hourly cell visits or every 30 minutes as prescribed in terms of an intoxicated person in custody. • Ensure that windows, doors and roof of the detention facilities are in a good condition (daily) during midday inspections to check whether or not the locking systems are still in working condition. (All faults must be reported immediately in writing to SCM for urgent attention, followed with a detailed Occurrence Book entry. Under no circumstances may a person be detained in a detention	SO (G) 331 SO (G) 341 SO (G) 347 SO (G) 361 Correctional Service Act, 1998 (Act No. 111 of 1998)	Discipline Register. Modus operandi of escapes from and death in detention facilities must be communicated. On- and Off Duty parade inspections of members' equipment.

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	facility with broken windows, broken doors or broken locking mechanisms). • Ensure that no prohibit items are in the cells; • Ensure that persons in custody are locked up in the sleeping section / room at night and not in the recreation area. • Ensure that there are sufficient human resources available during visits by families of detainees for proper supervision. • Perform regular properly detention facility searches. A proper Occurrence Book entry must be made after each search took place. • Ensure that the relevant medical treatment is provided to the person in custody whenever it is necessary. • Before entering the detention facilities, all persons in custody must be searched, for example after their return from court, after further investigations, after medical treatment and after they received visitors. The Visiting Register must be completed (each visitor must enter his or her name, address, telephone number and the person in custody's name. Doctors and attorneys must also be recorded in the visitors register). ▪ Visitors must at all times be searched. ▪ Suspected persons arrested for category B (less serious offences) must under no circumstance be detained with persons arrested for category A (serious offences) and must only be detained as a last resort. • Ensure the immediate transfer of Remand Detainees to the Correctional Centre/Remand Detention Facility (according to J7 Detention Warrant). • Transfer sentenced offenders to Correctional Centre or to any other Centre as prescribed by the court. • Ensure that sufficient human resources are available at the loading zone and that all possible escape routes are guarded. In instances when there is a high-risk person/s in custody to be transported, utilise additional members from TRT or POP units where/if possible;		CCTV cameras. J7 forms (Detention Warrant).
Escape from police station / court loading zones and whilst in-transit		SO (G) 345 SO (G) 361	Risk assessment. Standing Agenda point on PCCF/CCCCF/SCCF meetings. Daily inspection of motor vehicles

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	• Park transporting vehicle inside the loading zone, close and lock the loading zone gate and ensure secure escorting into vehicle. • A detainee transport truck, patrol vehicle or minibus must be used when transporting more than one person in custody; • Ensure that all police vehicles utilised for transporting persons in custody are issued with padlocks; • Doors of vehicles and canopies must be locked at all times. (Padlocks must be inspected daily during on and off duty parade inspections); • During transporting of more than one person in custody with a minibus or sedan vehicle, each person in custody must be accompanied by a member / escort. • Proper escort mechanisms must be utilised in instances of persons in custody who are a high risk to escape (additional vehicles and members).		for padlocks by CSC Commanders. On- and Off Duty parade inspections of members' equipment. Modus operandi of escapes from loading zones must be communicated.
Escape from and death in custody during further investigation	• Suspects must be restrained (use of handcuffs, leg-irons etc.) at all times in terms of the circumstances and profile of the person in custody. • Investigating officer must take direct supervision and responsibility of the person in custody. • Investigating officer must book out the suspect and book him/her back after the investigation in the Occurrence Book and SAPS 14. No member shall take a suspect / person in custody from any detention facility for investigation purposes or for any reason without booking him/her out in the Occurrence Book and Custody Register (SAPS 14). • The CSC Commander must ensure that when a person in custody is received back from further investigation, he/she is free from any injuries and the person must be properly searched before placing him/her back in the police cell.	SO (G) 341 SO (G) 345 SO (G) 350 SO (G) 256 SO (G) 361	Risk assessment Direct communication between CSC Commander and the investigating official. Follow up of outstanding OB and SAPS 14 entries for detainees booked out for investigation.

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Escape from custody from hospital / clinic / treatment centre or any other medical facility	• Ensure that members are posted for guard duties according to the risk profile of the facility and person in custody (assess all possible doors or windows not equipped with burglar bars with the necessary equipment). • Utilise applicable restraining measures at all times until person in custody is safely locked up again in a detention facility i.e. handcuff, leg-iron etc. • Do not allow unsupervised contact between a person in custody with members of the public. • The person in custody must under no circumstances be left unattended in the hospital/clinic/treatment centre or any other medical facility. • During visits to the toilet, the handcuffs of a person in custody must be taken off and replaced with leg-irons. Additional to this, the toilet door may not be closed fully in order for the member/escort to partially see the person in custody without invading his or her privacy. Escorts must, however, evaluate the situation in order to take the necessary precautionary measures to restrain a person in custody to prevent an escape from custody. After the visit to the toilet, the person in custody's hands must be handcuffed again and the leg-irons can, if necessary, be removed.	SO (G) 291 SO (G) 256 SO (G) 350 SO (G) 341 SO (G) 361	Risk assessment. Station Commander, Relief Commanders, CSC Commanders, Duty Officers to visit the hospital / treatment centre frequently. Modus operandi of escapes from hospitals / treatment centres must be communicated. On- and Off Duty parade inspections of members' equipment.
Escape from and death in custody from court cells	• The Court Orderly must ensure that the detention facilities are in order (conducting inspections of court detention facilities every morning by the members posted at courts and make proper Occurrence Book entries in this regard. Defects/fauls to be reported immediately to be repaired. • Monthly meetings must be held between the role-players of the police station and the Court Manager of the Department of Justice and Constitutional Development to address the secure custody of persons at the courts.	SO (G) 271 SO (G) 361 SOP on Courts and Court Orderlies	Risk assessment. Occurrence Book entry. On- and Off Duty parade inspections of members' equipment. J 7 forms (Detention Warrant) Modus operandi of escape/death

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	- The Court Manager of the Department of Justice and Constitutional Development must be sensitised to inspect the condition of the court detention facilities regularly. - Arrange a locksmith to check locking mechanisms (doors and windows) and a certificate must be issued at least quarterly to the Station Commander/Court Manager. - Appoint a responsible member for keeping detention facility keys. - Sufficient human resources must be made available to guard persons in custody in court cells (at least two guards per court cell). - Ensure that there are no dangerous objects in the court cells that may be used to escape or cause the injury or death of another person in custody.		from court cells must be communicated
Escape from and death in custody from court / court facilities	- The members posted at courts and court facilities must ensure that all exits such as doors and windows are properly inspected and in order and to make the relevant Occurrence Book entry in this regard. Defects/faults to be reported immediately to the Court Manager. - When the circumstances permits, guards must be posted at the exit/entrance doors of the court room facilities. - When persons in custody are taken to another room within the court building, for example to consult with an attorney, a guard must accompany the person in custody. - Timeous arrangements must be made with the Prosecuting Authorities in order to restrain a person in custody if necessary in terms of the profile of the specific person in custody.	SO (G) 271 SO (G) 350 SO (G) 361 SOP on Courts and Court Orderlies	Risk assessment. Occurrence Book entry. On- and Off Duty parade inspections of members' equipment. J 7 forms (Detention Warrant) Modus operandi of escape/death from court facilities must be communicated
Wrongful release (at courts or police stations)	- The CSC Commander must ensure that a person in custody is released according to the J7 from the court. The relevant Investigating Officer must be present during the release of a person in custody. - Specific measures must be implemented to prevent wrongful releasing of persons in custody such as fingerprint comparisons, photographs, identity number comparisons, etc.	SO (G) 361 SO (G) 362 NI 3/2016	Person must be properly identified before releasing. J 7 forms (Detention Warrant).

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	• A G344 form must be obtained from the Correctional Services for remand detainees which are fetched for court purposes and who are having further charge(s), must be handed over to the Court Orderlies in order to ensure that the detainee who is brought before court is not wrongfully released. • Court Orderlies must also be properly informed about all the cases against a person in custody in order to prevent wrongful releasing of a person in custody by the Presiding Officer whilst the specific person still needs to appear for other cases). • The CSC Commander or Court Orderlies who are responsible to release persons from custody, must obtain all information about the person in custody in order not to release him or her if he or she still needs to appear in other cases.		G344 form (form sent from prison to court with a detainee for the clerk of the court to record the result of the proceedings thereon) Fingerprint identification. Photograph. Identity number verifications if available. Modus operandi of escapes from detention facilities at courts and police stations must be communicated.
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ANNEXURE 2

- 5 Standing operating procedure to respect, protect and promote the rights of lesbian, gay, bisexual, transgender, intersex and (LGBTI+) persons





**STANDARD OPERATING PROCEDURE
TO
RESPECT, PROTECT AND PROMOTE
THE RIGHTS OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER, INTERSEX, PLUS
(LGBTI+) PERSONS**

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1. BACKGROUND

- 1.1 The Constitution of the Republic of South Africa, 1996, and the Service Charter for the Victims of Crime in South Africa ("Victims Charter") states that all people, regardless of their sexual practice, sexual orientation or gender identity and gender expression, are entitled to rights and services as victims of crime or as alleged perpetrators of crime, without fear of discrimination.
- 1.2 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI+) persons have the same rights as all other South African citizens who are victims of crime, or who are alleged perpetrators of crime. It is obligatory that the South African Police Service ("SAPS") treats all such persons with both dignity and respect. LGBTI+ include persons who are characterised by diversity in sexual orientation, gender identity, gender expression and/or biological variance that is different to the heterosexual and cisgender norm in society.
- 1.3 The SAPS has been inundated with reports and allegations relating to the failure of its members to provide adequate services and assistance to LGBTI+ persons who have been victims of crime. This includes submissions made by various Parliamentary Portfolio Committee members, media reports, other government departments, non-governmental organisations and complaints from members of the public.
- 1.4 The response of the criminal justice and associated systems to acts of crime and/or violence perpetrated against, or allegedly perpetrated by LGBTI+ persons can either have a positive or negative impact on such persons. Positive and affirming responses can assist in mitigating or preventing further crimes or acts of violence. However, a lack of suitable, supportive services and skilled and sensitised personnel may contribute to the vicious cycle of violence and may breed popular contempt in human rights which are often seen as protecting perpetrators only.
- 1.5 On the other hand, services that recognise and respond appropriately and effectively to the needs of all victims of crime and violence, regardless of their gender and/or sexual orientation, can assist in halting this cycle and help to build a culture of respect, understanding and appreciation for others and their human rights. This standard operating procedure provides direction for the empowerment of all victims, including those who are LGBTI+ persons, of crime and violence.

- 1.6 The standard operating procedure will assist all SAPS members, especially those SAPS members delivering front-line services, to ensure that LGBTI+ persons are not discriminated against and are treated with dignity and respect at all police stations and by all police personnel the victims of crime or alleged perpetrators of crime comes in contact with.

2. PURPOSE OF THE STANDARD OPERATING PROCEDURE

- 2.1 To ensure that SAPS members at all levels are well informed about what is expected from them when dealing with LGBTI+ persons, regardless of whether such person is a victim of crime or an alleged perpetrator of crime.
- 2.2 To ensure that SAPS members at all levels provide a service that is professional, non-marginalising and non-judgmental to LGBTI+ persons, their families, friends and support networks.
- 2.3 To ensure the protection of LGBTI+ persons who are victims of crime and the prevention of secondary victimisation.
- 2.4 To ensure the protection of the constitutional rights of LGBTI+ persons who are alleged perpetrators of crime.

3. SCOPE OF APPLICATION

- 3.1 This standard operating procedure is applicable to all SAPS members who provide frontline services to the public, as well as any other SAPS member (irrespective of their rank) who during the course and scope of their duties, comes into contact with any LGBTI+ person.

4. REGULATORY FRAMEWORK

- 4.1 This Standard Operating Procedure is *inter alia* guided by the —
 - (i) Constitution of the Republic of South Africa, 1996
 - (ii) South African Police Service Act, 1995 (Act No. 68 of 1995).
 - (iii) Criminal Procedure Act, 1977 (Act No 51 of 1977)
 - (iv) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000)
 - (v) Alteration of Sex Description and Sex Status Act, 2003 (Act No 49 of 2003)
 - (vi) Children's Act, 2005 (Act No 38 of 2005)

- (vii) Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 7 of 2013)
- (viii) Domestic Violence Act, 1998 (Act No 116 of 1998)
- (ix) Older Person's Act, 2006 (Act No 13 of 2006)
- (x) Child Justice Act, 2008 (Act No 75 of 2008)
- (xi) Employment Equity Act, 1998 (Act No 55 of 1998)
- (xii) Domestic Violence National Instruction 7 of 1999
- (xiii) Protection of Older Persons, National Instruction 1 of 2014
- (xiv) Sexual Offences National Instruction 3 of 2008
- (xv) National Instruction 2 of 2002 (Search and Seizure)
- (xvi) National Instruction 2 of 2012 (Victim Empowerment)
- (xvii) National Instruction 1 of 2016 (The Use of force in effecting arrest)
- (xviii) National Instruction 3 of 2010 (The Care and Protection of Children in terms of the Children's Act)
- (xix) Standing Order 361 (Handling of Persons in the Custody of the SAPS)
- (xx) Standing Order 362 ((Custody Register (SAPS 14) of the SAPS)
- (xxi) Standing Order 341 (Arrest and treatment of an arrested person until such person is handed over to the Community Service Centre Commander of the SAPS)
- (xxii) Victim Empowerment Programme, the SAPS Manual.
- (xxiii) National Instruction 3 of 2008 (Sexual Offences)
- (xxiv) The Department of Justice and Constitutional Development National Intervention Strategy for the LGBTI+ Sector (**Attached as Annexure A**)

5. DEFINITIONS

In this Standard Operating Procedure, unless the context otherwise provides --

- 5.1 **Asexual** means without sexual feelings or associations. An asexual individual may still experience attraction but this attraction does not need to be realized in any sexual manner.
- 5.2 **Binary** or more specifically **gender binary** mean the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine.
- 5.3 **Biological sex** means the biological and physiological characteristics that are socially agreed upon as informing the classification of a person as male or female.
- 5.4 **Bisexual** means a person who is capable of having sexual, romantic and intimate feelings for or a love relationship with someone of the same gender

and/or with someone of other genders. Such an attraction to different genders is not necessarily simultaneous or equal in intensity.

- 5.5 **Cisgender** means a term describing a person whose perception and expression of her or his own gender identity matches the biological sex she or he was assigned at birth.
- 5.6 **Coming out** means the process of disclosing one's sexual orientation. In heteronormative contexts the expectation to disclose one's sexual orientation is typically associated with non-heterosexual orientations, while heterosexuality is generally assumed unless indicated otherwise. Coming out is a process of how one wants to be identified in relation to others. When an individual chooses not to come out (which is their right), the informal term used is "to be in the closet".
- 5.7 **Cross-dresser** means a person who dresses in clothing of the opposite sex. While anyone may wear clothes associated with a different sex, the term cross-dresser is typically used to refer to men who occasionally wear clothes, makeup and accessories culturally associated with women. Those men typically identify as heterosexual. This activity is a form of gender expression and not done for entertainment purposes. Cross-dressers do not wish to permanently change their sex or live full-time as women (previously referred to as a "transvestite").
- 5.8 **Detention facility** means a police cell, lock-up or temporary detention facility which is under the control of the SAPS.
- 5.9 **Gay** means a man who has sexual, romantic and intimate feelings for or a love relationship with another man (or men). However, lesbian women may also describe themselves as "gay" based on the historical significance of the word referring to both homosexual persons.
- 5.10 **Gender** means the socially constructed roles, behaviours, activities and attributes that a particular society considers appropriate for either men or women.
- 5.11 **Gender-affirming treatment/procedure** means medical treatment and other procedures, such as cross-gender hormones and gender-affirming surgeries, which transgender person can choose to undergo in order to make their bodies more congruent with their gender identity, thus affirming their gender.
- 5.12 **Gender diversity** means the range of different gender expressions that spans across the historically imposed male-female binary. Referring to "gender

diversity” is generally preferred to “gender variance” as “variance” implies an investment in a norm from which some individuals deviate, thereby reinforcing a pathologising treatment of differences among individuals.

- 5.13 **Gender expression** means the way in which people express gender, often through external manifestation like behaviour, clothing, hairstyles, voice or bodily characteristics, names and pronouns. The way a person express gender is not necessarily a reflection of their gender identity but could be an indication thereof. Do not assume that a person is cisgender or transgender based on how a person expresses gender.
- 5.14 **Gender identity** means person’s private sense of being male, female or another gender. This may or may not match the biological sex a person was assigned at birth.
- 5.15 **Gender non-conformity** means displaying gender traits that are not normatively associated with a person’s biological sex. “Feminine” behaviour or appearance in a male is considered gender non-conforming, as is “masculine” behaviour or appearance in a female.
- 5.16 **Hate crime** means any incident that may or may not constitute a criminal offence, perceived as being motivated by prejudice or hate. The perpetrators seek to demean and dehumanise their victims, whom they consider different from them based on their actual or perceived race, ethnicity, gender, age, sexual orientation, disability, health status, nationality, social origin, religious convictions, culture, language or other characteristic. These may also be referred to as “hate-related” crimes.
- 5.17 **Heterosexism** means a system of beliefs that privileges heterosexuality and discriminates against other sexual orientations. It assumes that heterosexuality is the only normal or natural option for human relationships and suggests that all other sexual relationships are either subordinate to or perversions of heterosexual relationships. In everyday life, this manifests as the assumption that everyone is heterosexual until proven otherwise.
- 5.18 **Heterosexual** means having sexual, romantic and intimate feelings for or a love relationship with a person or persons of a gender other than your own.
- 5.19 **Homophobia** means an irrational fear of and/or hostility towards lesbian women and gay men, or same-sex sexuality more generally (Also termed “homo-prejudice”).

- 5.20 **Homosexual** means a person who is emotionally, romantically and sexually attracted to people of the same sex. However, many homosexual persons prefer to use the terms gay or lesbian.
- 5.21 **Intersex** means a variety of conditions (genetic, physiological or anatomical) in which a person's sexual and/or reproductive features and organs do not conform to dominant and typical definitions of "female" or "male". Such diversity in sex characteristics is also referred to as "biological variance" – a term which risks reinforcing a pathologising treatment of differences among individuals, but is used with caution to indicate an inclusive grouping of diversity in sex characteristics, including, but not limited to, intersex individuals.
- 5.22 **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.
- 5.23 **Legal alteration of sex description** means that a person has legally changed his, her or their sex (from male to female or female to male) and the Department of Home Affairs has issued them with a new identity document reflecting the changes as required by the Alteration of Sex Description and Sex Status Act 49 of 2003.
- 5.24 **Lesbian** means a women who has sexual, romantic and intimate feelings for or a love relationship with another woman (or women).
- 5.25 **LGBTI+** means the abbreviation referring to lesbian, gay, bisexual, transgender, intersex and other persons. "LGB" are sexual orientations, while "T" is a gender identity, "I" is a biological variant and "+" includes other groups relating to sexual orientation and gender identity including asexual, non-binary, queer and many more. They are clustered together in one abbreviation due to similarities in experiences of marginalisation, exclusion, discrimination and victimisation in a heteronormative and heterosexist society, in an effort to ensure equality before the law and equal protection by the law. However, the possible differences between persons who claim these labels or to whom these labels may be assigned ought not to be trivialised. Their respective issues, experiences and needs may in fact differ significantly and in several respects.
- 5.26 **Non-binary** means people whose gender is not male or female.
- 5.27 **Queer** means an inclusive term that refers not only to lesbian and gay persons, but also to any person who feels marginalised because of her or his sexual

practises, or who resists the heteronormative sex/gender/sexual identity system.

- 5.28 **Restraining measures** means handcuffs or a leg iron or any other device approved and issued by the SAPS for the purpose of restraining a person.
- 5.29 **Search** means any act whereby a person, container or premises is visually or physically examined with the object of establishing whether an article is in, on or upon such person, container or premises.
- 5.30 **Sexual behaviour** means sexual behaviour distinguished from sexual orientation because the former refers to acts, while the latter refers to feelings and self-concept. People may or may not express their sexual orientation in their behaviour.
- 5.31 **Sexual diversity** means the range of different expressions of sexual orientation and sexual behaviour that spans across the historically imposed heterosexual-homosexual binary.
- 5.32 **Sexual orientation** means a person's lasting emotional, romantic, sexual or affectional attraction to others (heterosexual, homosexual/same-sex sexual orientation, bisexual or asexual).
- 5.33 **Transgender** means people who have a gender identity, and often a gender expression, that is different to the sex they were assigned at birth by default of their primary sexual characteristics. It is also used to refer to people who challenge society's view of gender as fixed, unmoving and inextricably linked to one's biological sex. Transgender people can be heterosexual, bisexual, homosexual or asexual.
- 5.34 **Transgender man** means a person who was assigned "female" at birth, but identifies as male. Such a person is also referred to as a "female-to-male (FtM) trans person.
- 5.35 **Transgender women** means a person who was assigned "male" at birth, but identifies as female. Such a person is also referred to as a "male-to-female (MtF) trans person.
- 5.36 **Transphobia** means an irrational fear of and/or hostility towards people who are transgender or who otherwise transgress traditional gender norms.

- 5.37 **Transsexual** means people who seek to or have permanently changed their physical appearance/bodies through medical intervention, including but not limited to hormones and/or surgeries. Unlike transgender, transsexual is not an umbrella term. Many transgender people do not identify as transsexual and prefer the word transgender. It is best to ask which term a person prefers. If preferred, use as an adjective: transsexual women or transsexual man.

6. LIST OF ACRONYMS AND ABBREVIATIONS

- 6.1 **"CIS"** Crime Investigation Service
- 6.2 **"CSC"** Community Service Centre
- 6.3 **"CJS"** Criminal Justice System
- 6.4 **"CSO"** Civilian Society Organisations
- 6.5 **"DoJ & CD"** Department of Justice and Constitutional Development
- 6.6 **"FCS"** Family Violence, Child Protection and Sexual Offences Unit
- 6.7 **"LGBTI+"** Lesbian, Gay, Bisexual, Transgender and Intersex
- 6.8 **"NGO"** Non-Government Organisation
- 6.9 **"NIS"** National Intervention Strategy
- 6.10 **"NPA"** National Prosecuting Authority
- 6.11 **"NTT"** National Task Team
- 6.12 **"OB"** Occurrence Book
- 6.13 **"RRT"** Rapid Response Team
- 6.14 **"SAPS"** South African Police Service
- 6.15 **"SOGIE"** Sexual Orientation, Gender Identity and Gender Expression
- 6.16 **"SOP"** Standard Operating Procedure
- 6.17 Summaries of LGBTI+ (**Annexure B**) and SOGIE (**Annexure C**) acronyms are attached for easy reference.

7. INTERACTION WITH LGBTI+ PERSONS

- 7.1 SAPS members do not need to be LGBTI+ experts to fight discrimination or promote equality. Simply following the guidelines below will enable SAPS members to provide a respectful, inclusive and supportive service to LGBTI+ persons which will prevent secondary traumatising.

(a) Communication

- (i) Open and respectful verbal and non-verbal communication forms a crucial part of good service delivery and should make people feel welcome and safe. Nonverbal communication involves the conscious and unconscious processes

of conveying information (like facial expressions, gestures and postures) and the interpretation of such information.

- (ii) Allow the client/complainant/victim to speak first and listen attentively while he/she/they are speaking to guarantee better understanding.
- (iii) Ask open-ended questions which is designed to encourage a full, meaningful answer using the client/complainant/victim's own knowledge and/or feelings. It is the opposite of a closed-ended question, which encourages a short or single-word answer. Closed-ended questions are those which can be answered by a simple "yes" or "no," while open-ended questions are those which require more thought and more than a simple one-word answer.

(b) Respect and Protection of Dignity

- (i) Respect, recognize and affirm a person's sexual orientation, gender identity and gender expression. Sexual orientation is not the same as gender identity and gender expression, and gender expression does not necessarily reflect a person's gender identity. See a person as a human being regardless of their sexual orientation, gender identity and gender expression. Remember that SAPS officials took an oath to protect and serve all people in South Africa.
- (ii) Do not make assumptions of a person's sexual orientation, gender identity and gender expression based on your personal understandings, cultural beliefs, religious views etc. It is often difficult to understand differences in the backdrop of conservative religious and cultural perspectives however, our Constitution demands of us to do the humane thing which is to respect all human beings in the country.
- (iii) Do not make assumptions of someone's gender identity and sex based on their appearance or based on what is stated in their identity or other legal documents.
- (iv) Do not ask unnecessary questions about the person's private life, sexual practices, sexual orientation, gender identity, gender expression and/or biological characteristics. Discuss only things that relate directly to the matter at hand. Remember it takes courage to speak up about crime or discrimination and it is our duty as service providers to make sure that LGBTI+ persons feel safe and supported.
- (v) If unsure of a person's gender identity and the pronouns they use...ASK. It is always best to ask individuals whether they would like to be referred to as Mr or Miss/Mrs and or if they are more comfortable with a male or female pronoun.

(c) Integrity

- (i) Always be honest, open and accountable for your actions.
- (ii) It is important that you behave in a professional manner, that you adhere to all official directives and that you honour your word.
- (iii) Remember that service provision goes beyond saying the right thing, you have a responsibility to assist to the best of your abilities.

(d) Language use

- (i) It is obligatory that SAPS members use appropriate and inclusive language (verbal, non-verbal and written language), when communicating with LGBTI+ persons as it will make a person feel acknowledged and affirmed, enhance their goodwill and co-operations, and furthermore enable them to seek justice and equal access to the law.
- (ii) Before imposing English terminology/labels concerning sexual orientation and gender identity in communities that does not use it, attempt to understand local terminology/labels used to describe sexual orientation and gender identity.
- (iii) Avoid derogatory or hurtful words, or making assumptions about for example a person's sexual partner or their gender identity.
- (iv) It is important to ask a person how they would like to be addressed and to adhere to this request i.e. whether they would like to be referred to as Mr, Mrs or Miss and or if they are more comfortable with a male or female pronoun.

(e) Confidentiality

- (i) Confidentiality is key! Do not disclose a person's gender identity or sexual orientation and experiences without their consent, because not all LGBTI+ persons have necessarily disclosed their diversity of orientation, identity and/or biology to others (even those who are close to them) and this concealment ought to also be respected.
- (ii) Respect the right to privacy. Speak to the person in private and assure him/her/they that the information he/she/they shared will be treated as confidential and will only be shared if it is required by law or for the proper delivery of services.

- (iii) Victim-friendly rooms or an alternative room must be used at police stations whenever the need arise for a private interview.

(f) **Behaviour**

- (i) Do not inappropriately touch, intimidate or assault the client/complainant/victim/survivor.
- (ii) Be aware of “micro aggressions” which entails i.e. body language, gestures and tone of voice that similarly could be deemed an “assault” on someone’s dignity and/or integrity and can cause distress.

(g) **Educate**

- (i) Understand LGBTI+ rights and be aware of services or organisations in your area that render supportive services to LGBTI+ persons.
- (ii) Help LGBTI+ clients to understand their rights.
- (iii) Make sure you explain the next steps and any available support structures clearly because asking for help does not necessarily mean that a person knows how the system works.

(h) **Empathy**

- (i) Put yourself in the client/complainant/victim’s shoes.

(i) **Be informed**

- (i) Liaise with local and provincial representatives of Departments and any other relevant local institution, to identify local organisations that are willing, able and registered to provide temporary safe care, counselling or other support services to LGBTI+ persons.

7.2 Prevent Secondary victimisation

- (a) Secondary victimisation (also known as post crime victimisation or double victimisation), relates to further victimisation following on from the original victimisation.
- (b) The re-traumatisation of the sexual assault, abuse, or rape victim through the responses of individuals and institutions is an example of secondary

victimisation. For example, victim blaming, judgemental behaviour, treating victims with skepticism and inappropriate behaviour or language based on their LGBTI+ status, exacerbates the victim's suffering

- (c) All victims regardless of their LGBTI+ status must be allowed to make statements and be listened to with attention to detail because secondary victimisation may negatively impact their willingness to participate in the criminal justice system proceedings.
- (d) LGBTI+ persons are not inherently vulnerable but are placed at risk through social, economic and political marginalisation and exclusion.

8. ROLES AND RESPONSIBILITIES

8.1 Search Procedures

- (a) Section 29 of the Criminal Procedure Act, 1977 (Act no. 51 of 1977) provides that a search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only.
- (b) However, should a person object to being searched by a SAPS member of the same biological sex due to their gender identity, such objection must –
 - (i) if it takes place at the Community Service Centre, be recorded in the Occurrence Book (SAPS 10). The member must request the said person to sign the entry in the Occurrence Book and by so doing, the said person acknowledges that he/she/they made the request to be searched according to their gender identity.
 - (ii) if it takes place at another place, be recorded in the Pocket Book (SAPS 206) of the member. The member must request the said person to sign the entry in their Pocket Book and by so doing, the said person acknowledges that he/she/they made the request to be searched according to their gender identity.
 - (iii) Arrangements to be made for the search of the person by a police official of the preferred sex, who must then proceed to conduct the search in a decent manner having due regard for the status of the person.
- (c) **Remember** gender identity is a person's private sense of being male, female or another gender and this may or may not match the biological sex a person was assigned at birth or the gender marker indicated in their identity document.

- (d) Transgender persons should not be subjected to unnecessary undressing and members must refrain from removing wigs and prosthetics, unless the removal is required for purposes of searching the person. The removed items should be returned to the person unless it cannot be returned for the safety of the person during the period of detention or in the event of the items being required for purposes of evidence as stated in terms of SO (G) 361 paragraph 11(4).
- (e) In the event that a transgender person needs to be subjected to an intimate search, the provisions of SO (G) 361 paragraph 11(2) that states as follows will apply:
 - (i) An intimate search may only be authorized by a Station Commander, if he or she has reasonable grounds to believe that:
 - a person in custody has concealed a dangerous weapon on his or her person
 - such a person has concealed on his or her person an article which may afford evidence of the commission of an offence or
 - such a person has concealed on his or her person an article which may be used in attempt to effect an escape.
 - (ii) An intimate search must be conducted by a registered medical practitioner or a registered nurse.
- (f) Members must refrain from using unnecessary force when arresting any person. Only the minimum force should be used as set out in National Instruction 1 of 2016.

8.2 Transport

- (a) Arrested LGBTI+ persons are to be transported in terms of SO (G) 341 paragraph 8(7) that states:
 "(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.
- (b) The additional principle applying in respect of the transport of transgender and intersex persons is that transgender and intersex persons should be transported separately for example:

- Only transgender males should be transported together.
 - Only transgender females should be transported together.
 - Only intersex males should be transported together.
 - Only intersex females should be transported together.
- (c) **Remember** that irrespective of an intersex person's gender identity, the anatomical appearance of a person's sexual and/or reproductive features and organs which do not conform to dominant typical definitions of "female" or "male", may put an intersex person at risk if he/she is not transported or detained separately.

8.3 Detention

- (a) All arrested persons must be detained in terms of Standing Order (General) 361, however the following additional principles apply in respect of transgender and intersex persons:
- (i) All transgender persons and intersex persons should be detained in separate detention facilities at the police station where the person was arrested.
- (ii) In the event of a separate detention facility not being available at the police station where the arrest was effected, the transgender or intersex person must be transported and be detained at a detention facility in the cluster. For example:
- Only transgender males should be detained together.
 - Only transgender females should be detained together.
 - Only intersex males should be detained together.
 - Only intersex females should be detained together.
- (b) An arrested transgender person must be recorded in the Custody Register (SAPS 14) with a red pen from column 1 to 16. In the "Gender Column" transgender males and females must be indicated with a "T".
- (c) An arrested intersex person must be recorded in the Custody Register (SAPS 14) with a red pen from column 1 to 16. In the "Gender Column" intersex males and females must be indicated with an "I".
- (d) The importance of recording "T" and "I" is to ensure that the responses to transgender and intersex persons, as well as trends over time is captured.

- (e) Gay, lesbian and bisexual persons will be detained in accordance with their biological sex.

8.4 Relief Commanders

- 8.4.1 Relief Commanders to ensure that members in their respective relief comply with this SOP and the Station Order with regard to the interaction, searching, transport and detention when dealing with LGBTI+ victims of crime and persons who have been arrested.

8.5 Station Commanders

- 8.5.1 Ensure that mechanisms are put in place to guarantee compliance with this Standard Operating Procedure. These mechanisms must include, but not be limited to specific instructions to relief commanders to take note of this instruction and to ensure that there is proper compliance on the particular relief.
- 8.5.2 Ensure a Station Order is in place to cover all aspects of police treatment of LGBTI+ victims of crime and alleged perpetrators of crime.
 - (a) The station commander must, taking into account the unique circumstances prevailing in his or her specific station area, available resources, etc., issue station orders that will ensure that the rights of LGBTI+ persons are respected, protected and promoted –
 - (i) requiring a member under his or her command to inform a LGBTI+ victim of the general services rendered by organisations to victims of crime, as well as specific services rendered by organisations to LGBTI+ persons and how to inform the victim thereof (e.g. by providing the victim with a copy of the list or allowing the victim to peruse the list or reading the information from the list to the victim).
 - (ii) setting out the steps that must be taken by such member to assist the victim, when requested thereto by the victim, to gain access to any service rendered by an organisation mentioned in the list or to obtain medical treatment should this be required; and
 - (iii) in general, instructing members under his or her command on any other matter relating to the treatment of LGBTI+ persons whether victims or perpetrators in terms of interaction, search procedures, transport, detention and disciplinary action in terms of non-compliance by members and whatever else he or she deems necessary to determine in respect of his or her specific station area.

- 8.5.3 Ensure that all members under his/her command are aware of and comply with this Standard Operating Procedure and the Station Order.
- 8.5.4 Ensure that non-compliance to the Standard Operating Procedure and the Station Order is considered misconduct and commanders are instructed to investigate and take appropriate disciplinary steps in cases of non-compliance in terms of the South African Police Service Discipline Regulations, 2006.
- 8.5.5 Ensure that a resource list to provide assistance and support is available at station level for referral of LGBTI+ victims to counselling and other support services in the community. The Department of Justice and Constitutional Development brochure "Working With Diverse Communities" (**Annexure D**) is attached to provide assistance in this matter.
- 8.5.6 Ensure that members are sensitized about LGBTI+ persons and receive in-service training.
 - (a) All SAPS members at his or her police station receives on the job training (e.g. during station lectures) on this Standard Operating Procedure and the Station Order issued by him or her.
 - (b) On the job training includes sensitivity training for purposes of dealing with LGBTI+ persons in a dignified manner. Civil Society Organisations that form part of the LGBTI+ National Task Team can be approached through the Department of Justice and Constitutional Development for assistance with sensitivity training.
- 8.6 Cluster Commanders**
 - 8.6.1 Cluster Commanders must submit a consolidated certificate with regards to the training and implementation of this SOP to the relevant Provincial Commissioner.
 - 8.6.2 Cluster Commanders must submit a consolidated certificate with regard to the identification of designated detention facilities.
- 8.7 Provincial Commissioners**
 - 8.7.1 Ensure that this SOP is implemented and complied with by all stations.
 - 8.7.2 The Provincial Commissioner to submit a report to the Divisional Commissioner: Visible Policing regarding the implementation and compliance of this SOP within three (3) months of the SOP coming into effect.

8.7.3 The Provincial Commissioner must designate a member from Social Crime Prevention, to represent SAPS on the Provincial Task Team and Provincial Rapid Response Team.

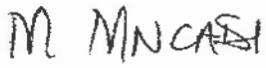
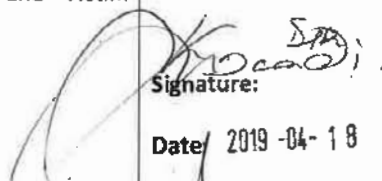
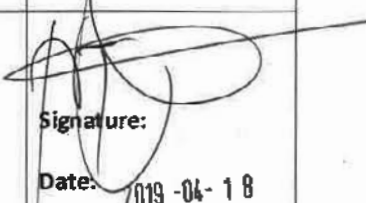
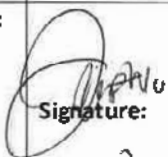
9. CAPACITY BUILDING SESSIONS AND IMPLEMENTATION

9.1 Capacity building sessions will be conducted for all provinces by 30 September 2019, in partnership with the Department of Justice and Constitutional Development. This is to enable members at police stations and provinces to understand issues of implementation.

9.2 Implementation will come into effect on 1 October 2019, after the above-mentioned capacity building sessions.

10. REVIEW

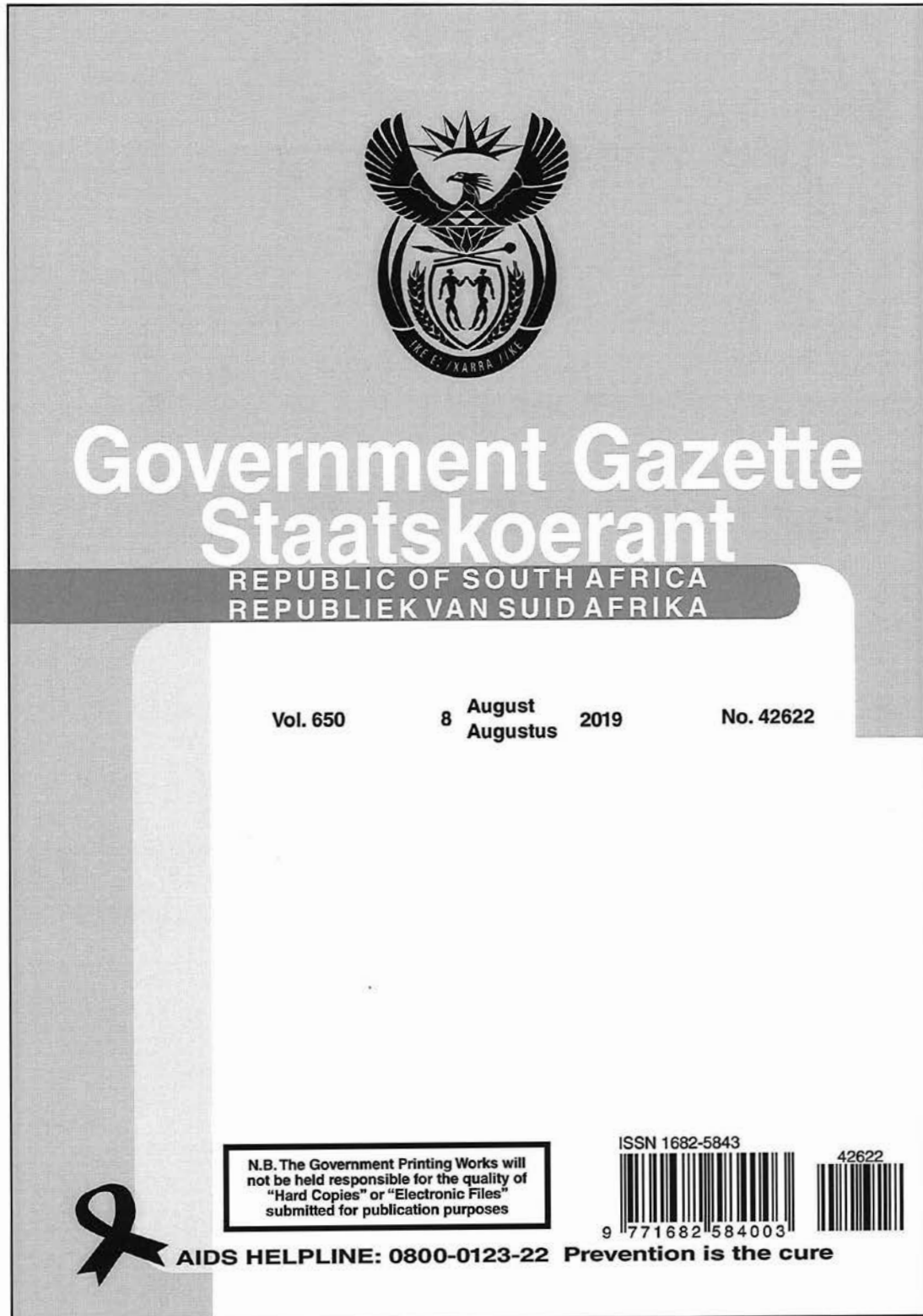
10.1 The finalised SOP will be reviewed after three (3) years of the date of implementation.

Perused, verified and recommended by: 	Section Head: Vulnerable Groups and Victim Empowerment Director: M Mncadi	 Signature: Date: 2019-04-18
Perused, verified and recommended by:	Component Head: Social Crime Prevention Major General: TN Mathonsi	 Signature: Date: 2019-04-18
Perused, verified and Approved by:	Acting Divisional Commissioner: Visible Policing Lieutenant General: SJ Jephta	 Signature: Date: 2019-04-18

ANNEXURE 2

- 6 Immigration Act of 2002:
Determination of places of
detention of illegal foreigners
pending deportation





NO. 1046

DEPARTMENT OF HOME AFFAIRS

08 AUGUST 2019

IMMIGRATION ACT, 2002
(Act No. 13 of 2002)
 [Section 34(1)]

DETERMINATION OF PLACES OF DETENTION
OF ILLEGAL FOREIGNERS PENDING DEPORTATION

1. I, Mr Thulani Mavuso, Acting Director-General: Department of Home Affairs, determine, in terms of section 34(1) of the Immigration Act, 2002 (Act No. 13 of 2002) ("Immigration Act"), the following Stations of the South African Police Service, as places of detention of illegal foreigners pending deportation or transfer to Lindela Holding Facility for deportation.
2. This list replaces the list of police stations as published in Government Gazette No. 38903, Notice 534 on 22 June 2015.

Province	Police Station			
Eastern Cape	• Adelaide • Alexandria • Algoa Park • Alice • Aliwal north • Barkly East • Beacon Bay • Belford • Bell	• Cofimvaba • Dalasile • Duncan Village • Dutywa • East London • Elands Height • Elliot • Elliotdale • Flagstaff	• Keiskammahoek • King Williams Town • Kwazakele • Lady Grey • Lusikisiki • Maletswai • Mdantsane • Middelrift	• Ngqeleni • Ntabankulu • Palmietfontein • Phumalanga • Port Alfred • Port St Johns • Queenstown • Seymour • Sterkspruit

ANNEXURE 2

	- Bethelsdorp - Bisho - Bityi - Bizana - Buffalo Flats - Burgersdorp - Butterworth - Cala - Cambridge - Chungwa	- Floukraal - Gelvandale - Grahams Town - Healdtown - Hofmeyer - Humansdorp - Humewood - Jamestown - Jeffrey's Bay - Joza - Kabega Park	- Motherwell - Mount Ayliff - Mount Frere - Mount Road - Mqanduli - Mthatha Central - Mzamba - Ndevana - New Brighton - Ngangelizwe - Ngcobo	- Steynsburg - Sulenkama - Tabase - Tarkastad - Thina Falls - Tsolo - Tsomo - Uitenhage - Venterstad - Walmer - Zwelitsha
Free State	- Allanridge - Bainville - Bethlehem - Bloemspuit - Boithuso - Bothaville - Botshabelo - Clarens - Clocolan - Cornelia	- Daelesville - Excelsior - Ficksburg - Glen - Goedemoed - Harrismith - Heidedal - Henneman - Hobhouse - Hoopstad	- Jacobsdal - Kroonstad - Luckhoff - Mafube - Phillippolis - Phuthadijhaba - Selosesha - Smithfield - Theunissen - Tseki	- Tseseng - Tumahole - Tweespruit - Virginia - Vrede - Warden - Welkom - Wesselsbron - Zamdela
Gauteng	- Actonville - Alberton - Benoni - Boipatong - Boksburg - Brakpan - Brooklyn - Cleveland - Cullinan - Daveyton - Diepkloof - Diepsloot - Edenvale	- Eldorado Park - Fochville - Ga-Rankuwa - Garsfontein - Germiston - Hillbrow - Jabulani - Jeppe - JHB Central - Kagiso - Kameeldrift - Katlehong - Kempton Park	- Khutsong - Kliptown - Krugersdorp - Lenasia - Lenasia South - Meadowlands - Midrand - Muldersdrift - Orlando - Pretoria Central - Pretoria North - Katlehong North - Primrose	- Randburg - Randfontein - Rodepoort - Sandton - Sebokeng - Sharpeville - Soshanguve - Springs - Sunnyside - Tembisa - The Barrage - Tokoza - Tsakane - Zonkizizwe
KwaZulu Natal	- Bergville - Bhekithemba - Brighton Beach - Dalton - Durban Central - Emanguzi - Eshowe - Esikhaleni	- Harding - Hlobane - Howick - Inanda - Kwadabeka - Kwadukuza - Kwambonambi - Madadeni - Margate - Mayville	- Mountain Rise - Mpumalanga - Mpungamhlophe - Mtubatuba - New Hanover - Newcastle - Ntuzuma - Nyoni - Osizweni - Paulpietersburg	- Pinetown - Pongola - Port Shepstone - Richards Bay - Richmond - Scottburgh - Sundumbili - Ulundi - Umhlali - Umlazi

	• Ezakheni	• Mooirivier	• Phoenix • Pietermaritzburg	• Utrecht • Westville
Limpopo	• Alldays • Apel • Bela-Bela • Bolobedu • Botlokwa • Burgersfort • Dennenilton • Gilead • Giyani • Gravelotte • Groblersdal • Haenertsburg • Hlanganani • Hoedspruit • Jane Furse • Laersdrift • Leboeng • Lebowakgomo	• Lephalale • Letsitele • Lulekani • Maake • Magatie • Mahwelereng • Makhado • Makuya • Malamulele • Maleboho • Malipsdrift • Mara • Marble Hall • Masemola • Masisi • Matlala • Mecklenburg • Modimolle	• Modjadiskloof • Mogwadi • Mokopane • Motetema • Musina • Mutale • Naboomspruit • Nebo • Northam • Ohrigstad • Phalaborwa • Pienaarsrivier • Polokwane • Ritavi • Rooiberg • Roossenekal • Saselamani • Sekgosese	• Sekhukhune • Senwabarwana • Seshego • Siloam • Thabazimbi • Thohoyandou • Tinmyne • Tolwe • Tshaulu • Tshilwavirusiku • Tshitale • Tubatse • Tzaneen • Waterpoort • Waterval • Witpoort • Zaaipiaas • Zebediela
Mpumalanga	• Acornhoek • Amersfoort • Badplaas • Balfour TVL • Barberton • Belfast • Bethal • Carolina • Delmas • Dientjie • Elukwatini • Embalenhle • Emzintoni	• Ermelo • Evander • Graskop • Greylingstad • Hazyview • Hendrina • Kabokweni • Kinross • Komatipoort • Kriel • Kwaggafontein • Kwamhlanga • Lydenburg	• Mahamba • Matsulu • Mbuzini • Mhala • Middelburg • Mpumalanga • Morgenzon • Nelspruit • Ngodwana • Pienaar • Piet Relief • Pilgrims Rest • Sabie	• Sakhile • Secunda • Siyabuswa • Skukuza • Standerton • Sundra • Tonga • Volksrust • Vosman • Waterval • Boven • Witbank • White River
North West	• Atamelang • Bloemhof • Boitekong • Brits • Delareyville • Hartebeespoortdam • Hebron	• Jouberton • Kierksdorp • Klipgat • Koster • Lichtenburg • Madibogo • Mahikeng • Makwassie	• Marikana • Mmabatho • Mogwase • Mooifontein • Morokweng • Orkney • Ottosdal • Ottoshoop	• Phokeng • Potchefstroom • Pudimoe • Rustenburg • Stilfontein • Swartruggens • Tlhabane • Vryburg • Wolmaransstad
Northern Cape	• Augrabies • Barkly West	• De Aar • Douglas	• Keimoes • Kimberley	• Postmasburg • Rosedale

ANNEXURE 2

	• Bathlaros • Brandvlei • Calvinia • Carnarvon • Colesberg	• Galeshewe • Hartswater • Hopetown • Jan Kempdorp • Kakamas • Kathu	• Kuruman • Noupoot • Olifantshoek • Pofadder • Port Nolloth • Prieska	• Springbok • Upington • Victoria West • Vosburg • Williston
Western Cape	• Athlone • Beaufort West • Bellville • Bellville South • Bishop Lavis • Bredasdorp • Caledon • Cape Town Central	• Clanwilliam • Dysselsdorp • Elsie's River • Groot Brakrivier • Harare • Heidelberg • Kraaifontein • Langebaan • Maitland	• Malmesbury • Melkbosstrand • Mitchells Plain • Paarl • Pacaltsdorp • Piketberg • Prince Albert • Ravensmead • Rawsonville	• Rondebosch • Somerset West • Stellenbosch • Vredendal • Wolseley • Wynberg

The minimum standards relating to the detention of illegal foreigners shall be as prescribed in regulation 33(5) of the Immigration Regulations, 2014.



MR THULANI MAVUSO
ACTING DIRECTOR-GENERAL
DEPARTMENT OF HOME AFFAIRS

