The National Prosecuting Authority of South Africa
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Die Nasionale Vervolgingsgesag van Suid-Afrika

Awaiting Trial Detainee Guidelines

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Introduction

Of all human rights, liberty is undoubtedly one of the most fundamental. Any person arrested and detained is deprived thereof despite the initial basic presumption of innocence.

Arrest is also but one – and the most extreme – of various alternative means of ensuring a suspect's attendance at court. (*Louw v Minister of Safety and Security* 2006 (2) SACR 178 (T) at 186-7)

Furthermore, continued incarceration of an accused before conviction has severe prejudicial implications for family life, the labour-market, and the tax-payer.

The finalization of any trial as expeditiously as possible – and without unnecessary court appearances – is also obviously in the interests of all parties involved (the accused, witnesses, trial rolls, and personnel serving in the courts). The prisons in South Africa are seriously overpopulated and in this regard awaiting trial (and especially juvenile) detainees are a major concern.

The situation is further exacerbated by the fact that persons convicted in the regional court and then transferred to the high court under the "minimum sentence" legislation; continue to be detained with awaiting trial status until their convictions are confirmed much later by a judge.

The National Prosecuting Authority (NPA) is committed to striving, in co-operation with all other relevant role-players, to reduce – and then to keep – the number of awaiting trial detainees (and especially juveniles) to the minimum. Of course the ill-considered and/or unwarranted release of any accused person can also be potentially dangerous and seriously undermine the community's essential faith in the efficacy of the legal system.

Where prosecutors are not the primary or only functionaries whose actions or procedures impact on the problem(s), they should nonetheless pro–actively seek to inform, educate and encourage other relevant role-players at every opportunity – formally and informally – to help alleviate the problem(s) addressed herein.

In general prosecutors can and must play a vital role in ensuring:

1. At the outset that the accused persons were arrested for justifiable reasons (and the police must be consciously discouraged from any possible attempts to abuse the 48-hour pre-appearance detention clause);

2. That further incarceration of accused persons is justified – on an ongoing basis – as the only realistic or viable option;

3. That if the accused is granted bail the prosecutor must monitor unpaid bail at the next appearance;

4. That all necessary instructions for further investigation are issued as soon as possible (and progress carefully monitored thereafter);

5. That all remands/postponements are necessary and for justifiable reasons (and not adopt a slavish or formalistic adherence to the “14-day syndrome”);

6. That maximum use is made of each court appearance to advance the case towards the goal of finalization, at least regarding the merits of the case, at the earliest opportunity.

This is a guideline to sensitise prosecutors as to the various options available to try to reduce the number of awaiting-trial detainees. As the Divisions differ considerably it is in the discretion of each Director of Public Prosecutions as to which of these options to implement.

Chapter 1 Measures to Reduce the Number of Awaiting Trial Detainees Prior to Their First Appearance in Court

Methods of ensuring the attendance of an accused before court are:

1. Arrest (with or without a warrant) in terms of sections 39 and 40 of the Criminal Procedure Act, no 51 of 1977 (hereinafter refer to as Act 51 of 1977).
2. Summons in terms of sections 54 of Act 51 of 1977.
3. Written notice in terms of section 56 of Act 51 of 1977.
4. Indictment in terms of section 144 of Act 51 of 1977

Part I Arrest

Prosecutors must ensure that arrests are in accordance with the provisions of the applicable section of Act 51 of 1977.

If so requested by SAPS community service centre commander it would be of assistance if prosecutors could visit police stations over weekends (and especially over long weekends) in order to screen the case dockets. This could help ensure that no-one is held awaiting-trial if there is no case against him/her. In the case of juveniles the prosecutor can also make decisions on whether to prosecute or to "divert" the case. In some of the major centres this is the responsibility of a commissioned officer at the crime office and prosecutors should take care not to interfere with the SAPS crime office's work.

At the time of arrest

Section 40(1) (b) of Act 51 of 1977 relates to persons suspected of having committed an offence referred in schedule 1 other than the offence of escaping from lawful custody. One of the relevant offences is "assault, when a dangerous wound is afflicted." The concept of "grievous bodily harm" is not always synonymous therewith.

In Bobbert v Minister of Law and Order 1990 (1) SACR 404 (C), the court defined a dangerous wound as "one which itself is likely to endanger life or the use of a limb or organ." The court considered "grievous bodily harm" as "intent to do more than inflict the casual and comparatively insignificant and superficial injuries which ordinarily follow upon an assault. There must be proof of intent to injure and to injure in a serious respect."[37]

The legislature is specifically silent about assault common, and no arrest for assault common is accordingly authorized.

[37] The legislature is specifically silent about assault common, and no arrest for assault common is accordingly authorized. Also see the directives issued by the National Commissioner of Police on 9 May 2005.

Section 40(1) (q) of Act 51 of 1977 states "who is reasonably suspected of having committed an act of domestic violence as contemplated in section 1 of the Domestic Violence Act, no 116 of 1998 which constitutes an offence in respect of which violence is an element". An arrest may therefore only take place under this section if violence has been used in the commission of the offence.

Where a juvenile has been arrested the police must adhere to the requirements of section 50(4) of Act 51 of 1977 which states the following: "The parent or guardian of a person under the age of 18 years shall, if it is known that such parent or guardian can readily be reached or can be traced without undue delay, be notified forthwith of the arrest of such person by the police official charged with the investigation of the case". See annexure 2 as an example of a section 74(2) of Act 51 of 1977 notice to the parents/guardian.

This is, however, subject to Directives *supra* issued by the National Commissioner of Police on 9 May 2005.[38]

After an accused has been arrested

The accused may be:

- Detained;
- Released in terms of section 59 of Act 51 of 1977;
- Released in terms of section 59A of Act 51 of 1977;
- Held at a place of safety in terms of section 71 of Act 51 of 1977;
- Released on warning in terms of section 72 of Act 51 of 1977; or
- Issued with a written notice in terms of section 56 of Act 51 of 1977.

48 hour abuse by the SAPS

According to section 50(1) (c) of Act 51 of 1977, an accused has to appear in court not later than 48 hours after his or her arrest, if not released on bail or warning. There are circumstances in which the 48 hours may be extended.[39]

Section 29(1) (a) of the Correctional Services Act no 8 of 1959, regulates the situation in respect of an un-convicted accused under the age of 14 years, who may only be detained in a police cell for a maximum period of 24 hours after his/her arrest. Section 29(1) (b) of Act 8 of 1959 specifies that an un-convicted person between the age of 14 and 18 years may be detained in a police cell for a maximum period of 48 hours after his/her arrest. In both cases, juveniles may only be detained in a police cell if such detention is necessary and in the interests of justice and if the person concerned cannot be placed in the care of his/her parents

[38] See Annexure 1.
[39] See section 50(1) (d).

or guardian, any other suitable person, or any institution or place of safety as defined in section 1 of the Child Care Act 74 of 1983 for the period in question.

There is no provision that children may be detained in a police cell for longer than the stipulated 24 or 48 hour period. They may still be detained for 48 hours (or the normal extension thereof) provided detained at a "place of safety."

The member of the police or the peace officer responsible for ordering the detention in a police cell of a child under the age of 18 years must, on the child's first appearance, provide the court with a written report setting out the reasons for the detention and an explanation why it was necessary to detain the person in a police cell. See the pro forma reason for detention of juveniles in police cells.[40] This pro forma must be completed in duplicate, filed in the B-section of the docket and should be available at the first appearance. The prosecutor must place the age of the juvenile accused on record and hand the original to the magistrate.

Prosecutors must ensure, that the police know the restrictions on juvenile detention, as set out in section 29(1) (a) and (b) of Act 8 of 1959.

Section 4B of Act 116 of 1991 requires that an arrested child who has not been released shall be assessed by a probation officer as soon as reasonably possible. There is a duty on the police and the investigating officer specifically to notify a probation officer of a child's arrest, that he is likely to remain in custody and when he will appear in court. The station commissioner must have a list of the probation officers available for this purpose. See in this regard the instructions of the National Commissioner of the Police in his circular dated 8 December 2004.[41]

Police not infrequently maximize the duration to the legal limit even though no reason exists why the accused cannot be taken to court within the first 24 hours. The National Commissioner of South African Police Services has issued clear instructions in this regard in a circular dated 9 May 2005.[42] Any abuse of the 48 hour period of detention should be brought to the attention of the station commander.

Release on bail in terms of Section 59 of Act 51 of 1977

Section 59 of Act 51 of 1977 refers to "police bail" in relation to a certain category of offences where the police can set bail before an accused is due to appear in court for the first time. Only a police official of or above the rank of non-commissioned officer may authorize the release on bail.

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40 See Annexure 4.

41 See Annexure 5.

42 Annexure 1, paragraphs 9, 11 and 12.

In terms of section 50(4) of Act 51 of 1977, the parents or guardian should be informed of the arrest of an accused under the age of 18 years. Bail under this section may also be set for an accused younger than 18 years, but the amount set must be realistic.

A police official of or above the rank of non-commissioned officer may authorize bail only for offences mentioned in paragraph 5 *infra*. A sum of money must be paid, and payment should be at the relevant police station.

Offences for which the police may release an accused on bail are any offence not appearing on the following list:

Table 1 Offences for which the police may not release an accused on bail

Treason
Sedition
Murder
Rape
Robbery
Assault, when a dangerous wound is inflicted *
Arson
Housebreaking / breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R2 500.
Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.
Any offence under any law relating to the:- (a) Possession of (i) Dagga exceeding 115 grams; or (ii) Any other dependence-producing drugs (b) Conveyance or supply of dependence-producing drugs.
Any offence relating to the coinage
Public violence
Kidnapping
Child stealing
Contravention of the provisions of sections 1 and 1A of the Intimidation Act, no 72 of 1982.

Any conspiracy, incitement or attempt to commit any of the abovementioned offences.

Prosecutors should inform the police they may not warn an accused in terms of section 59, but only in terms of section 72 of Act 51 of 1977. In cases of assault, where a dangerous wound has been inflicted the prosecutor should consider releasing the accused on bail in terms of section 59 A of Act 51 of 1977.

The police must phone the prosecutor on bail duty if there is any doubt as to whether or not an accused may be released on bail under this section 59 of Act 51 of 1977.

All cases where an accused could have been released on bail, but was kept in custody without justification, should be brought to the attention of the station commander to prevent similar incidents in future.

The police may not impose any bail conditions under this section.

Release on bail in terms of section 59A of act 51 of 1977

Section 59A of Act 51 of 1977 is where a prosecutor releases an accused on bail after-hours. See part 10 of the policy directives in the NPA manual.

A prosecutor must have a specific authorization (delegation) from the Director of Public Prosecutions (DPP) in this regard.

Prosecutors should all be in possession of an official identification card issued by the NPA to prevent any possible attempt at impersonating a prosecutor for this purpose.

A prosecutor is not entitled to release an accused on warning under this section.

The prosecutor may release an accused on bail only when the latter is charged with contravening one or more of the offences listed in schedule 7 of Act 51 of 1977. If an offence is not listed in schedule 7 the prosecutor cannot release the accused on bail. Offences listed in schedule 7 are as follows:[43]

Table 2 Offences listed in Schedule 7 of Act 51 of 1977

- Public violence;
- Culpable homicide;
- Bestiality;

[43] Read the guidelines in respect of certain of the offences in the NPA manual.

- Assault involving the infliction of grievous bodily harm;
- Arson;
- Housebreaking (common law or statutory) with intent to commit an offence;

- Malicious injury to property;
- Robbery (excluding robbery with aggravating circumstances*)[44]
- Theft, if the amount involved in the theft does not exceed R20 000-00;
- Any offence referred to in section 264(1)(a), (b) and (c).[45]
- Any offence in terms of any law relating to the illicit possession of dependence producing drugs.
- Any offence relating to extortion, fraud, forgery or uttering, if the amount of value involved in the offence does not exceed R20 000-00.
- Any conspiracy, incitement or attempt to commit any offence referred to above.

A prosecutor is not allowed to consider or set bail in cases of common assault. See the definition of "grievous bodily harm" in part I, paragraph 1.1 a *supra*.

The bail application or functions contemplated in section 59A of Act 51 of 1977 should be carried out at either a police station or the magistrate's office, in which case the police must be informed to take the accused to the magistrate's office.

An interpreter must be used if necessary to translate the proceedings to the accused.

A list of prosecutors on bail duty (with contact telephone numbers) should be supplied to the police.

There must be a consultation with the investigating officer before an accused is released on bail.

Obtain a list of police officers on duty and identify a contact person who the prosecutor can contact after-hours if unable to reach the investigating officer.
(In practice the prosecutor consults the arresting officer or detective on standby duty.)

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[44] "Aggravating circumstances" refer to wielding of a firearm or any other dangerous weapon, infliction of grievous bodily harm, and/or threat to inflict grievous bodily harm by the offender or an accomplice on the occasion when the offence is committed, whether before, during or after the commission of the offence. If the amount involved in the offence does not exceed R20 000-00.

[45] Receiving of stolen property, knowing it to have been stolen; an offence under sections 36 or 37 of the General Law Amendment Act 62 of 1955; and an offence under section 1 of the General Law Amendment Act 50 of 1956. If the amount involved in the offence does not exceed R20 000-00.

The fact that the police do not object to bail does not mean that the prosecutor should automatically grant bail. The normal principles regarding bail (including sections 60(5) - (9) of Act 51 of 1977) are still to be applied.

The *audi alterem partem* rule should be applied.

This is not a trial or formal hearing. The prosecutor may ask relevant questions, but a lengthy debate with the accused or his lawyer about bail should be avoided.

The prosecutor must keep notes about this process and file such in the docket. These notes are a safeguard and will also serve to inform the relevant prosecutor about the bail history of the case when the docket is brought to court to be placed on the roll.

Prosecutors should confirm that an accused does not have previous convictions. The reasons for this is that

> Schedule 5 of Act 51 of 1977 determines that a schedule 1 offence becomes a schedule 5 offence for purposes of a bail application in the following circumstances:
>
> (a) Where the accused is charged with a schedule 1 offence and has previously been convicted of a schedule 1 offence; or
>
> (b) Where the accused had been released on bail for a schedule 1 offence and has allegedly committed a further schedule 1 offence after his release on bail.

A record of the proceedings must be kept by the prosecutor on the prescribed form provided in the NPA Manual.

The prescribed pro-forma, referred to in the Policy Manual, should be completed in triplicate, when bail has been granted. Any bail conditions should be noted on the pro-forma bail form.

i) The original is handed to the investigating officer, who submits this as proof of the bail proceedings when the accused pays his bail at the police station
ii) The first copy is handed to the control prosecutor or other prosecutor responsible for enrolling the matter on the first court date after the hearing.
iii) The second copy remains in the docket

As these applications will take place after court hours, the bail money should be paid at the police station. Only cash or bank-guaranteed cheques may be accepted.

If satisfied that bail can be granted, the prosecutor must decide on an amount. This must be a realistic amount. It would serve no purpose to set an excessive amount which the accused cannot afford.

If there is insufficient information to reach a decision regarding the bail or the value involved cannot be ascertained or the accused's previous convictions are not known or doubtful, the prosecutor should not grant bail as the offence could then fall outside the ambit of Schedule 7.

Although the Act 51 of 1977 does not require it, the reason(s) for refusing bail should be noted on the docket.

The prosecutor may stipulate bail conditions (section 59 A (3) (b) of Act 51 of 1977).

The prosecutor must warn the accused to appear on the next court date.

Release on warning in terms of Section 72 Act 51 of 1977

A police official may, where an accused is in custody and under circumstances where he may release the accused on bail in terms of section 59 and the offence does not fall within the ambit of Parts II and III of Schedule 2 of Act 51 of 1977, release an accused on warning, and if the accused person is under the age of 18 years release him/her in the care of his/her parents/guardian and warn such person in whose care he/she is placed to appear in court at a specific time and place.

A prosecutor does not have the right to release an accused person on warning as contemplated by section 72.

It must be ensured that any address given up is indeed the residential address of the accused.

An accused under the age of 18 years may only be released on warning if it is possible to also release him in the care of his/her parents/guardian.

Attempts must be made to obtain a birth certificate or identification document of the accused to establish the age of the accused, and a copy of such must be filed in the case docket.

Steps must be taken immediately to trace the parents/guardian of an accused under the age of 18 years. It must also be ensured that such a person is indeed the parent/guardian of the accused.

The prescribed forms as contemplated by section 72 (3) (a) of Act 51 of 1977 must be completed and filed in the case docket.

Part II Summons

Summons to appear before court in terms of Section 54 Act 51 of 1977

This section is specifically designed to secure the attendance in court of an accused person in circumstances where he/she has not been arrested. It is also useful in instances where the case has earlier been struck off the roll or provisionally withdrawn and needs to be enrolled again.

Where a complaint is laid, instead of arresting an accused person, the police take the docket to the prosecutor for decision.

1.1 See directives to SAPS by National Commissioner dated 9 May 2005.[46]

1.2 Section 54 may not be utilized by peace officers.

1.3 This means of securing the attendance of an accused person is not limited to any offence.

1.4 The prosecutor also has the discretion of determining an admission of guilt fine on the summons if he/she on reasonable grounds believes that a magistrate's court, on convicting the accused of the relevant offence, would not impose a sentence exceeding the amount as announced in the Government Gazette (currently R5 000.00 – Government Gazette 24393 of 14 February 2003).

1.5 *S v Makolane* 2006 (1) SACR 589 TPD held that a prosecutor may fix an admission of guilt fine in the case of a common law offence notwithstanding the Firearms Control Act, but only under certain circumstances.

1.6 A juvenile may be served with a summons in terms of section 54 but his/her parent/guardian must also be handed a copy and warned to appear in court on the same date.

1.7 The accused must have a fixed address (residential or work address).

1.8 Prosecutors should only apply for a warrant of arrest in terms of section 43 Act 51 of 1977 as a last resort to secure the attendance of an accused before court.

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46 Annexure 1, paragraphs 6 and 7.

Summons in terms of Section 57a Of Act 51 of 1977

Section 57A states that in the case where an accused has appeared in court and is in custody/released on bail/warning and before he/she has pleaded the prosecutor may, if he/she on reasonable grounds believe that a magistrate will not impose a higher fine than that determined from time to time by the minister (currently more than R5000.00), hand to the accused a written notice or cause such notice to be handed to the accused by a peace officer, stipulating an admission of guilt fine that the accused may pay in respect of such an offence and that, upon payment of such a fine, the accused does not have to appear in court again.

See the pro forma notice in terms of section 57A of Act 51 of 1977.[47]

The prosecutor must endorse the charge sheet to the effect that a notice has been issued and forward the duplicate original of such notice to the clerk of the court.

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The application of this section has a very similar affect to the issuing of summons under section 54 Act 51 of 1977, but is a lot less cumbersome and the requirements are not as stringent - for instance in respect of “service” required in terms of the law. This does not have to be issued by the clerk of the court and it simply means that the prosecutor completes the required notice and hands it over to the accused.[48]

The provisions of sections 55, 56(2) and (4) and 57(2) - (7) of Act 51 of 1977 are applicable.

The crux of this section is basically that a prosecutor can determine an admission of guilt fine to be paid even in circumstances where an accused has already appeared before court after he/she had been arrested on a particular offence.

The prosecutor ought to apply the same principles and considerations for the issuing of such a notice that he/she would have in considering issuing summons in terms of section 54 Act 1977 *supra*.

It is advisable that the prosecutor only makes this decision once the investigation is completed and the relevant SAP 69 record is available.

In less serious offences the prosecutor should already give consideration to the possible use of this section at first appearance and possibly postpone the matter for a short period of time in order to finalize the investigation/obtain the SAP 69.

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47 Annexure 3.

48 The provisions of sections 55, 56(2), (4) and 57(2) to (7) Act 51 of 1977 are also applicable.

Issuing a written warning (J534) in terms of Section 56 Act 51 of 1977 and setting an Admission of Guilt may be set on such warning in accordance with the Provisions of Section 56.

1. This may only be applied by peace officers prior to first appearance in court.

2. The peace officer must on reasonable grounds believe a magistrate's court would not, on conviction, impose a fine exceeding an amount determined by the Minister in the Government Gazette (currently R2 500.00 – Gazette No 24393 of 14 February 2003). See section 57(5)(a) of Act 51 of 1977 as to the determination of such an amount. Any admission-of-guilt fine must be in accordance with the prescribed amount.

   It will normally only be determined in cases of minor (and mainly statutory) offences.

   In order to reduce the number of awaiting-trial detainees the Director of Public Prosecutions can investigate the viability of section 56 and authorize the issuing of J534 notices and admissions of guilt fines for certain other crime categories including minor common law offences. (For example theft and MITP with a value of less than R500.00, and possession of dagga weighing less than 10 grams). The difficulty with common law offences is that there must be a magisterial determination, the investigation must be finalized, all relevant facts (including the previous convictions of the accused) of the case must be known, the fingerprints must have been taken, and there must be no pending legal enquiries into the fitness of the accused to possess a firearm- or a driver's licence.

3. The prescribed written notice (J534) must comply with the provisions of section 56(1) (a) - (d) of Act 51 of 1977.

4. Once such a written notice has been issued and served on the accused in custody, he/she must immediately be released from custody.[49]

5. A juvenile may also be served with a written notice. In such a case his/her parents must also receive a copy of such notice and be warned to appear in court. In this instance section 74 Act 51 of1977 must also be followed.

6. Such a notice must be handed to an accused person personally and may not be served on someone else.

[49] Refer to the 24/7 project

Further measures to reduce the number of awaiting trial detainees prior to first appearance

1. The SAPS commanding officer or officer on duty should inspect the cells on a regular basis to ascertain and identify juveniles in detention, ensure that their further detention is warranted, and make arrangements to have such accused detained at a place of safety.

2. Juveniles should specifically be informed about diversion and/or community service.

3. Prosecutors may even secure the release of the accused person after-hours in appropriate cases by early screening of dockets.[50]

4. Securing the attendance of parents/guardian promptly and prior to a juvenile accused's first appearance will ensure there are no delays for this purpose.

[50] Refer to 24/7 Guidelines

Chapter 2 Methods of Reducing Awaiting Trial Detainees at First Appearance

It is of vital importance that every Division, and specifically every district, establish measures and programmes that suit the specific community's needs for effective implementation as they will be affected the most. In order to reduce the number of awaiting-trial detainees

Part I Bail

Bail is one of the most effective ways of reducing the number of awaiting trial detainees. Bail and bail procedures are primarily governed by sections 60 to 70 of Act 51 of 1977.[51] The final decision concerning bail at and after the first court appearance (including the amount and any conditions) is the sole discretion of the magistrate.

The prosecutor will have to look at all the considerations referred in section 60(4) to 60(8A) of Act 51 of 1977.

An accused person is in terms of section 60(1) of Act 51 of 1977 entitled to be released on bail in respect of offences other than those mentioned in Schedules 5 and 6 if the interest of justice permit such release. There is a burden of proof on the State to show on a balance of probabilities that the release of the accused will not be in the interests of justice.

The objectives of bail can sometimes be achieved by simply requesting that relevant conditions be added.

"An excessive bail amount is an indirect and unconstitutional way of ordering the further detention of the accused" (Steytler: Constitutional Criminal Procedure (1998)).

Prosecutors should not recommend that bail be fixed in an amount of less than R1000.00. Practically, where prosecutors are therefore of the opinion that the amount of bail should be less than R1000.00, they should ensure that the accused can indeed pay the amount or rather recommend to court that the accused be released on warning if it is appropriate.

If the magistrate fixes an amount less than R1000.00 or an amount that the accused cannot pay, the prosecutor should at the next appearance ask for a reduction of such an amount. If the accused can still not pay the amount of bail the prosecutor must ask the court to warn the accused and/or take the necessary steps to ensure that the matter is fast tracked.

[51] See part 9 of the policy directives in the NPA manual.

The management of unpaid bail is crucial to the reduction of awaiting-trial detainees. If the accused did not pay the bail by 14:00 the matter can be re-called to investigate the reasons for the failure.

There is nothing prohibiting the release of a juvenile on bail.

In respect of offences referred to in Schedules 5 and/or 6 of Act 51 of 1977 the accused bears the *onus* on a balance of probabilities to satisfy the court that there is evidence:

- In terms of Schedule 5 that the interests of justice permit the release on bail;
- In terms of Schedule 6 that there are exceptional circumstances which in the interests of justice permit the release on bail.

In terms of Part 9 paragraph C.2 of the NPA Policy Directives no prosecutor may agree to the setting of bail where Schedule 5 and 6 offences are involved without prior authorization from the DPP or SPP in certain Divisions.

The NPA Policy Directives state: “No case may be placed on the roll without the preparatory bail forms being completed by the investigating officer.” If it is impossible for the investigating officer to fully complete such form at first appearance or prior to placing the case on the roll, the prosecutor may request that the matter be postponed for up to 7 days as contemplated in section 50(6)(d) of Act 51 of 1977 in order to obtain the necessary information.

For opposed formal bail applications prosecutors should ensure that all relevant aspects concerning the application are investigated and that the investigating officer is available at the next court appearance and has a statement prepared under oath.

If, after bail has been fixed, an accused still cannot afford to pay the bail amount, the prosecutor must ask the court in appropriate cases to reduce the amount of bail and/or to release the accused on warning and/or to request the probation officer/correctional officer to compile a report to determine the viability of the implementation of section 62 (f) Act 51 of 1977 as a condition to the release on warning.

If a matter is on the roll for a period longer than 6 months and the accused is still in custody, the prosecutor should reconsider the bail position of the accused irrespective of whether or not bail has been fixed, and specifically the amount of bail where bail has been fixed. The investigation and/or presentation of at least the evidence in the State’s case must be fast-tracked – also see on page 48 methods to fast track cases and chapter 5.

Bail conditions – effective use of Section 62 and 62(F) – to consider suitable bail conditions as an alternative to denying bail

Section 62 of Act 51 of 1977

This section deals with the specific conditions which ensure that the proper administration of justice is not jeopardized by the release of the accused on bail.

Additional bail conditions may be added at any time even if conditions have previously been imposed.

Section 62(f) of Act 51 of 1977

The provisions of section 62(f) are an effective alternative to detention as an accused is kept under house-arrest pending the finalization of his case.

This can only be considered after a report by either a social worker (probation officer) or a correctional official has been compiled and will generally apply to cases where no violence is involved.

The duty of the probation officer or correctional official will mainly be to establish:

1. Whether the accused has a fixed abode;
2. Whether the accused is employed; and
3. Whether the release on bail constitutes a potential danger to the victim or state witnesses.

The report should also make provision for the necessary conditions regarding supervision.

Such a report is a mere guideline, however. The prosecutor may still apply for further conditions and the magistrate may also add or remove conditions exercising his/her discretion.

An accused must pay bail in terms of this section even if it is a minimal amount. However, section 72(1) (a) of Act 51 of 1977 provides that the accused may be warned and placed under supervision.

If section 62(f) is used more frequently, prison authorities should not need to rely on the provisions of section 63A of Act 51 of 1977. In terms this section the head of a prison may apply for the release of the accused on warning or for the amendment of imposed bail conditions if the prison population of that specific prison has reached such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused.

After the accused's release on bail in terms of section 62(f), the correctional official or probation officer will have to monitor the accused on a regular basis to ensure that he/she complies with the conditions of his/her release.

If the accused does not comply, the relevant official should submit a report (in affidavit form) to this effect to the prosecutor.

The prosecutor should then apply for a warrant in terms of section 68 of Act 51 of 1977 and make an application to the court to revoke the bail.

Prosecutors should therefore liaise with the Department of Correctional Services to encourage the use and implementation of section 62(f). It is a more expedient remedy and involves less administration than utilising section 63A.

Prosecutors should identify the responsible probation officer(s) and correctional supervision official(s) in their areas who will compile reports when so requested by the prosecutor or act as liaison officers.

If the prosecutor is in a large office he/she may make arrangements that such officials have an office there, and applications may then be considered and processed on the premises on a daily basis or on a certain day of the week.

These officials should be trained about the requirements of such a report.[52]

Cases should be carefully screened at the first appearance, and the Chief Prosecutor consulted as to the type of offences in respect of which section 62(f) should be considered.

The written request for a report should be made to the official in triplicate. The original should be handed to the correctional official or probation officer, the duplicate copy should be attached to the charge sheet, and the last copy should be kept in an office file. Should the original prosecutor not be available on the next court date, perusal of the charge sheet will indicate to the magistrate and new prosecutor what the original intention was with regard to bail.

The case must then be postponed for a week and the magistrate informed accordingly. The prosecutor must ensure that the request reaches the official involved as soon as possible.

The report will then be submitted to the magistrate when the prosecutor formally requests that the accused be released in terms of section 62(f).

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[52] See the pro-forma, Annexure 4, which should be made available to the compiler of the report.

Conditions in terms of section 62 of Act 51 of 1977 may relate to reporting, travel restrictions, prohibition of communication, a place where documents can be served on the accused, or to ensure the proper administration of justice and supervision of a probation officer and/or correctional official.

The four principles governing bail conditions should be taken into account. They:

i. Cannot be *contra bonis mores*;
ii. Should be clear and precise;
iii. Should not be *ultra vires;* and
iv. Must be practically feasible.

Conditions frequently suggested include:

1 The times that the accused is allowed to leave his home for purposes of work; to apply for work; to attend church, rehabilitation and other programmes; or to participate in other activities.
2 That the accused not be allowed to consume any alcohol or use any drugs;
3 That the accused is to report at the social worker's office at certain times;
4 That the accused is not entitled to leave the magisterial area without the consent of the correctional official or probation officer;
5 That there should be an authorization by the correctional official or probation officer for any change of address;
6 That any reasonable instruction(s) by the Commissioner of Correctional Supervision Services be complied with; and/or
7 That accused is to comply with monitoring by the relevant official.

Part 9 of the Policy Directives in the NPA Manual states that the prosecutor should inform the investigating officer when bail conditions aimed at preventing contact with witnesses have been imposed so that the investigating officer can inform the witnesses accordingly.

Failure to comply with a bail condition is also an offence in terms of section 67A of Act 51 of 1977.

Part II Alternative dispute resolution mechanism

Diversion

The purposes of diversion are the disposal of cases in a manner that equips the accused with the necessary life-skills, enables him/her to attain personal growth, and where the accused is not encumbered with a criminal record.

Formal diversion

Part 7 of the Policy Directives in the NPA Manual is applicable and such diversion aims at diverting the accused from the formal court process with or without conditions.

The concept was originally developed specifically with juveniles in mind in order to protect first offenders in minor or petty cases from the consequences of a conviction and a record. Such cases are disposed of other than through normal court proceedings and can be preferable to merely withdrawing the case as the offender should learn at the same time, to take responsibility for his/her actions and acquire life-skills that would prevent him/her from repeating the same kind of criminal behaviour.

The Probation Services Act, no 116 of 1991 “provides for the establishment and implementation of programmes aimed at the combating of crime” and “for rendering of assistance to and treatment of certain persons involved in crime”

The proposed Child Justice Bill will establish dedicated child justice courts at all centres, where the emphasis will be on diversion wherever possible and include a range of non-custodial sentences where trials do proceed.

An experienced prosecutor should be identified to handle all diversions if possible. Prosecutors should be pro-active and have regular meetings with possible role-players to ensure that diversion programmes are implemented in their areas of jurisdiction (including provisions for the supplying of necessary equipment, supervising etc.). A committee with role-players should be established to monitor whether the programmes are practical and effective.

It is of vital importance that role-players should co-operate in order to establish programmes which fit the community’s specific needs and circumstances.

The Department of Social Development and NICRO (National Institute for Crime Prevention) are normally important role-players as they usually have different life-skills development programmes in place.

Section 3 of the Probation Services Act, no 116 of 1991, makes provision for programmes which are inter alia aimed at:

a) The prevention and combating of crime;
b) The performance of community service;
c) Information to and the treatment of offenders and other persons; and
d) Restorative justice as part of appropriate sentencing and diversion options.

Section 1 of Act 116 of 1991 and the proposed Child Justice Bill stress the importance of the concept of restorative justice as "the promotion of reconciliation, restitution and responsibility through the involvement of a child and the child's parents, family members, victims and the communities concerned."

There may be a need for "victim-offender mediation programmes" and the performance of community service as part of diversion programmes.

An accused may only be considered for diversion, if he/she

- Has a fixed address;
- Acknowledges liability for the offence;
- Is younger than 18 years; or appropriate adult offenders and
- Is prepared to participate in the diversion programme.

Programmes which may be considered include:

- A drug or alcohol programme – involving for instance the local doctor, the Alcoholics Anonymous Association, psychologists, and nursing staff.
- A sexual offender programme – involving the local doctor, psychologists, teachers and social workers.
- A life-skills development programme – involving community members, educators, psychologists, religious leaders and social development.
- A programme aimed at preventing family violence – involving community members, educators, psychologists, family and friends, religious leaders, FAMSA, and Social Development
- An anti-violence programme – involving community members, educators, psychologists, religious leaders and Social Development.
  (Others to be involved include NICRO, Department of Correctional Services, Community Police Forums, Business Against Crime, Non-Governmental Organization officials, and community leaders.)

The above are merely examples and are not a "*numerus clausus".* Prosecutors must be innovative where circumstances require different programmes.

The duration of these programmes is normally 6 to 8 weeks, during which period the accused will normally attend weekly lectures and perform community service during weekends. Details could be changed to meet the needs of the accused or presenters of a programme (for example, during school holidays).

Attention should be given to the following:

- The venue (location in Magisterial District);
- Duration of programme;
- Availability of lecturers/presenters (should be available in afternoons, so that children can still attend school);
- Person responsible for reporting to the prosecutor after the programme has been completed should be nominated/identified; and
- Liaison person should be identified if prosecutor or any other stakeholder needs feedback or information.

With regard to community service, the following must be considered;

- Risk of activities. Indemnities should be signed by accused and their parents;
- Duration and kind of service, and place where it should take place (once again, it should be a local place);
- Dates and times of service;
- Number of sessions to be completed;
- Supervising person;
- Equipment and supplies needed (for example garden utensils for garden work; paint and ladders for painting of walls; soap, buckets etc for cleaning of offices; protective clothing). Sponsors may play a vital roll in supplying the equipment. Business Against Crime may for example be approached for sponsorships;
- A person should be identified who will give feedback regarding completion of the community service. Ideally, this person should give such feedback in writing. The accused can then present this report to the prosecutor on his/her next appearance.

After the prosecutor has identified a potential diversion case, an assessment of the accused by a social worker should follow.

The definition of assessment in Act 116 of 1991 is “a process of developmental assessment or evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor.”

Section 4B of Act 116 of 1991 requires that an arrested child who has not been released shall be assessed by a probation officer as soon as reasonably possible.

There is a duty on the police and the investigating officer specifically, to notify a probation officer of a child's arrest, that he/she is likely to remain in custody and when he/she will appear in court. The Station Commissioner must have a list of the probation officers available for this purpose.

(See in this regard the instructions of the National Commissioner of the Police in his circular dated 8 December 2004 - Annexure 5)

Care should be taken with serious offences (such as rape or housebreaking) and where the court would have imposed a minimum sentence upon conviction if the accused were not a minor. In principle cases will be diverted in order to protect first offenders in minor or petty cases from the consequences of criminal trial and not to divert serious and dangerous juvenile criminals.

If the accused has had the privilege of a previous diversion or if he/she has a criminal record, he/she should not be considered for diversion.
The social worker should furnish the prosecutor with a report. This report must contain *inter alia*:

a) Whether the accused has a fixed address;
b) Whether the accused acknowledges liability for the offence;
c) The exact age of the accused, where possible;
d) Whether the accused is prepared to participate in the diversion process and whether it will be practical for him/her;
e) The legal guardian's willingness to take responsibility for the accused;
f) Whether the accused has a previous conviction(s) and the details thereof;
g) Whether the accused had previously been on a diversion programme;
h) The social and family circumstances of the accused;
i) Any possible substance-abuse;
j) Circumstances surrounding the commission of the offence;
k) The attitude of the alleged offender in relation to the offence; and
l) The recommendation of the social worker.

The prosecutor should request the report of the social worker in writing. (See the pro forma request to the Department of Social Development to assess the juvenile.[53] This should be in triplicate: the original should be given to the social worker, the first copy should be attached to the charge sheet, and the second copy should be filed in a file created for diversion matters.)

[53] See Annexure 6.

If there is any doubt as to the age of the accused, the correct age should be established first. This aspect is important as it is well known that juveniles are normally considered for diversion. Adult offenders may seek to abuse the system by pretending that they are under the age of 18 years.

A final decision will be made upon receipt of the report as to whether or not the case should be diverted. Prosecutors are not bound by the recommendations of the social worker.

Some prosecutors withdraw the matters provisionally and then follow up later whether the accused completed the diversion programme successfully. This practice may work in a small office. However, in larger offices, prosecutors frequently have to enter into lengthy correspondence to establish what has happened in diversion cases. This is time-consuming.

To avoid the above, it is suggested that the matter still be enrolled and postponed to a date after which the accused ought to have completed his/her diversion programme. The additional benefits of such an arrangement are that it is the responsibility of the accused to submit the report stating whether he/she has successfully completed the programme. The accused literally has a sword over his/her head, as he/she knows that the case will merely proceed if he/she has not complied. There is no delay in the matter and there is less risk that the complainant and witnesses will lose interest, as they will see that justice is done.

If the accused presents a report which indicates that he/she has co-operated and that the programme was successfully completed, the case will be withdrawn.

If the accused has not co-operated or has only attended a part of the programme, the case should be postponed for trial and finalised like any other case.

The NDPP has instructed prosecutors to keep a register of all cases where screening for diversion has taken place. This register must therefore be completed even where a candidate was not ultimately referred for diversion.

The register should be kept alphabetically in order to facilitate establishing whether a specific accused has been referred or considered for diversion before.

The decision to divert is still discretionary. The State is *dominis litis* and may still institute prosecution when an accused is a minor. See *S v D and Others* 1997 (2) SACR 673 (C).

If an accused qualifies for a diversion, the prosecutor must endorse the docket with such decision and the reasons therefore. This should also be noted in the investigation diary of the docket.

The prosecutor must also inform the parents/guardian of the accused as to what is meant by diversion, how the proposed programme will have to be followed, what the consequences are, and how this process will benefit the accused.

The prosecutor who handles the trial may also rather request that the accused attend a diversion programme as part of a suspended sentence upon conviction. This will then form a condition of the suspended sentence. If the accused then does not comply therewith; the suspended sentence can be put into operation.

Informal diversion

This process differs from "formal diversion" only in the sense that no "formally" established programme is followed.

The prosecutor plays a pro-active role and there are no limits to innovation and initiative in respect of the type of programme the offender should follow.

Juveniles as well as adults may be considered for informal diversion.

Adult diversion will normally be applied in petty cases.

In respect of juveniles, the prescribed register should still be completed, but no assessment is required.

The parties must be informed:

a) That the accused must acknowledge liability for the offence;
b) That participation is voluntary;
c) That compliance will lead to a withdrawal of the charge(s); and
d) That the accused has to obtain a report/submit proof of compliance to the prosecutor at his/her next court appearance.

Examples:

- Possession of drugs/dagga - person must go for rehabilitation and should submit proof on future date.
- Disregarding stop sign (bicycle or motor cycle used – juvenile) - offender must write a 5-page essay on road safety and why contraventions should be punished – essay to be handed in within certain time – contents to be satisfactory.
- Malicious injury to property – breaking of neighbour's window - offender must work in the neighbour's garden for number of hours and must apologise – neighbour to confirm to investigating officer/prosecutor that it was done before case is withdrawn.

The decision of the prosecutor to divert should be noted on the docket and the investigation diary should be endorsed with the outcome.

Restorative Justice as a means of avoiding prosecution and incarceration

The purpose of restorative justice is disposal of the case where there is no prosecution but the balance between the offender and the victims is restored without the accused being detained awaiting-trial.

Restorative justice in terms of the Probation Services Act, no 116 of 1991 means the promotion of reconciliation, restitution and responsibility through the involvement of the child, the child's parents, family members, victims and the communities concerned.

It is a process very similar to diversion aimed at reducing the number of awaiting-trial detainees and the number of cases on court-rolls.

It does not necessarily involve any official Department or social worker, but will always involve the offender and victim. The process is driven by volunteers in the community.

Members of the community act as facilitators between the accused and victim, and attempt to address the hurts and needs of both and bring about justice by trying to repair the harm that was caused. The focus is rather on rehabilitation and not on punishment.

In practice the facilitator will convene with the offender and victim. The victim will have the opportunity to address the offender and to inform him/her how the crime affected and hurt him/her (financially, physically and emotionally). The victim will also have the opportunity to ask the offender questions. This will be followed by a discussion and eventually an apology by the offender. The two parties will then decide on a way this can be remedied. Any undertaking should preferably be in writing to remind the offender of his/her obligations and to monitor progress. If the community needs restitution, this may also form part of the undertaking.

Restorative justice offers communities the chance to heal themselves, build a sense of community, and reinforce the values of a healthy community.

Basic requirements:

- The offender must admit guilt;
- The victim must be willing to participate in the process;
- The process should be available for first-time offenders, young offenders and offenders of minor crimes only.

Victim-support organisations should be invited to take part in the planning and managing of restorative justice services.

The offender will try to make amends by:

- Expressing his/her repentance;
- Restoring the situation in monetary terms;
- Performing community service;
- Undergoing any treatment that will benefit him/her.

The facilitator must monitor the process and inform the prosecutor whether the offender has complied.

When a program of restorative justice is not successfully completed, the case is brought back to court and charges are reinstated.

Chapter 3 Methods to Fast-Track Certain Awaiting-Trial Detainee Cases

Part I Plea-Bargaining

Formal Plea-Bargaining[54]

The purpose is to reduce the number of awaiting-trial detainees and/or the court rolls without sacrificing the demands of justice and/or the public interest.

The prosecutor dealing with formal plea-bargaining must fall within the general authorization from the National Director of Public Prosecutions. On 25 June 2003 (reference NPS 9/2/2) the following people were duly authorised to negotiate and enter into plea and sentencing agreements:

- The Deputy National Directors of Public Prosecutions;
- Directors of Public Prosecutions;
- Deputy Directors of Public Prosecutions;
- Chief Prosecutors; and
- All prosecutors of the substantive rank of Senior Public Prosecutor.

On 14 March 2002 the NDPP issued the following Directives in terms of section 105 A (11) (a) of Act 51 of 1977:

- A sentence of imprisonment is not to be bargained away where justice and/or the public interest require(s) an effective sentence of incarceration.
- Where legislation reserves the imposition of a life-sentence to the High Court, section 105A may not be utilized in the lower courts.
- For any other offence where a minimum sentence is prescribed, only the Director of Public Prosecutions may authorize a sentencing agreement.

As section 105A (12) compels the NDPP to submit annual records and statistics to Parliament, he has instructed prosecutors to keep certain statistics – see the NPA manual

The sentence agreement may only be finalised after consultation with the investigating officer, and the complainant.

The agreement must be in writing (with a certificate from any interpreter utilized).

[54] Section 105a of Act 51 of 1977

A prosecutor who receives a request (preferably at least 14 days from the trial date) for a formal plea-bargain must refer the request to his/her senior public prosecutor or chief prosecutor.

Informal Plea-Bargaining

The purpose of the informal plea bargain is to fast-track the cases of awaiting-trial detainees.

This differs from “formal” plea-bargaining in the sense that it is less time-consuming and there is no formal agreement as to the sentence.

The prosecutor should suggest the Legal Aid representative visit the local prison and invite relevant awaiting-trial detainees to consider a guilty plea in order to fast-track their cases. Ideally this should be raised at the first consultation between the accused and the legal representative. This is also known as “project plead guilty”. If the accused is interested the prosecutor will be contacted to fast-track the case.

Other more traditional forms include:

- Accepting a plea of guilty on a lesser offence;
- Accepting guilty pleas on some charges with the provision that the rest are to be withdrawn;
- Withdrawal of charges on condition the accused testify (as a section 204 witness) and/or assist the police in their investigations.

In this system the prosecutor may initiate the process, and acts as facilitator.

The prosecutor and the accused or his/her legal representative agree on the charge(s) to be pleaded to and the facts which will form the basis of the plea, and record such in a statement drafted in terms of section 112(2) of Act 51 of 1977. The accused can then be requisitioned for court to finalise the matter.

The complainant must be consulted. The docket must also be endorsed accordingly.

An accused’s record should be obtained before any plea is considered.

No plea may be accepted in cases where a minimum sentence is applicable. Prosecutors must look at the legislation on minimum sentence crimes (Section 51 Act 105 of 1997) and must contact AFU where the latter have an interest before accepting any plea or entering into any plea bargain.

Part II Other methods to fast-track cases

Securing the criminal record (SAP 69)
It is indeed possible to secure the SAP 69 form within 10 days.

The investigating officer must obtain the fingerprints of the accused on a SAPS 76 form. This will be forwarded to the Local Criminal Record Centre (LCRC) offices.

At the LCRC the fingerprints, obtained per SAP 76, will be scanned into a computerized system electronically linked to a central database in Pretoria, which is then able to "read" the prints and produce the SAP 69 form which will also be electronically forwarded to the local LCRC offices. If not, instructions to this effect should be given to the investigating officer.

This can then be printed and the investigating officer can collect it.

No person should be awaiting the outcome of his case in custody just because the SAPS 69 is not available.

Prosecutors should write an instruction in the SAP 5 regarding the SAP 76. At second appearance the prosecutor should ensure that the relevant SAP 76 with the accused's fingerprints has been submitted to the local LCRC.

Where the accused pleaded guilty on the first appearance the prosecutor must request the investigating officer in writing to obtain the SAP 69 before the date of sentence.

DNA-Analysis
A large number of awaiting-trial detainees' cases cannot be finalized due to outstanding DNA analysis. Too many cases are postponed awaiting the results of the DNA analysis.

Specific initiatives were instituted to prioritize certain requests forwarded for DNA analysis, for example in cases where children and mentally-disabled witnesses are involved.

It is important that medical practitioners clearly indicate on the medico-legal examination form, (the J88), the following information:

- Date and time of examination.
- Name of person examined.
- Samples taken for investigation, (clearly indicated on the sexual assault evidence-collection kit form).
- Seal number of evidence collection kit.

- Details of persons to whom the specimens were handed.

Similarly the person receiving the specimens should file his/her statement regarding the receiving and handling of the said specimens, with reference to the name of the victim to whom the crime collection kit pertains, the seal numbers of the crime collection kit, and his/her handling thereof.

On first appearance, the prosecutor should establish whether specimens were collected from the victim.

If, as per the J88, it is clear that specimens were in fact collected, the prosecutor should ensure that all relevant details pertaining to the collection thereof are stipulated on the J88. If any of the afore-mentioned detail is lacking, the prosecutor should give instructions for such to be remedied. Similarly the prosecutor should ensure that there is a statement regarding the handling of the specimens by the SAPS member receiving such.

The prosecutor should establish, if possible, whether the accused intends raising a defence of consent in rape matters. This can be done from the accused's warning statement and/or the legal representative. If it appears that consent will be the defence, it will not be necessary to request DNA analysis as the element of sexual intercourse is admitted. The prosecutor must however forward instructions to the investigating officer to forward the crime collection kit to the Forensic Science Laboratory (FSL) for safekeeping. Should the accused's version at a later stage change - and DNA evidence become relevant - the said specimens will be available for such analysis.

If the defence of the accused is not initially known, it is advisable that DNA analysis be requested.

On first appearance, the prosecutor should request that blood be drawn from the accused for purposes of DNA analysis. This should be done within 7 days of the matter being placed on the roll. In order to facilitate this, arrangements should be made that the investigating officer either have blood drawn at the prison, or that the accused be detained at the local SAPS cells for this to be done, if the accused is in custody. Alternatively, if the accused is on bail, proper arrangements should be made with him to present himself for this purpose. Measures to achieve this, suitable to the logistics of each office, should be implemented.

The prosecutor in court should inform the court of the State's intention to obtain and utilize DNA evidence, and obtain an order in terms of section 37 of Act 51 of 1977, if needed, to ensure that the accused present him/herself for the taking of a blood sample.

The investigating officer must ensure that blood is drawn from the accused, the details pertaining thereto being noted in a J88 by the medical practitioner.

The investigating officer must file his/her statement regarding the receipt of the accused's crime collection kit, and his/her handling thereof.

As soon as the blood of the accused had been drawn, the docket, containing the J88's of both the victim and the accused, must be presented to the prosecutor.

Upon receipt of such docket the prosecutor should assist the investigating officer to complete the relevant sections, being Part A and the annexure to the request for DNA-typing, and comparison by the Forensic Science Laboratory (SAPS FSL).

The prosecutor should complete Annexure 7 as a cover-sheet to accompany the official paperwork.

The prosecutor then proceeds in completing Part B of the said document.

As this pro-forma request form supplied by the SAPS FSL does not make provision for the seal numbers of crime collection kits, it is recommended that a further letter on an official letterhead accompany the pro-forma request form, and the following information should be reflected:

- Name of victim and seal number of victim's crime collection kit.
- Name of the accused and seal number of accused's crime collection kit.
- Number of perpetrators.
- Age of victim.
- Contact details of the prosecutor and investigating officer.
- A request that all correspondence should be faxed through to both the prosecutor as well as to the investigating officer.

A copy of the said request is filed in the docket and a further copy kept on file with the prosecutor for easy reference in case of further correspondence and in order to regularly follow up with regards to the progress of the DNA analysis.

All specimens and documentation regarding the request for the DNA analysis to commence are then forwarded to the SAPS FSL simultaneously by hand of the investigating officer, who receives an acknowledgement-of-receipt from the SAPS FSL, which must be filed in the docket.

In priority cases a copy of the request documentation is faxed through to the local SAPS FSL, for the attention of the relevant contact persons as per attached list in Chapter 6.

It is further recommended that the prosecutor contact the nodal contact person at the local FSL and request them to e-mail the request for DNA typing and comparison by the Forensic Science Laboratory to the prosecutor's office. This document can then be completed on the computer and emailed back to the contact person, in order to expedite the process.

Regular telephonic follow-up should be done with regards to the progress and status of the DNA analysis. When contacting the SAPS FSL information such as the lab number and details of the analyst can be obtained.

When contacting the analyst, quote the lab number and request written feedback on issues such as whether a positive semen result has been obtained or the current status of the analysis.

If at any stage during the investigation or during the trial it becomes evident that DNA evidence will become relevant (for instance where an accused subsequently denies sexual intercourse) it is imperative to request such analysis as a matter of urgency. The same procedure will be followed, but it will now be necessary to request that the matter be dealt with as a priority matter in order to avoid any delays. It is suggested that the request then immediately be forwarded to the nodal contact person and that thorough reasons be given regarding the urgency of the request and the next court date clearly stated. It is also advisable that the nodal contact person be contacted telephonically to explain the situation to him/her, as he/she would then be in a position to give an estimate as to when the results could be expected. The matter can then be remanded in court to a date in accordance therewith.

Should it at any stage no longer be necessary for the DNA analysis to proceed (for instance where the accused plead guilty) it is imperative to inform the SAPS FSL immediately in writing thereof to ensure that no resources are wasted in a fruitless analysis.

As the SAPS FSL prioritize all cases according to the trial date prosecutors must ensure that they mark the date of trial clearly and or inform the FSL as soon as the trial date was determined.

Mental observation in terms of Chapter 13 of Act 51 of 197755

The few psychiatric hospitals that accept referrals of accused for observation and report back in terms of section 79 of Act 51 of 1977 are experiencing severe staff – and other logistical shortages, and there is generally a huge backlog of cases and lengthy waiting periods for beds to become available.

[55] Part 25 of the Policy Directives in the NPA Manual refers.

This causes a huge backlog in the awaiting-trial detainee numbers as they are nearly all in custody awaiting their observation.

Section 79(2) (a) of Act 51 of 1977 does not lay down a hard-and-fast rule that all referrals must be for a full period of 30 days.

In serious cases (section 79 (1) (b) of the Act) where a panel of 3 to 4 experts is required, the customary 30 - day period is justifiable.

In the many less serious cases (section 79 (1) (a) of the Act), however, enquiries have revealed that the hospitals (and sole reporting psychiatrists) can generally adequately complete the requisite process within as little as 7 days.

This can lead to a dramatic reduction in the otherwise unproductive waiting period, the processing of many more cases, and - ultimately - a reduction in the number of affected awaiting-trial detainees (and, usefully, a reduction in expenses for the Department of Health).

In conjunction with their Directors of Public Prosecution, prosecutors should accordingly liaise with the authorities at their respective psychiatric hospitals concerning the introduction of such a 2-tier system of referrals.

The Firearms Control Act, No 60 of 2000

Because of the specific definition of a firearm in the Act the State has *inter alia* to prove that each firearm found in possession of an accused has the capability to fire objects at a “muzzle energy exceeding 8 joules (6ft lbs)”.

Lay witnesses will obviously not be able to adduce evidence about the muzzle energy of any arm, nor can the court deduce such by only looking at the firearm. Even experienced police officers are unlikely to be able to express an opinion on the muzzle energy of the particular arm without scientific testing.

The firearm would normally have needed to be submitted to the forensic laboratories of the SAPS and a certificate in terms of section 212(4) (a) of Act 51 of 1977 submitted to court. [56] Expert witnesses in this regard must be on standby for the trial.

After consultations with the Assistant Commissioner of General Investigations at the national office of the SAPS, he will identify members of the SAPS in every cluster who have attended a

[56] Refer to Screening in process maps

course on firearms, and such will then supply the necessary affidavits in terms of section 212 of Act 51 of 1977.[57]

Section 212 of Act 51 of 1977 is a mechanism to expedite cases and the identification of the relevant local SAPS member to issue such certificates will reduce the backlog.

After the testing of the firearm by the local expert instructions must nevertheless also be given to the investigating officer to send the said firearm to the forensic science laboratory for ballistic analysis in order to ascertain if the said firearm was used in other offences. They will also examine the firearm for IBIS testing, comparisons, and the recovery and restoration of obliterated alpha-numeric figures on metal.

Methods to fast-track investigations and the trial

There are various ways in which a prosecutor can ensure that the investigation in a matter is finalized speedily.

1. It is of vital importance that at first appearance already the prosecutor ensures that all relevant instructions regarding the further investigations in the case are written in the investigating diary for the investigating officer.

2. These instructions from the prosecutor must be clear and concise and must be necessary and relevant in order to prove the case.

(This should include requests for the SAP 69, section 212-statements, fingerprints and forensic reports- and specific request forms (e.g. DNA analysis), should be filed in the docket at the first appearance.)

The prosecutor should also give clear instructions regarding the tracing and/or taking of statements from witnesses, and ensure that witness *subpoena's* are ready once the matter is postponed for trial.

If it is known what the defence will be or what evidence will not be disputed, prosecutors must endeavour to get formal admissions and ensure that non-essential witnesses are not inconvenienced by unnecessary attendance at court. [58]

The prosecutor must ensure that the defence receives the copy of the case docket (once the investigation is completed) timeously in order to prepare for the trial.

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[57] See example of affidavit in terms of section 212 of Act 51 of 1977 – Annexure 8.

[58] There is a specific process in place catering for High Court fast tracking of guilty pleas.

If there is any request for further particulars, the prosecutor must supply such in time for the trial to proceed without delay.

Securing a legal representative at first appearance will also avoid unnecessary delays. In many court centres there exists an agreement that courts of first appearance (juvenile and other cases) have a permanent member of the Legal Aid Board or the public defenders in attendance. The accused can then immediately exercise his/her discretion whether to instruct such an attorney.

If it is not possible to have such a person on a permanent basis in court, it should at least be arranged that the Legal Aid Board or public defender is present in court on a specific day in the week, and all such matters should then be remanded to such a date for proper instructions. As a last resort, where such an attorney cannot be in court on a fixed and regular basis, it should be arranged that the necessary application forms are in court for the accused to complete for his/her family to submit to one of these organizations where the accused is in custody.

It is vital that any trial date be arranged with the legal representative of choice of the accused to avoid any delay. Juveniles should be advised to obtain the services of such a legal representative.

The prosecutor should also make it clear that if an accused wants to plead guilty the case will be fast-tracked.

Delays caused by problematic state witnesses

Child Witnesses

Young children are often the victims of crime and more often than not single witnesses. To establish their competency and ability to testify is important. This can delay a trial unnecessarily. As prosecutors we sometimes lack the ability and time to make such an assessment.

The prosecutor should establish the age of the victim, and decide whether it would be necessarily for the child to testify. As a general guideline all child witnesses under the age of seven years should be referred for assessment.

Such an assessment can be done by qualified people who later, during the trial, can give an expert opinion with regard to the child's competency to testify, which the presiding officer can then consider when deciding whether that the child is competent to testify as required by section 193 of Act 51 of 1977.

A qualified person would be a psychologist, probation officer, or social worker. They can be attached to the Department of Social Development or non governmental organizations (NGOs) such as The Teddy Bear Clinic or the family violence, child-abuse and sexual offence units of the SAPS.

The prosecutor should arrange this at the earliest opportunity as the assessment and obtaining of the report can be time-consuming.

The purpose of this assessment is to assess the child's:

- competency to testify (i.e. to distinguish between truth and falsehood);
- ability to testify (i.e. to communicate and relate the evidence);
- need for counselling and court preparation;
- need for an intermediary in terms of section 170A of Act 51 of 1977; and/or
- any other relevant factor.

The prosecutor must forward the letter of referral to such qualified person, giving a brief summary of the facts and the reason for the referral. The contact details of the prosecutor, the next-of-kin of the victim, as well as that of the investigating officer, must also be supplied.

The report with regard to the assessment should be filed in the docket.

If the assessor finds the child incompetent to testify, and in the absence of other admissible evidence, the prosecutor must withdraw the case against the accused at the earliest opportunity to avoid further detention.

If the allegation of sexual abuse is not corroborated by other evidence, and the competency of the victim to testify is in question, it is advisable that the matter not be placed on the roll until such time as the victim's competency to testify had been established and an informed decision regarding the prospects of a successful prosecution can be made.

Mentally disabled witnesses

Persons with mental disabilities are vulnerable and increasingly falling prey to crime and the attention of perpetrators of sexual offences.

The nature and extent of such witnesses' mental disability and the impact of such disability on their competency to testify, needs to be assessed at the earliest possible opportunity. These findings could impact on the viability of the case, the charges that are put to the accused, as well as the Schedule applicable for bail. As this can cause unnecessary delays and detentions it is important that prosecutors properly manage cases with mentally disabled witnesses.

When the prosecutor at first appearance receives a docket and there is a witness involved who suffers from a mental disability, the age of the witness as well as the extent of the disability should be established. Unless there are eye-witnesses or positive DNA, the mentally disabled witness will have to testify.

If the victim is required to testify, he/she should be referred for a psychological assessment regarding his/her competency to testify. As a general guideline, all witnesses in respect of whom there is an allegation of mental illness or disability should be referred for assessment.

The purpose of this assessment should be to assess the victim's: -

- IQ, to establish whether he/she falls within the ambit of offences created in section 15 of the Sexual Offences Act, no 23 of 1957;
- Competency to testify;
- Ability to testify;
- Ability to communicate;
- Ability to consent or to understand the act to which he/she is consenting and the consequences thereof;
- Physical appearance for purposes of the ability to consent; and
- To ensure that the correct method is used to prepare the witness for court.

If the said victim is under the physical age of 18 years,

- The need for an intermediary in terms of section 170A of Act 51 of 1977; and/or
- The need for the victim to testify in camera, in a separate room, utilizing section 158 of Act 51 of 1977, needs to be assessed.

A letter of referral should be forwarded to the psychologist in question giving a brief summary of the facts, the reason for the referral and a detailed account of the victim's mental disability (as far as such is known) and all relevant contact details.

The assessment report must be filed in the docket.

If the assessor finds the victim to be incompetent to testify and, in the absence of any other admissible evidence to prove the case, the prosecutor must withdraw the case at the earliest opportunity to avoid unnecessary detention.

Chapter 4 Juveniles

Pending promulgation of the Child Justice Bill, no 49 of 2002, there is an Interim National Protocol in place for the management of children awaiting-trial, which was agreed upon between the Departments of Justice and Constitutional Development, the Office of the National Director of Public Prosecutions, the Department of Social Development, the Department of Safety and Security, and the Department of Correctional Services. It was launched in Parliament by a former Minister of Justice and Constitutional Development in September 2001. The Provincial Forum should ensure and monitor the implementation of the interim national protocol by the various sectors.

The objectives of the interim protocol

The objectives of the Interim Protocol are to ensure:

- Effective inter-sectoral management of children who are charged with offences and who may need to be placed in a residential facility awaiting-trial;
- Appropriate placement of each child based on an individual assessment;
- Correct use of the different residential options available;
- The flow of information between the residential facilities and the courts;
- That managers of facilities are assisted to keep the numbers in facilities manageable;
- That communities are made safer through appropriate placement of children, effective management of facilities and minimization of abscondment;
- That the situation of children in custody is effectively monitored;
- That appropriate procedures are established to facilitate the implementation of the proposed new legislation, once it has been passed by Parliament.

Arrest

When a child is arrested every effort must be made by the police, as soon as possible, to:

- Notify the parents or guardians about the fact that the child has been arrested (section 50(4) of Act 51 of 1977);
- Notify the parents about the time, place and date at which the child will appeal in court (section 74(2) of Act 51 of 1977);
- Consider the release of the child to parents or guardians on “police bail” where this is suitable (section 59(1)(a) of Act 51 of 1977);
- Consider the release of the child into the “care of the person in whose custody he is” and the issuing of a written notice to appear in court in cases where the child could be released on police bail (section 72(1)(b) of Act 51 of 1977);

- Notify a probation officer that a child has been arrested (section 50(5) of Act 51 of 1977);
- Take a child directly to a probation officer for assessment if there is a probation officer on duty;
- Obtain confirmation of the age of the child when notifying parents of the arrest.

The National Commissioner of Police issued instructions to SAPS members in annexure 5 specifically in respect of the management of children awaiting trial and annexure 1 regarding arrest and detention in general.

An unconvicted accused under the age of 14 years: They can only be detained in a police cell for a maximum period of 24 hours after arrest.

An unconvicted person between the age of 14 and 18 years old may be detained in a police cell for a maximum period of 48 hours after arrest.

Placement in a place of safety in terms of Section 71 Act 51 of 1977

This is intended for the situation where an accused is under the age of 18 years in respect of any offence and may normally otherwise have been released on bail by an SAPS member in terms of section 59 or by a court in terms of section 60. This section will only be utilized instead of release on bail.

Such SAPS member or court may, *in lieu* of such bail or *in lieu* of keeping the accused in custody:

- Place him/her in a place of safety (See Child Care Act); or
- Place him/her under the supervision of a probation officer or correctional official pending his/her appearance/further appearance in court.

Securing the attendance of parents/guardian at court

Section 74 (1) of Act 51 of 1977 requires that where an accused person is under the age of 18 years, a parent or, as the case may be, the guardian of the accused shall be warned in accordance with the provisions of subsection (2) to attend the relevant criminal procedure. See annexure 2 for an example of a notice in terms of section 74.

These provisions are mandatory and police officials are compelled to adhere thereto unless the parent/guardian cannot be traced without undue delay.

Police officials should attempt to serve the warning on the custodian prior to first appearance in order to ensure that there are no unnecessary delays at first appearance.

It should be noted by all role-players that the Criminal Procedure Act does not define "guardian" and the courts have been left to interpret this. They have generally given it a broad interpretation, allowing family members such as aunts and uncles, grandparents and older siblings to stand as guardians for children. This facilitates the release of children, and is a positive practice provided that the person into whose care the child is released is over 18 years or older, and has a pre-existing relationship with the child, although this need not necessarily be a blood relationship. For children in boarding school or residential care, the teacher or care worker may stand in as a guardian.

The presence of the parents/guardian will not only comply with the rights of the juvenile offender to be assisted by such person(s), but will also secure the possible release of the accused on warning in the care of the parent/guardian and/or the implementation of diversion programs.

At the first appearance, and where the parents of the juvenile are not at court, prosecutors should ensure that the court or social workers establish their whereabouts from the accused and ask the court to record such on the charge sheet. The investigating officer should then be requested to immediately warn the parents for the next appearance. If their whereabouts are unknown the trial can proceed and it will not be regarded as irregular.

Release on warning in care of parents by court – Section 72 of Act 51 of 1977

The court has the power in terms of section 72 of Act 51 of 1977 to release an accused from custody and warn him/her to appear in court in lieu of releasing him/her on bail. This section will find application in all cases where the court would be entitled to release a person on bail in terms of section 60 of Act 51 of 1977.

The court would also be entitled to add conditions to the release.

Prosecutors should give serious consideration to recommending the release of an accused on warning where the offence is not of a serious nature and it is clear that an accused cannot afford to pay even a nominal amount of bail. The prosecutor must consider the nature of the crime, and flight risk, and possible prejudice to the course of justice.

In the case of a juvenile offender (under the age of 18 years) the court is however obliged to also place him in the care of his custodian (parent/guardian) and warn the latter to appear in court and to inter alia secure the attendance of the juvenile placed in his/her care.

The custodians of such a juvenile offender must be appropriately warned to appear in court at the first appearance or the earliest date thereafter.

Bail in an amount of less than R1000.00 should not be recommended to court but rather release on warning.

Probation services and assessment

The Provincial Department of Social Development must make available to all police stations in the area of service:

- The times that probation services are available;
- Venues where children are to be brought for assessment;
- Relevant names and contact details of probation officers;
- Assistance the Department can offer with family finding.

The Provincial Department of Social Development will ensure that:

Every arrested child is assessed by a probation officer as soon as possible and not later than 48 hours of the arrest having taken place.

A sufficient number of trained staff is made available in the area of service to undertake such assessments.

Probation services liaise between the residential care facilities (run or subsidized by the Department of Social Development) and the Court, ensuring that the courts are informed about the various facilities and the availability of places in each facility on an ongoing basis.

The assessment will be recorded on an assessment form. It will include the following relevant information:

- Name
- Address
- Age (source included)
- CAS number, police station and investigating officer's name
- Availability of parents/guardians and attempt to contact
- Relevant background information.

It will also contain recommendations regarding:

- Diversion
- Release into care of parent/guardian
- Placement (and availability of places in recommended facility)
- Age estimation.

In major centres social workers can be permanently allocated to a specific court and all assessments of juveniles done at first appearance.

It is advisable to approach the local Department of Social Development to enquire if it is viable to have a social worker attached to a court on a permanent basis to assess juvenile accused. If it is not possible to have such a permanent social worker, arrangements should be made that the social workers at least visit the relevant court on a specific day on a regular basis. These cases can then be postponed to such a date in order to have the assessment done as soon as possible.

If there are very few juvenile accused cases an arrangement must be made to contact the social worker if and when there is such a case on the roll and the assessment can then be done immediately or on a specific arranged date.

Responsibilities of DOJCD

The DOJCD will assist the Provincial Department of Social Development by:

- Ensuring that probation officers have easy access to all children appearing in the courts, including those appearing in the ordinary (not “juvenile”) district courts;
- As far as is reasonably possible, designating one court within a district to deal with all juvenile matters;
- Channelling of regional court cases involving juveniles through one regional court where reasonably possible;
- Allowing adequate time for assessments to take place on the morning of the first appearance (if such assessments have not already been completed);
- Notifying probation services if a child is due to appear in court and has not been assessed, and make such child available for assessment.

Centralized courts to deal with juvenile cases have huge benefits. All role-players dealing with these cases can be properly trained as to the different options available to them in dealing with juveniles.

It will ensure continuity and make the management of these cases (where the accused first have to be screened by social workers) a lot easier and more effective.

It also ensures that all role-players know where such cases are being dealt with and helps establish a good working-relationship and understanding.

After assessment, prior to appearance in court

- The probation officer will hand over the completed assessment form to the prosecutor, and, where possible, should discuss or explain the recommendations;
- The prosecutor will peruse the completed assessment form, together with the docket and make a decision regarding whether or not to prosecute;
- If the matter is to be remanded for further investigation or for trial, the issue of placement will also need to be considered;
- The probation officer will inform the prosecutor as to availability of accommodation at the various facilities. If further information is required regarding placement, the prosecutor can ask for such information to be provided by the probation officer;
- If it appears likely that the child could be released into the care of the parent or guardian but such persons are not present at court, the matter should stand down and the prosecutor must request the probation officer and investigating officer to make all reasonable efforts to ensure that the parents or guardians come to court. If they do not come to court on that day the remand recommended by the prosecutor should be for no longer than a few days.

First appearance in court

When a juvenile accused appears in court the prosecutor must immediately: -

- Verify the age of the accused;
- Ensure that there is a case against the accused;
- Depending on the nature of the crime committed, do everything possible not to detain the child awaiting-trial in custody; and
- Notify Legal Aid, as the child is entitled to legal representation without any exclusion.

If it is necessary to detain the juvenile (due to the seriousness of the offence or the fact that the child is dangerous) the prosecutor must fast-track and prioritises the investigation and the trial.

At the first appearance in court, consideration will be given to the completed assessment form and the recommendation of the probation officer regarding release or suitable placement, including availability of places in the recommended facility. If the magistrate does not agree with the probation officer's recommendation, the probation officer should, where possible, be called to give reasons to support his or her recommendation.

The options for placement to be considered are set out below hierarchically. The least restrictive options should be considered first:

- Release of children into the care of parents/guardian. If it seems likely that the child could be released to parents or guardian but that all efforts to get such person(s) to court on the day in question have failed, the child should be remanded to a suitable facility, based on the recommendation of the probation officer, for a short period of time;
- The placement of the child into the care of the parent or guardian with additional conditions (such as regular reporting to the police or to the probation officer). This option would be suitable where the family is willing and able to take the child into their custody but the court has some concerns (e.g. about abscondment);
- The placement of the child in a place of safety;
- The placement of the child in a secure care facility;
- The suitability of setting bail in an affordable amount;
- Detention in prison as a last resort and for the shortest possible period of time.

Remands

According to the current law, children awaiting-trial in prison must be remanded for periods of no longer than 14 days. The idea of bringing children back to court regularly is aimed at giving children an opportunity to raise problems or concerns with the magistrate regarding his or her placement, and thus attempts to serve as a monitoring system for children in detention. It is recognized that the practical application of these regular remands places an additional burden on the courts and may even add to the possibility of delays in the case, thus ultimately having a negative result for the child in some instances. For these reasons the draft Child Justice Bill published by the SA Law Commission extends this 14 day remand period to 30 days. However, until such time as the new law has been passed, the 14-day remand rule should be observed.

The Department of Social Development can utilize remands as an opportunity to suggest a new placement for the child if, for example, it becomes apparent that the child has been inappropriately placed or if a vacancy becomes available in a more suitable facility. The social workers at the residential facilities should contact the probation officer at the court or the prosecutor and arrange to have a new recommendation made to the court. Police must transport children awaiting-trial in facilities run by the Department of Social Development to and from court for remand and trial appearances.

Dockets regarding children accused must be carefully scrutinized at each remand, and the prosecutor should assess the progress of the investigation and the prospects of a successful

prosecution on an on-going basis. If the prospects of a successful prosecution appear to be dwindling, consideration should be given to the release of the child, even if the matter is to remain on the roll.

In order to streamline the process of regular remands of children, courts may consider "clustering" the remands for certain days of the week, for example, on Tuesdays and Fridays, thus freeing-up other days for trials. In areas where the prisons have been designated as "places of sitting" (Pretoria and Port Elizabeth) consideration can be given to clustering the remands and doing them on two days every week in the prison. If this is done, due regard must be had to enable their families to attend such remands where this is possible.

It should be noted that the 14-day remand rule also places pressure on parents, guardians or other family members who are required to attend each hearing. Whilst the presence of such persons to support children should always be encouraged, court personnel should be sensitive to the fact that working parents may not be able to be absent from work every two weeks for lengthy periods of time. It is possible to release them from this responsibility, provided that measures are taken to ensure that they are present on the date of trial, either by being warned by the court, or through the assistance of the police to appear on the trial date.

Requisitions

Where, in the opinion of a manager of a residential facility, a child has been placed inappropriately and a more appropriate placement option is available, the child can be requisitioned to court for a change of the order to be considered.

If a child has been placed in a residential facility because his or her parent or guardian was not at court on the first appearance, but the parent or guardian then becomes available and is willing to take the child in their custody, the child can be requisitioned to court so that the order can be reconsidered.

The social worker at the facility should notify the probation officer if a requisition is required, and the probation officer will then make the necessary arrangements with the clerk of the court. Information regarding the specific court, the child's name and the case number, as well as the next date of appearance will be required for these arrangements to be made. It is the responsibility of the police to do the transporting from the facility to court for these requisitions, and they will need to be notified about this responsibility in good time.

Age assessment

In the criminal justice system it is highly relevant to correctly establish the age of a juvenile accused. This factor determines for example the place of detention, release on warning in the

care of parents, and sentence (section 290 of Act 51 of 1977 and specifically minimum sentences).

Where the age of the child is uncertain and there is reason to believe that he or she may be over the age of 18 years, the magistrate may make an estimation of the age in terms of section 337 of Act 51 of 1977. Information obtained by the probation officer will assist the court in this regard. It is not essential to resort to obtaining the assistance of the district surgeon or district medical officer to determine age, but this may be done if it is considered that it will be of value to the court in making a determination of age.

It is obvious that, should the biological mother of the accused be available to testify about the age of the accused, her evidence will be the easiest and quickest to obtain.

Other evidence that could assist would be school records of the juvenile accused.

By means of x-rays a radiologist can determine the age of a juvenile accused accurately. This evidence can also be submitted by way of an admission from the defence.

A district surgeon should also be able to do a fairly reliable age determination.

A new medical device that scans the skeleton of the accused, supplies information on the skeleton, bone-density, length of bones for example in a printout form is currently investigated as a possible way of measuring the age of the accused. Only a radiologist will be able to interpret this information and give an opinion based thereon.

If, after a child has been placed in one of the residential facilities, it emerges as a clear matter of fact that he or she is 18 years old or older, the social worker at the facility may ask the probation officer or the prosecutor to bring this to the attention of the court on the date of next appearance. If the matter appears urgent (for example because the person involved poses a threat to children in the facility) the social worker may ask the probation officer or prosecutor to make arrangements for the person to be requisitioned to court. The social worker or a child care worker from the facility should make himself/herself available to give evidence regarding age where this is necessary or appropriate, and the court should hear and take note of evidence in this regard.

Monitoring

The situation of children should be monitored within each district. This can be achieved through an inter-sectoral meeting which should take place preferably on a monthly basis but not less than four times per year. Many of the larger towns and cities already have such structures in place.

At these meetings cognizance should be taken of the number of children in custody (both prisons and Social Development facilities), the number of children diverted, and the number of cases where children have been in custody for a periods of more than three months and/or six months. The purpose of keeping and examining these figures is to identify and address problems and ensure that priority is given to cases where children are in custody. The meetings also provide an opportunity for partners to raise issues and improve inter-sectoral management systems to help make the system operate more efficiently. Crisis issues such as injuries or deaths of children during arrest or whilst in custody, over-crowding in facilities, and escapes from facilities should be dealt with on an urgent basis, perhaps through sub-committees appointed by the meeting. Relevant national Departments should be notified about these crisis issues. In the proposed new system such local inter-sectoral structures will become the core structures of a new monitoring system.

Summons in terms of Section 54 of Act 51 of 1977

There is nothing prohibiting a prosecutor from making use of the provisions of this section in the case of a juvenile offender.

It is, however, of importance to remember that the custodian (parent/guardian) is also warned to appear in court in terms of section 74(2) (b) when a juvenile is summoned to appear in court in terms of section 54 Act 51 of 1977.[59]

Diversion of a criminal process into a Children's Court enquiry in terms of Section 254 of Act 51 of 1977

The purpose of section 254 of Act 51 of 1977 is to create a mechanism to convert a criminal proceeding into a children's court enquiry, to identify a child "in need of care", and to ensure that the cause(s) of his/her criminal conduct is/are addressed.

This can be done irrespective of the offence with which the accused is charged, but is generally for very young first offenders charged with less serious offences and in need of control and discipline rather than rehabilitation.[60]

The decision to convert is within the discretion of the Magistrate and may be issued even after conviction (and section 254 (2) of Act 51 of 1977 determines that the conviction shall then be of no force).

The Child Care Act, no 74 of 1983, defines a child as "any person under the age of 18 years", and section 14(4) describes a child "in need of care" as a child:

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59 See Chapter 1, part II *supra.*

60 S v L 1978 (2) SA 75 (C) on 77.

- Who has no parent or guardian or whose parent or guardian cannot be traced;
- Who has been abandoned or is without visible means of support;
- Who displays behaviour which cannot be controlled by his/her parent or the person exercising custody over him/her;
- Who lives in circumstances likely to cause or be conducive to his or her seduction, abduction or sexual exploitation;
- Lives in or is exposed to circumstances which may seriously harm his/her physical, mental or social wellbeing;
- Who is in a state of physical or mental neglect;
- Who has been physically, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he /she is; or
- Who is being maintained in contravention of section 10 of Act 74 of 1983 (in respect of a child under the age of 7 or a child to be adopted, who is with a person other than a designated relative for a period exceeding 14 days without the permission of the Commissioner of Child Welfare or when no application for adoption has been made).

The Magistrate may convert the proceedings into a children's court enquiry if any of the above circumstances exist and it becomes clear that the accused's criminal behaviour is a direct or indirect result of his/her personal circumstances.

The common law principles that an accused younger than 7 years is *doli incapax* and that, until proven otherwise, a child between the ages of 7 and 14 years is considered to be *doli incapax*, are to be borne in mind.

The Constitution, Act no 108 of 1996 also stipulates in section 28(2): "A child's best interests are of paramount importance in every matter concerning the child."

The National Commissioner of Police has also issued a circular dated 8 December 2004[61] concerning "Responsibilities of members in relation to the management of children awaiting-trial" in terms of which a child identified as a child in need may, instead of being arrested, be removed to a place of safety and/or brought before the children's court. Section 12(1) of Act 74 of 1983 authorises any policeman or social worker to remove a child from any place to a place of safety without a warrant, if there is reason to believe that the child is a child referred to in section 14(4) of Act 74 of 1983 and that the delay in obtaining a warrant would be prejudicial to the safety and welfare of such child.

If there is any doubt, the child should be taken to a place of safety until his first appearance and the prosecutor must be notified accordingly.

[61] See Annexure 5.

The child must be assessed by a social worker or probation officer.

This assessment must happen before the criminal proceedings can be converted to a children's court.

Where a social worker has been notified about the arrest of the accused in terms of section 50(5) of Act 51 of 1977, the assessment may be done by the social worker before the accused appears in court. In practice, however, assessment often only takes place at the first appearance of the accused.

The prosecutor must, if there is no social worker's report to hand, request such. (Annexure 6). This should be completed in triplicate (1 - to the social worker; 2 - attached to charge sheet; and 3 - filed in the prosecutorial assessment file).

The SAPS must take the accused for such assessment, any age-assessment that may be necessary, obtain the SAP69, and trace the parent/guardian.

If a children's court enquiry is to be held, the prosecutor must endorse the docket and record the reasons in the investigation diary.

The social worker will arrange that children's court proceedings are instituted and the only requirement is the written report from the social worker.

This report should contain:

- The family background of the child;
- The reason(s) why the child is a child in need of care as defined in section 14(4) of the Child Care Act;
- The recommendation of the social worker.

There is no reason why this report cannot be compiled on the same day the children's court proceedings are instituted.

Once children's court proceedings have been instituted, the criminal case is withdrawn.

The diversion register must still be completed.

After an enquiry, the Commissioner of Child Welfare may:

- Place the child in foster care;
- Place the child with his/her parent(s) or guardian under certain conditions and under the supervision of a social worker;

- Order that the child be sent to a children’s home; or
- Order that the child be sent to a school of industry.

Chapter 5 Management Tools and Role-players

Part I Management Tools

Screening of case dockets

It is of vital importance that case dockets are screened before enrolling the case on the court roll. The policy of "no case, no enrolment" must be enforced without exception. This can happen at the police stations at night or on Sundays or early on court-day mornings.

Once every few months the complete court roll must be screened again and all deadwood-cases must be withdrawn. During this screening the prosecutors must be on the look out for all cases:

- Older than three months in the district court and six months for other cases. The reasons why these cases are not finalized – they should be withdrawn if there is no prospect that the investigations or the trial will be finalized at the next appearance. Proper instructions regarding the further outstanding investigation must then be noted with report back deadlines;
- Where bail was fixed in an amount of less than R1000-00 and the accused could not pay. If appropriate the accused should be warned on the next court appearance or section 62(f) applied;
- Where the accused could not pay the bail amount fixed by the magistrate. If appropriate the amount of bail should be reduced or section 62(f) applied;
- Where petty crimes are involved. The reasons for the delay must be investigated and the case withdrawn if necessary;
- Where the witnesses are repeatedly not at court. These matters should be withdrawn, or if appropriate, the prosecution should be stopped (section 6(b) of Act 51 of 1977).
- If it is not an appropriate case for diversion, restorative justice or plea-bargain options should be explored;
- Check if the case cannot be provisionally withdrawn pending the finalization of the SAPS investigation, and then summons the accused to appear in court; and
- Mark all cases older than 6 months with a colour sticker.

Prosecutors should sensitise legal practitioners not to postpone cases unnecessarily or for lengthy periods.

If the accused did not pay the bail by 14:00 the matter can also be recalled to enquire why it was not paid.

Cases where the accused are in custody must be prioritized.

Case review task teams

It is in the discretion of each DPP or Chief Prosecutor to establish a case review task team for a district, and determine the nature and composition of such a team.

At the very least it should have a dedicated prosecutor in charge of the management of awaiting-trial detainees or a group of prosecutors in charge of screening the dockets and cases on the roll.

This team must also manage all children's cases irrespective of whether or not they are in detention.

The team could also include the senior or control prosecutor as well as other role-players (such as representatives from the local correctional services facility, Department of Social Development, places of safety in the district, and members of SAPS). From their side such representatives will monitor awaiting-trial detainees and provide feedback to the prosecutor or team of prosecutors, who will in turn "investigate" concerns raised.

The prosecutorial case review task team will constantly monitor cases of awaiting-trial detainees and specifically issues such as:

- Age determinations
- Length of investigations
- Length of trial cases
- Alternative methods of securing attendance at court
- Possible plea-bargains
- Fast-tracking of guilty pleas from awaiting-trial detainees
- Alternative sentence and dispute resolutions
- General management of awaiting-trial detainee cases, and specifically children

In terms of section 29(5)(a) of the Correctional Services Act, children detained in prison should be brought before the court every 14 days so that the magistrate may reconsider his/her order to detain these children in prison. When screening the cases prosecutors must ensure that this requirement is strictly adhered to.

Statistics of awaiting-trial detainees

All Directors of Public Prosecutions and Chief Prosecutors should have access to the special awaiting-trial database of the Department of Correctional Services. With this information at hand the awaiting-trial detainees can be managed very closely 24/7.

Specific attention should be paid to all awaiting-trial detainees:

- Younger than 18 years;
- On petty and less serious crimes; and
- Detained for longer than 3 months (in a district court case) or 6 months (in other cases).

Prosecutors should immediately query such cases and the reasons for detention should be investigated as a matter of urgency.

By the same token relevant prosecutors should be kept accountable if it is clear that they in turn are not performing their duties in this regard diligently.

Information sheet on each child awaiting-trial detainee

The only way in which a Director of Public Prosecutions and/or a Chief Prosecutor can properly manage children awaiting-trial in detention is to keep an information sheet on each child under the age of 18 years that appears in the courts of a district.

It should be borne in mind that the statistics mentioned in chapter 5 paragraph 3 *supra* will only reflect information on children in detention at correctional services facilities (prisons) and not those in:

- Detention at police cells,
- Secure care facilities,
- Places of safety,
- Reform schools, and
- In home-based supervision.

At first appearance the prosecutor in court must complete a pro-forma such as Annexure 9. This information sheet is then faxed to an individual already identified for such purpose by the Director of Public Prosecutions (Chief Prosecutor or person in charge of project) who will manage children awaiting-trial for the area of the division.

If the prosecutor does not have access to a fax, the information must be phoned through to the manager of the project.

Each time such a child appears in court the information sheet must be updated and re-faxed. This will continue until the case is finalised.

The prosecutor in charge of the project must keep these sheets in alphabetical order so as to facilitate updating.

Sitting outside ordinary court hours

This can be a most effective method especially to finalize cases, and then awaiting-trial detainee cases can get preference during normal court hours. Implementation of this option, however, can only be achieved if it is practically possible and after there has been agreement between all relevant role-players.

It could for example be arranged that one or two (or more) courts commence at 08h00 (instead of 09h00) where the accused are not in custody (as the logistics of securing the attendance of accused in custody that early might be problematic) or continue sitting after 16h00.

So-called Saturday courts could also be arranged where possible with all the role-players, or the implementation of additional courts could be considered. The NPS unit at head office should be involved in these instances (as there are financial implications), as must other Departments.

Incentives

An incentive to prosecutors for successful and speedy finalization of awaiting-trial detainee cases is always another option and serves to sensitize prosecutors.

In this respect, however, one must be wary of the possible abuse of the system owing to the temptation to accept a plea on a lesser charge just to finalise the case whilst the main charge could have been proved.

National standards for awaiting-trial detainee case-cycle times

The National Inter-Sectoral Child Justice Committee (ISCCJ) has advertised the agreed upon turnaround time of 3 months for all cases involving children in district court cases and accused with less serious cases, and 6 months for more serious cases.

Part II Role-Players

The NPA cannot alone meaningfully reduce the number of awaiting-trial detainees and it is very important that working relationships with all the different role-players (e.g. DOJCD, the Magistrates, Social Services, SAPS, Correctional Services, Non-governmental Organizations, etc.) be established on a local level.

This realization has led to the establishment of numerous local task teams and/or multi-disciplinary teams to address problems in a multi-disciplinary fashion.

All role-players, but especially Magistrates, should be encouraged to critically evaluate any requests for remand of a case once the matter has been set down for trial.

When a matter has therefore been set down for trial, prosecutors should request the court to note on the record that the defence has received a copy of the docket and has been placed in funds to proceed with the trial.

When a charge sheet with the tell-tale sticker (older than 6 months) is on the roll, all role-players should work together to finalise the matter as soon as possible especially where a juvenile in custody is involved.

Child Justice Fora

Co-operation of all parties involved in the Provincial Child Justice Forma is of great importance in reducing the number of awaiting-trial detainees in general, but more especially in respect of children in custody.

Guidelines for provincial Child Justice Fora

Principles and Policy underlying the child justice system.

The Child Justice Bill was introduced into Parliament in mid-2002 as Act no. 49 of 2002. As introduced, the Act principally seeks to:

- Promote crime prevention by dealing appropriately with children (persons below 18 years) when they first enter the criminal justice system;
- Protect children charged with less serious offences from the negative effects of courts and prisons;
- Promote moral regeneration by bringing families and communities back to the focus of managing the behaviour of children;
- Involve victims and communities through an emphasis on ubuntu and restorative justice;

- Promote the use of programmes that hold children accountable for their actions in ways they understand;
- Reduce the number of trials in which children are involved;
- Promote the principle that imprisonment of children is a measure of last resort in appropriate cases;
- Ensure the safety of the community by retaining a channel for the prosecution, conviction and, in appropriate cases, the imprisonment of children who commit serious or violent offences; and
- Provide for inter-sectoral monitoring that will allow an active, responsive approach to the management of the child justice system by government.

The Objectives are:

To gather information from the courts in the various districts falling within the Province in relation to children in the criminal justice system, including information relating to the following:

- Arrests;
- Pre-trial detention (numbers of children and lengths of detention in police cells, correctional facilities (prisons) and places of safety/secure care facilities);
- Lengths of detention should be monitored as follows:
    - More than six (6) months;
    - More than one (1) year;
    - More than three (3) years;

- Number of children diverted;
- Number of children going through trials;
- Number of children sentenced to correctional supervision;
- Number of children sentenced to reform school(s);
- Number of reform schools available countrywide;
- Number of beds (accommodation) available at the time of reporting;
- Number of children currently serving sentences in correctional facilities (prison);
- Number of children granted bail but who cannot afford to pay:
    - Less than R500-00;
    - Less than R1 000-00;
    - More than R2 500-00;

- In cases where no bail has been set, why are children kept in custody?
- Number of children awaiting-trial in correctional facilities who have committed less serious offences;

- Number of children awaiting-trial in correctional facilities who are younger than 15 years of age;
- How many children have Legal Aid representatives?
- Profile of cases in which children are charged (for example assault common, shoplifting, murder, rape etc.) and
- What steps will be taken by the prosecution in cases where children are charged with petty offences?

- To analyse the data received;
- To intervene to resolve issues which become evident from the analysis of the data or which are reported as complaints;
- To ensure standardization and uniformity;
- To ensure inter-sectoral collaboration on children in conflict with the law and for the implementation of the Child Justice Bill;
- To enhance collaboration with initiatives by other Departments on children awaiting-trial or committing crimes (children used by adults to commit crimes);
- To report to the Provincial Development Committee and the National Inter-Sectoral Committee on Child Justice on a monthly basis;
- To foster co-operation with other role-players regarding the establishment and running of provincial one-stop child justice centres;
- To support the DPP with the establishment of case-review teams at local court level;
- To ensure finalization of cases involving children within agreed-upon turnaround times of 3 months (for less serious crimes) and 6 months (for serious crimes) in district courts;
- To have a regular inter-departmental forum to address current and ongoing issues relating to the management of children in conflict with the law in each Province;
- To address challenges and blockages in the implementation of policy and law;
- To highlight good practice;
- To provide strategic interventions and serve as a peer review mechanism to ensure that each Department is fulfilling its roles and responsibilities in the child justice system; and
- To monitor the management of children in conflict with the law in the Province.

Membership

The Provincial Child Justice Forum should consist of:

- Department of Justice and Constitutional Development (Chair);
- Representative from the Judiciary/Lower Court Management Committee (Chief Magistrate of magisterial district);

- National Prosecuting Service of NPA (DPP or Chief Prosecutors);
- South African Police Service (Social Crime Prevention);
- Department of Social Development (Youth and Social Crime Prevention Directorates);
- Department of Correctional Services;
- Department of Education;
- The Legal Aid Board (Justice Centre in Provinces);
- Office of the Inspecting Judge of Prisons;
- Representatives from invited NGO's (such as NICRO and Khulisa working in the field of children in conflict with the law); and
- Representatives from places of safety and secure care facilities.

Critical issues

The meetings should provide an opportunity for the partners to raise issues and improve inter-sectoral management systems to make the system operate more efficiently.

The below-mentioned crisis issues should be dealt with on an urgent basis, perhaps through sub-committees appointed by the meeting or bilateral co-operation:

- Injuries or deaths of children during arrest or whilst in custody;
- Over-crowding in facilities;
- Escapes from facilities;
- Children awaiting transfer to reform schools;
- Children sent to hospitals for mental observation without correct documentation; and
- Children referred for mental observation in correctional facilities (prison).

Relevant Provincial and National Departments should be notified about these crisis issues.

Additional issues as standard agenda points:

Assessment of children:

- What is the average time-lapse between arrest and assessment of children by probation officers?
- Are assessment reports submitted, and do they contain the required information?
- Are diversion services operating smoothly?
- How many children are being diverted?
- Is there a range of programmes available?
- If not, what further services are required?
- Are pre-sentence reports submitted timeously by probation officers?
- If not, why not, and how can the challenges be addressed?

- How many children are being sentenced to correctional supervision?
- Are there problems or impediments? Can these be resolved?

Problems with regard to the transportation of children to reform schools:

- Are sentenced children designated and transported to reform schools?
- If not, why not, and how can the challenges be addressed?
- How many children are currently sentenced to terms of imprisonment in the Province?
- For how long?
- Are any of the children below the age of 14 years?

Relying on the Government Departments to get statistics:

- Are the statistics and name-lists submitted timeously?
- If not, why not, and how can the challenges be addressed?
- Are case-review task teams established at local court level?

The DPP or representatives to report on case review task teams.

One-stop child justice centres

One-stop child justice centres are to be established in terms of the Child Justice Bill and will house child justice courts, holding facilities for children awaiting-trial, places of safety/secure care facilities, reform schools, and offices for police, prosecutors, social workers, magistrates, admin support staff and NGO's delivering diversion services. These centres are to be run in accordance with the Child Justice Bill under the chairmanship of the DOJCD.

The Provincial Child Justice Forum should identify the need for, and placement of, one-stop child justice centres in the Province, and make recommendations to the National ISCCJ and Development Committee accordingly.

The National DOJCD has requested an extra budget from the JCPS cluster and National Treasury for the building/establishment of at least one, one-stop child justice centre by the 3rd year after passage and enactment of the Child Justice Bill.

Secure care facilities are the responsibility of the national and provincial Departments of Social Development; and reform schools are the responsibility of the Department of Education.

Chapter 6 Annexures

ANNEXURE 1

Instruction Relating To The Arrest And Detention Of Suspects, Issued By The National Commissioner Of Police On 9 May 2005.

South African Police Service — Suid-Afrikaanse Polisiediens

Private Bag
Privaatsak X94

Fax: 393-2165

KOMPOL

Your reference/U verwysing:

My reference/My verwysing: 26/5/1

Inquiries/Navrae: National Commissioner JS Selebi

Tel: (012) 393-1746

THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

2005 -05- 09

A. All Divisional Commissioners
HEAD OFFICE

B. ALL PROVINCIAL COMMISSIONERS

C. All Heads
HEAD OFFICE

D. All Commanders
COLLEGES AND TRAINING CENTRES

E. All Section Heads
HEAD OFFICE

F. All Station Commissioners and Unit Commanders

G. ALL DEPUTY NATIONAL COMMISSIONERS

H. The Chief of Staff
MINISTRY FOR SAFETY AND SECURITY

I. The Secretary
NATIONAL SECRETARIAT FOR SAFETY AND SECURITY

SUID-AFRIKAANSE POLISIE DIENS
PROVINCIAL COMMISSIONER
GAUTENG
2005 -05- 09
PROVINSIALE KOMMISSARIS
GAUTENG
SOUTH AFRICAN POLICE SERVICE

INSTRUCTIONS RELATING TO THE ARREST AND DETENTION OF SUSPECTS

A-F. 1. It has come to my attention that there are commanders (including station commissioners and area commissioners) who are issuing clearly unlawful instructions relating to arrest and the detention of suspects. Such instructions have resulted in civil claims being instituted against the Service by persons who either were unlawfully arrested or unlawfully detained. This has already resulted in the Service being ordered to pay thousands of rands in compensation for such persons. This situation is totally unacceptable and must stop with immediate effect.

2. Examples of the aforementioned instructions include the following:

(a) *The setting of targets requiring members to effect a certain number of arrests during a certain period of time.*
Such instructions force a member to arrest persons for petty offences in order to achieve the set target. This effectively removes the discretion of a member to decide not to arrest in a particular instance (such as where it would have been perfectly appropriate to issue a written notice [J 534] to the offender).

(b) *Instructions requiring members to arrest persons for minor offences in respect of which a police official has no power to arrest. A typical example of such an instruction is a general instruction that persons should be arrested for common assault even if the assaults —*
(i) were not committed in the presence of members; and
(ii) did not take place during a domestic violence incident and the member had reason to believe that the victim will be in danger of imminent harm if the perpetrator is not arrested.
Such instructions are clearly in contravention of section 40 of the Criminal Procedure Act, 1977.

(c) *Instructions requiring members to arrest persons for shoplifting simply because the shop owner or security officer insists on the arrest.*
Such an instruction requires the member to arrest and detain the suspect even though the suspect may be a child or an adult who has a fixed address and who is a learner or a student at a training institution or has a job. In such a case there is no reason whatsoever why the particulars of the suspect cannot be taken, the investigation completed, the docket referred to the public prosecutor and the public prosecutor be requested to issue a summons in terms of section 54 of the of the Criminal Procedure Act, 1977, to ensure the presence of the perpetrator at the trial.

(d) *Instructions requiring members to detain arrested suspects for a full period of 48 hours and thereafter to take them to court, irrespective of whether preliminary inquiries indicate that the suspect —*
(i) is innocent; or
(ii) is probably guilty but is a child or an adult and there is reason to believe that the person will attend his or her trial since he or she has a fixed address and is a learner or student at a school or other training institution or has a job and may therefore be released on bail or on written warning [SAPS 496] without the further investigation being jeopardized.

(e) *Instructions requiring members to arrest persons for serious offences even though such offences were committed in circumstances where the person acted in, what appear to be, self defence or private defence and where there is reason to believe that the suspect will attend his or her trial since he or she has a fixed address and is a learner or student at a school or other training institution or has a job and is unlikely to interfere with the further investigation and that the investigation may be completed and the docket referred to the public prosecutor to issue a summons in terms of section 54 of the Criminal Procedure Act, 1977, to ensure his or her presence at the trial.*

(f) *Instructions requiring members to wait until the middle of the night (for no apparent reason other than to humiliate the suspect) before arresting the suspect in his or her house for a serious offence in circumstances in which the whereabouts of the suspect are well known and the suspect has a fixed address or a job and the investigation may be completed and the docket referred to the public prosecutor to issue a summons in terms of section 54 of the Criminal Procedure Act, 1977.*

3. By complying with such instructions, members are alienating the public from the Service and causing communities to lose their trust in the Police Service. The Service cannot afford this.

4. Any instructions of the aforementioned or a similar nature are accordingly hereby **withdrawn with immediate effect**.

5. In order to ensure that there is a common understanding of what is expected of members in this regard, it is necessary to re-iterate certain principles that govern the arrest and detention of persons and to, once again, explain how those principles should be applied in practice.

6. 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 should therefore be regarded as an **absolute last resort**. It is expected of a member to always exercise his or her discretion in a proper manner when deciding whether the presence of a suspect at his or her trial should be secured through an arrest or can be ensured in another manner.

7. A member, even though authorised by law to arrest a person, should normally refrain from arresting the person if —

(a) the attendance of that person at his or her trial may be secured by first completing the investigation and referring the docket to the public prosecutor to issue a summons as provided for in section 54 of the Criminal Procedure Act, 1977; or

(b) the member believes that a magistrate's court, on convicting such person of that offence, will not impose a fine exceeding the amount determined by the Minister of Justice from time to time by notice in the *Government Gazette*, (at present R 2 500,00), 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.

In this regard, Judge Bertelsman recently observed the following in the Case of *A Louw and Another v the Minister of Safety and Security and Others* in the High Court of South Africa, (TPD), (Case No. 8835/03), on page 16:

"*What these statements mean is that the police are obliged to consider, in each case when a charge has been laid for which a suspect might be arrested, whether there are less invasive options to bring the suspect before the Court than an immediate detention of the person concerned. If there is no reasonable apprehension that the suspect will abscond, or fail to appear in Court if a warrant is first obtained for his/her arrest, or a notice or summons to appear in Court is obtained, then it is constitutionally untenable to exercise the power to arrest.*"

8. There are circumstances where the law permits a member to arrest a person although the purpose with the arrest is not solely to take the person to court. These circumstances are outlined in Standing Order (G) 341, paragraph 4(2), 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.

9. In terms of section 50(1)(c) of the Criminal Procedure Act, 1977, a person who has been arrested as a suspect and who is not released because no charge is to be brought against him or her and who is not released on bail or on warning (SAPS 496) must be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest. Although the Service is authorised, in terms of

this section, to detain a person for 48 hours, every effort must be made to take a person to the lower court as soon as reasonably possible.

10. I expect every investigating officer to plan his or her work in such a manner that he or she will be in a position to make a decision as to whether the suspect can be released on —
    (a) a SAPS 328 (if no charge is to be brought against him or her);
    (b) warning (SAPS 496); or
    (c) bail (if the investigating officer is of the opinion that the suspect will attend his or her trial)

    as soon as possible after the arrest has been made. I further expect officers who inspect dockets to ensure that this instruction is complied with and to make sure that the investigation diary (SAPS 5) of the docket contains a detailed explanation by the investigating officer for any undue delay in this regard.

11. Once an investigation officer is satisfied that a suspect who is in detention cannot be released as set out in paragraph 10, I expect the investigating officer to ensure that the suspect is brought to a lower court as soon as reasonably possible. Once this decision has been taken, there is no justification to continue the detention of the suspect until the expiry of the 48 hours before he or she is taken to court.

12. A tendency seems to have developed in certain areas and at certain stations to arrest suspects on Wednesday and Thursday evenings because the Service is then authorised to detain the suspect until Monday, before taking him or her to court. This is totally unacceptable and I expect an investigating officer who arrests a suspect after 16:00 on a Wednesday or Thursday afternoon and who fails to take that suspect to the lower court before the weekend starts, to make an entry in the Investigation Diary (SAPS 5), setting out the reasons why the suspect was not arrested earlier and why the suspect was not taken to court or released before the weekend commenced. Officers inspecting dockets must ensure that this instruction is complied with.

13. Food to persons who are detained in police cells are in many instances provided by clubs or institutions managed by personnel at stations. Any attempt to inflate figures of persons so detained through unnecessary arrests will be regarded as corruption, as the Service not only pays for the food so provided but also thousands of rands for civil claims in respect of unlawful arrests and the unlawful detention of persons.

14. Provincial Commissioners, area commissioners and station commissioners must study the contents of this letter very carefully and are held personally responsible

to see to it that these instructions are complied with. A failure to comply with these instructions must be regarded as serious misconduct and members and commanders who refuse to comply with these instructions must be held personally liable for any compensation that the Service is ordered to pay as a result thereof.

15. Any attempt by any member to use this instruction as an excuse not to perform his or her functions and duties in a proper manner, must be regarded in a very serious light and appropriate disciplinary steps must be taken against such a member.

G-1. Copy for your information.

J. S. SELEBI
NATIONAL COMMISSIONER

NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE

ANNEXURE 2

Notice in terms of section 74(2) of the criminal procedure act 51 of 1977 (notice to parent/legal guardian)

To:	**Name:**	_____
	Address:	_____
		_____
		_____
	Age/ID:	_____

You are hereby, as legal guardian of _____ warned to appear in the _____ Court (name of court) at number _____ on the _____ day of _____20___ at 08h30, where the said _____(name of accused) has to appear on charges of _____ and which accused:

- Is currently in custody on the said charge or
- Has been served with a summons or
- Has been served with a written notice.

You are obliged to attend the proceedings in question at the place and on the date and time specified above and or in the summons/written notice and to remain in attendance at the relevant proceedings until excused by court.

You may apply to the magistrate of the court in which the accused is to appear to be exempted from the obligation to attend the proceedings in question.

Should you fail to attend the proceedings or to remain in attendance as aforesaid, you may in terms of section 74(6) and (7) of the Criminal Procedure Act 51 of 1977 be arrested, convicted of an offence and sentenced to a fine not exceeding R300-00 (three hundred rand) or to imprisonment not exceeding three months.

_____ _____

Signature Date

Stamp of Issuing Office

ANNEXURE 3

Notice In Terms Of Section 57a Act 51 Of 1977
Kennisgewing In Terme Van Artikel 57a Wet 51 Van 1977

To: _____ Case number: _____

Aan: _____ Saaknommer: _____

Name of accused: Naam van beskuldigde:		
Residential address: Woonadres:		
Occupation: Beroep:	Status: Status:	Age: Ouderdom

You are hereby ordered to appear in the under mentioned court on the mentioned dated at 08h30 on the following charge/s:		U word hiermee gelas om in die onder-vermelde hof op die gemelde datum om 08h30 te verskyn op die volgende aanklag/te:

_____

Charges/Aanklagte:	Admission of guilt fee Skulderkenningsboete
1)	
2)	
3)	

District/Distrik	Court/Hof	Court number/Hof nommer

You may, however, pay an admission of guilt fine in respect of the abovementioned charge/s as stipulated prior to the abovementioned date, which will result in you not having to appear in court as aforesaid.

U mag egter ‘n skulderkenningsboete ten opsigte van bovermelde aanklagte soos bo vermeld betaal voor gemelde hofdatum, wat sal beteken dat u nie soos voormelde in die hof hoef te verskyn nie.

I, _____ being a public prosecutor/peace officer hereby confirm that the original of this notice had been handed/delivered to the abovementioned accused on the _____ day of _____ 20_____ and the exigency thereof explained to him/her.

Ek, _____ synde ‘n staatsaanklaer/vredesbeampte bevestig dat die oorspronklike van hierdie kennisgewing oorhandig/gelewer is aan bovermelde beskuldigde op die _____ dag van _____ 20_____ en die belang daarvan aan hom/haar verduidelik het.

_____ _____

Signature/Handtekening Date/Datum

ANNEXURE 4

Pro Forma: Report: Section 62(f) of Act 51 of 1977.

THE OFFICE OF THE SENIOR PROSECUTOR

_____

Enquiries: _____ Tel no: _____ Fax no: _____	The Correctional Official/the Probation Officer

Report In Terms Of Section 62(F) Of The Criminal Procedure Act

Case: _____

A report in terms of section 62(f) should be compiled and furnished on _____ to the prosecutor of _____ court.

The particulars of the accused are as follows:

Name and surname	
ID number and/or age	
Residential address	
Business address/Employer's address	
Tel number of employer/business	
Other contact person + tel no	
Gender	
Legal representative + tel no	
Other relevant information	

_____

Senior Prosecutor

ANNEXURE 5

Responsibilities of Members In Relation to the Management of Children Awaiting Trial, Issued by the National Commissioner of Police on 8 December 2005.

South African Police Service / Suid-Afrikaanse Polisiediens

Private Bag
Privaatsak X94

Fax No.
Faks No: (012) 393-1748

Your reference/U verwysing:

My reference/My verwysing: 37/1/2

Enquiries/Navrae: Adv A Brink

Tel: (012) 393-1761 / 1167

THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

2004 -12- 0 8

A. All Divisional Commissioners
HEAD OFFICE

B. ALL PROVINCIAL COMMISSIONERS

C. All Heads
HEAD OFFICE

D. All Commanders
SAPS COLLEGES AND TRAINING CENTRES

E. All Section Heads
HEAD OFFICE

F. ALL DEPUTY NATIONAL COMMISSIONERS

G. The Chief of Staff
MINISTRY FOR SAFETY AND SECURITY

H. The Secretary
NATIONAL SECRETARIAT FOR SAFETY AND SECURITY

RESPONSIBILITIES OF MEMBERS IN RELATION TO THE MANAGEMENT OF CHILDREN AWAITING TRIAL

A-G1. The South African Police Service is actively working towards reducing the number of children awaiting trial in police cells including correctional facilities.

2. It appears as if there are still members who are uncertain as to how to deal with children who have allegedly committed offences. In order to remove the uncertainty, the instructions contained in this circular set out clearly how such children should be dealt with.

3. Take note that a "child" is any person below the age of 18 years. This means any person who has not yet attained the age of 18 years.

4. If a child commits an offence in the presence of a member or the member reasonably suspects that the child has committed a First Schedule offence, a member may only arrest the child if such member has considered every other possible alternative method of dealing with the matter without arresting the child. To arrest a child should always be the last resort. Before deciding to arrest a child, the member should consider the possibility of taking the particulars of the child and opening a case docket. The responsible investigation officer must then complete the investigation and submit the docket to the public prosecutor. The public prosecutor may then either issue a summons for the child to appear in court to be tried on the charge or arrange for a warrant of arrest to be issued if he or she really deems it necessary that the child be arrested.

5. It would normally only be necessary to arrest a child in those instances where the child has committed a very serious offence and —
   (a) poses a danger to society or to certain persons or will himself or herself be in danger if not arrested; or

   (b) the particulars of the child cannot be ascertained or the child appears not to be staying at his or her parents or another responsible adult (such as would be the case if the child is a street child). In such a case the likelihood of finding the child at a later stage to serve a summons upon him or her will be very small.

6. Even if the circumstances set out in the previous paragraph are present or the offence allegedly committed by the child is not a serious offence, a member must give serious consideration to the question whether the child is not a "child in need of care" as set out in section 14(4) of the Child Care Act, 1983 (Act No. 74 of 1983) (hereinafter referred to as the "Child Care Act, 1983"). In terms of that section, a child will be deemed to be a "child in need of care" if the child —
   (a) has no parent or guardian;
   (b) has a parent or guardian who cannot be traced;
   (c) has been abandoned or is without visible means of support;
   (d) displays behaviour which cannot be controlled by his or her parents or the person in whose custody he or she is;
   (e) lives in circumstances likely to cause or conduce to his or her seduction, abduction or sexual exploitation;
   (f) lives in or is exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
   (g) is in a state of physical or mental neglect;
   (h) has been physically, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he or she is; or
   (i) is being maintained in contravention of section 10 of the Child Care Act, 1983.

7. If it appears that the child is indeed a "child in need of care" as set out above, the member should give serious consideration to remove such a child in terms of section 12 of the Child Care Act, 1983, to a place of safety and, if he or she removes the child, —
   (a) inform the parent or guardian of the said child or person in whose lawful custody the child is of his or her removal if such parent, guardian or person is known to be in the district from where the child was removed and can be traced without undue delay;
   (b) inform the children's court assistant concerned of the reasons for the child's removal; and
   (c) bring the child or cause him or her to be brought before the children's court of the district in which is situated the place from where the child was removed.

8. If a member decides to arrest the child on account of the offence, the child must be taken to the nearest police station and the arresting member must inform the community service centre commander of the reasons why he or she has decided to arrest the child. The community service centre commander must make an entry in the Occurrence Book setting out the reasons provided by the arresting member and the arresting member must sign the entry. The reasons for the arrest must also be included in the Arrest Statement (SAPS 3M(i)) of the arresting member.

9. The community service centre commander must —
   (a) notify the parents or guardians of the child about the fact that the child has been arrested and obtain confirmation of the age of the child;
   (b) after consulting the investigating officer, consider the release of the child —
      (i) to his or her parents or guardians on bail (SAPS 396); or
      (ii) into the "care of the person in whose custody he or she is" and issue a written notice to such person to ensure the appearance of the child in court (SAPS 496).

10. If the community service centre commander, after consulting the investigating officer, is of the opinion that the child should not be released on bail or on warning (as set out above), or the child is in custody in respect of an offence with regard to which the police may not grant bail or release a person on warning, he or she must —
   (a) notify a probation officer of the fact that the child has been arrested, is likely to remain in custody until his or her first court appearance and when and in which court the child will appear; and
   (b) once the probation officer has been notified as aforesaid, make an entry in the Occurrence Book stating —
      (i) the name of the arrested child;
      (ii) the number of the entry in the Custody Register;
      (iii) the time of notification;
      (iv) particulars of the probation officer who was notified; and
      (v) the response of the probation officer.

11. Every station commissioner must ensure that the particulars of the relevant probation officers are available in the community service centre to enable the community service centre commander to comply with his or her obligations and must also inform every member at his or her station of the instructions set out in this circular. Every station commissioner must also ensure that probation officers who arrive at a police station to assess a child in detention, is assisted to perform the assessment.

12. The Probation Services Amendment Act, 2002 (Act No. 35 of 2002) provides that if a child is not assessed before his or her first appearance in court, the court may authorise the extension of the period within which the assessment must take place by a period, not exceeding 7 days at a time, following the first court appearance. If a child has not, for any reason, been assessed by a probation officer after the expiration of the 48-hours (first appearance in court), a court may authorise the extension of the period within which such a child must be assessed to periods not exceeding 7 days. If such a child is remanded back into police custody the relevant community service centre commander must ensure that the probation officer is once again informed of the fact that the child is in police custody and the procedure, as set out in paragraph 10 above, must once again be followed. Such entries must be crossed-linked with the first entry made in this regard.

13. Whenever a child is detained in police custody longer than the prescribed time (24 hours for children under 14 and 48 hours for children aged 14 up to 18) the Station Commissioner must be informed and must in turn inform the Area Commissioner and provide full particulars relating to the circumstances. The Station Commissioner must ensure that measures are in place to ensure the safety of the child and must work with the probation officer to ensure that every effort is made to find an alternative place for the child. Area Commissioners must put in place measures to inspect the situation and liaise with the intersectoral stakeholders at area level to find an alternative solution. This is necessary as police cells were not designed for long term detention of adults or children and are as such not suitable environments for detaining children. Station and Area Commissioners will be held responsible if a child is not dealt with as prescribed in this circular.

14. If the problem persist and a solution cannot be found, the Provincial Commissioner must be informed and the situation must also be reported to the Division: Crime Prevention at national level. This will allow the situation to be addressed with provincial intersectoral stakeholders, and will also enable national stakeholders to identify problem areas and intervene when necessary.

15. The Provincial Commissioner must ensure that every station commissioner within his province has been informed of the contents of this circular and is provided with the relevant particulars of the nearest probation officer within that station area. Station commissioners must also see to it that all members under their command are properly informed of the contents of this circular.

16. Inter-sectoral committees at national, provincial and local level will be responsible to facilitate and monitor the process regarding the removal of children awaiting trial from police cells (including correctional facilities). Every Provincial Commissioner must liaise directly with the relevant provincial probation coordinator to obtain the particulars of all the probation officers within his or her province and their areas of responsibility as well as the particulars of the relevant inter-sectoral committees at provincial and local levels.

F-H. Copy for your information.

DEPUTY NATIONAL COMMISSIONER

NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
DR. V SINGH

ANNEXURE 6

Request To Department Of Social Development To Assess A Juvenile.

THE OFFICE OF THE SENIOR PROSECUTOR

Reference:		The Regional Head
Tel no:		Department of Social Development
Fax no:		

REQUEST FOR ASSESSMENT OF CHILD

Names and surname:	
Address:	
Gender:	
Age:	
Parent/Guardian:	
Contact details of parent/guardian:	
Offence(s):	
Police Station/Unit:	
Docket CAS number:	
Investigating officer:	
Tel no of investigating officer:	
Date of next appearance:	
Court number:	
Prosecutor:	
Particulars of victim (if available):	

_____

Senior Prosecutor

Child Justice Assessment Form

TO BE COMPLETED BY THE PROBATION OFFICER
Place in docket once completed

A. PERSONAL INFORMATION

Surname:	**SAPS Station:**
Name:	
Alias:	**Court:**
Date of Birth:	
Age:	**CAS:**
Proof of birth provided:	
Gender: Male ☐ Female ☐	**PO ref:**
Residential Address	
	District Office:

Parent/Guardian:
Address of Parent/Guardian:
Parent/Guardian present during assessment: Yes ☐ No ☐
If not, attempts made:
Contact Details (telephone no.):
Disabilities:
Medical information (including any injuries):

Schooling:	Name of school:	
	Address of school:	
	Tel no. of school:	
	Grade:	
	Name of teacher:	

Employer:	Name of employer:	
	Address of employer:	
	Tel no. of employer:	
	Type of employment:	

Other information:

General behaviour: _____

_____

_____

_____

Previous interventions with child: _____

_____

_____

_____

Recommendation of parent/guardian: _____

_____

_____

_____

B. OFFENCE

Alleged offence(s): _____

_____

_____

Date & time of arrest: _____

_____

Risk factors:	Gang involvement:	Yes ☐	No ☐	
	Substance use:	Yes ☐	No ☐	
	Adult involvement:	Yes ☐	No ☐	
	Socio-economic factors:	Yes ☐	No ☐	
	Peer Pressure:	Yes ☐	No ☐	
	Other cases pending:	Yes ☐	No ☐	
If cases pending please state details:				
Relationship with victim (family, girl/boyfriend, stranger):				
Previous institutional care: Yes ☐ No ☐ If yes, please state name and when:				

C. RECOMMENDATION OF THE ASSESSMENT OFFICER: (ONLY ONE OPTION)

1.	Parent/Guardian's care: Address (if not same as mentioned) _____ _____	Yes ☐	No ☐
2.	Diversion: (e.g. NICRO or Dept)	Yes ☐	No ☐
3.	Home-Based Supervision {Sec. 62(f)}	Yes ☐	No ☐
4.	Conversion:	Yes ☐	No ☐
5.	Placement in Place of Safety Contact details of person at the Place of Safety & time confirmed: _____ _____ _____ _____	Yes ☐	No ☐
6.	Correctional Centre: (state reasons) _____ _____ _____ _____	Yes ☐	No ☐

D. LEGAL REPRESENTATION

1.	Does the child have legal representation?	Yes ☐	No ☐
2.	If yes, name of Legal Representative:		
3.	Contact number(s) of Legal Representative:	_____ _____ _____	

_____ _____

Assessment officer/Probation officer (Print name) | Date and time of assessment

_____ _____

Contact number | District Office

PART 2(a)

Child Justice Assessment Form

TO BE COMPLETED BY THE PUBLIC PROSECUTOR
Attach to J7 once completed

Surname:	**SAPS Station:**
Name:	
Alias:	**Court:**
Date of Birth:	
Age:	**CAS:**
Proof of birth provided:	
Gender: Male ☐ Female ☐	**PO ref:**
Residential Address	
	District Office:

Parent/Guardian:
Contact Details (telephone no.):
Alleged offence(s):
Date & time of arrest:

Probation Officer's recommendation:
Prosecutor's comments:
Court ruling:
Reasons if detained in Correctional Centre:

_____ _____
State Prosecutor Date
Print name

PART 2(b)

Child Justice Assessment Form

TO BE COMPLETED BY THE PUBLIC PROSECUTOR
Attach to charge sheet once completed

Surname:	**SAPS Station:**
Name:	
Alias:	**Court:**
Date of Birth:	
Age:	**CAS:**
Proof of birth provided:	
Gender: Male ☐ Female ☐	**PO ref:**
Residential Address	
	District Office:

Parent/Guardian:
Contact Details (telephone no.):
Alleged offence(s):
Date & time of arrest:

Probation Officer's recommendation:
Prosecutor's comments:
Court ruling:
Reasons if detained in Correctional Centre:

_____ _____
State Prosecutor Date
Print name

PART 3

Child Justice Assessment Form

TO BE COMPLETED BY THE PROBATION OFFICER
Attach to J7 once completed

Name of facility:	
Child's name:	
DOB:	
Mastering:	
Generosity:	
Independency:	
Belonging:	
Family reunification (where and when possible); support to/for family if needed:	

_____ _____

Probation officer Date

ANNEXURE 7

Cover Letter for Forensic Analysis.

THE OFFICE OF THE SENIOR PROSECUTOR

Reference: _____ Tel no: _____ Fax no: _____	The Commanding Officer Forensic Science Laboratory _____ _____

FORENSIC ANALYSIS OR BALLISTIC TESTING

_____ CAS _____

INVESTIGATING OFFICER: _____ TEL NO: _____

CASE NUMBER: _____

LAB NUMBER: _____ REFERS _____

1) This case should be prioritized because:

- ❑ there is a child involved;
- ❑ there is a mentally disabled person involved;
- ❑ the complainant suffered life threatening injuries;
- ❑ it is a High Court matter;
- ❑ it is on the roll for trial.

2) The following test(s) should be done in this case:

- ❑ It should be established if there is semen in the smear;
- ❑ If there is semen, DNA analysis of the semen and control blood sample should be done;
- ❑ The exhibits should be tested for the presence of blood and blood typing should be done thereafter;
- ❑ DNA analysis should be done on the exhibit and/or blood sample;
- ❑ IBIS testing on firearm;
- ❑ The spent cartridges/bullets should be compared with the firearm;
- ❑ Etching of the firearm should be done to establish firearm number.

3) The reason(s) why this test(s) is/are necessary, is/are as follows:

_____

_____

_____

_____

4) Please contact the investigating officer once the report is finalized for collection thereof. The investigating officer's telephone number has been furnished for this purpose.

5) Kindly contact this office if any problems have been experienced.

_____

Senior Prosecutor

ANNEXURE 8

Example of Affidavit In Terms of Section 212 of Act 51 of 1977.

AFFIDAVIT

Station & CAS:	
SAP 13 No:	Control Register No:

_____ declare under oath in terms of Section 212(4)(a) : 212(8)(a) of Act 51 of 1977 as amended by section 6 of Act 35 of 1998 that:

1

I am a _____ in the South African Police Service and in the service of the State. I am attached to the _____ Detective Service as a _____.

2

I have nineteen (19) years uninterrupted service in the South African Police Service and have been attached to the Detective Service for the last fifteen (15) years. I was also during this period attached to the Illegal Firearm Investigation Unit for ten (10) years where the investigation of firearms and ammunition was part of my daily tasks and responsibilities. I have examined firearms and ammunition and have testified in the courts of South Africa on numerous occasions. I have successfully completed in-service training courses at Forensic Science Laboratory and Training division of the South African Police Service.

My training inter alia included the following aspects:

2.1 Investigation and Identification of Firearms;
2.2 Investigation and Identification of ammunition;
2.3 Investigation and Identification of small calibre ammunition components;
2.4 The identification and investigation of home-made firearm devices;
2.5 The function of firearm mechanisms during the firing process;
2.6 Techniques associated with the recovering and restoration of obliterated or partial obliterated alpha-numerical figures on metal;
2.7 I have completed courses in the use and handling of firearms at the SA Police College Pretoria and Maleoskop.

3

During the performance of my official duties I have examined and come in contact with the following ammunition as listed below:

3.1 .22 Short calibre cartridge
3.2 .22 Long Rifle calibre cartridge
3.3 .22 Winchester Magnum Rimfire calibre cartridge
3.4 6.35mm (.25 Auto) calibre cartridge
3.5 7.65mm (.32 Auto) calibre cartridge
3.6 7.63mm x 25mm (7.25mm Tokarev) calibre cartridge

Station & CAS:	
SAP 13 No:	Control Register No:

3.7 .32 Smith & Wesson Long calibre cartridge
3.8 .32 Smith & Wesson calibre cartridge
3.9 9mm x 17mm (9mm short, .380 Auto) calibre cartridge
3.10 9mm x 18mm (9mm Makarov) calibre cartridge
3.11 9mm x 19mm (9mm Parabellum) caliber cartridge
3.12 .38 Smith & Wesson calibre cartridge
3.13 .38 Smith & Wesson Special calibre cartridge
3.14 .357 Magnum calibre cartridge
3.15 .40 Smith & Wesson calibre cartridge
3.16 .44 Smith & Wesson Special calibre cartridge
3.17 .44 Smith & Wesson Magnum calibre cartridge
3.18 .45 Auto (.45ACP) calibre cartridge
3.19 .222 Hornet calibre cartridge
3.20 .222 Remington calibre cartridge
3.21 5.56mm x 45mm (5.56 Nato, .223 Remington) calibre cartridge
3.22 .22-250 Remington calibre cartridge
3.23 .243 Winchester calibre cartridge
3.24 25-06 Remington calibre cartridge
3.25 .270 Winchester calibre cartridge
3.26 7mm x 57mm (7mm Mauser) calibre cartridge
3.27 7mm Remington Magnum calibre cartridge
3.28 .308 Winchester (7,62mm x 51mm) calibre cartridge
3.29 7,62mm x 39mm (AK 47) calibre cartridge
3.30 7,62mm x 54 R calibre cartridge
3.31 .30-06 Springfield calibre cartridge

3.32 .300 Winchester Magnum calibre cartridge

3.33 .303 British calibre cartridge

3.34 8mm Maser (8 x 57 JS) calibre cartridge

3.35 .357 Holland & Holland Magnum calibre cartridge

3.36 .357 Weatherby Magnum calibre cartridge

3.37 .458 Winchester calibre cartridge

3.38 .460 Weatherby Magnum calibre cartridge

3.39 12 Gauge calibre cartridge

3.40 .410 calibre cartridge

4

The intention and scope of this forensic examination comprise the following:

4.1 The examination and identification of the most popular calibres of ammunition.

4.2 The classification of such ammunition as rim0fire, centre-fire and pin-fire ammunition, as meant in subparagraph (b) of the definition of a firearm in section 1 of the Firearm Control Act 60 of 2000.

Station & CAS:	
SAP 13 No:	Control Register No:

5

5.1 I found the ammunition listed in paragraph 3.1 to 3.3 to be rim-fire ammunition.

5.2 I found the ammunition listed in paragraph 3.4 to 3.40 to be centre-fire ammunition.

5.3 The third category of ammunition mentioned in paragraph 4.2 to wit pin-fire ammunition is rare and not common in South Africa.

5.4 Considering the above, any device manufactured or designed to discharge the ammunition as listed in paragraph 3.1 to 3.40 above conforms to the requirements of a firearm in terms of the Firearms control Act 60 of 2000 and is thus deemed to be a firearm in terms of this Act.

6

On _____ during the performance of my official duties I was requested by _____ of the _____ to examine the following exhibits that were marked by me with control register number _____:

6.1 One _____ model pistol/revolver with serial number _____ and one (1) magazine/no magazine. The exhibit

was marked with _____ CAS _____/_____/_____, and _____ SAP13.

6.2 _____ Cartridges.

7

I examined the firearm as mentioned in 6.1 and found that:

7.1 The firearm mentioned in 6.1 is/is not manufactured or designed to discharge _____ type ammunition and that it is/is not manufactured or designed to discharge _____ calibre cartridges.

I examined the cartridges as mentioned in 6.2 and found that:

7.2 The cartridges mentioned in 6.2 is _____ calibre cartridges and that the ammunition is/is not manufactured or designed to be discharged from a firearm as mentioned in 6.1 the ammunition is _____-type ammunition.

Considering the above, the firearm mentioned in 6.1 conforms to the requirements of a firearm in terms of the Firearm Control Act 60 of 2000 and is thus deemed to be a firearm in terms of this Act.

Station & CAS:	
SAP 13 No:	Control Register No:

8

The abovementioned conclusions were arrived at by means of an examination which requires a knowledge and skill in certain braches of physics and ballistics.

9

During the performance of my official duties the exhibits were for the purpose of the examination kept in my custody, under lock and key, from _____ to _____. The exhibits were thereafter handed back to the investigating officer as mentioned in paragraph 6.

10

I know and understand the contents of this declaration.

I have no objection in taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

_____

Date: _____

Time: _____

Place: _____

I certify that the deponent has acknowledged that he knows and understand the contents of this declaration which was sworn before me and that the deponent's signature was placed thereon in my presence at _____ on _____.

_____

Commissioner of Oaths

ANNEXURE 9

Information Sheet on Children Awaiting Trial Detainees.

Fax: _____

Name of child	
Birth date of child	
Case Number	
Name of detention centre	
Charges against accused	1
	2
	3
	4
	5
Why necessary to postpone awaiting trial in detention	
Date of first appearance	

Remand date	Reason

Date of conclusion	Result of trial/sentence

Chapter 7 Contact Details

A list of useful contact numbers to assist people working with children awaiting trial

National Departments		Tel:	Fax:
MS K B Shabalala	Chief Director: Vulnerable Groups Department of Justice	(012) 315-1378/9	(012) 315-1851
Ms P Moodley	Director: Child and family Law Department of Justice	(012) 315-1998 (012) 315-1868	(012) 315-1851
Mrs C S Kok	Deputy Director: Child Justice and Child Law Department of Justice	(012) 315-1259	(012) 325-1851
Mr A M Khambule	Deputy Director: Child Justice and Child Law	(012) 305-8077 082 807 8034	
Ms S Pienaar	Head Social Crime Prevention SAPS	(012) 421-8007 (012) 421-8271	(012) 421-8274
Ms M Mncadi	Director: Violence Prevention SAPS	(012) 421-8036	(0120 421-8274
Mr C du Toit	Deputy Director: Rights Advocacy (Children & Youth)	(012) 312-7552 082 802 8566	(012) 323-3733
Ms J Prozesky	Assistant Director: Rights Advocacy (Children & Youth) Department of Social Development	(012) 312-7569 082 576 3469	(012) 312-7592
Adv M Tserere	Senior State Advocate: Sexual Offences and Community Affairs Unit National	(012) 845-6147	(012) 845-7375
Ms F Fisola	Legal Aid Board	(012) 664-2921	082 600-1337
Mr S van Schalkwyk	Department of Education	(012) 312-5340	(012) 312-5029

Provincial Coordinators Probation Services				
Gerda Brown	Gauteng	(011) 355-7863	082 469 3125	(011) 355-7681
Miche Sepeng	North-west	(018) 387-5132	083 626 0925	(018) 384-2517
Dolly Ngqangweni	Eastern Cape	(040) 609-5308	082 498 6391	(040) 635-0693
Radesh Byroo	KwaZulu-Natal	(035) 874-3198	082 885 3208	(035) 874-3211
Hunadi Moropana	Limpopo	(015) 293-6331	084 588 8987	(015) 293-6211
Stan De Smidt	Western Cape	(021) 483-4563	083 627 6563	(021) 483-4555
Bongani Kubhayi	Mpumalanga	(013) 766-3120	082 372 4364	(013) 766-3455/6
Denise Mafoyane	Free State	(051) 409-9582	082 441 0982	(051) 409-0671
Florina Mouton	Northern Cape	(053) 874-9100	083 561 6156	(053) 871-3611

SAPS Youths Coordinators			
Superintendent Nillson	Western Cape	(021) 467-6043	(021) 467-6057
Inspector E Marais (Captain Crime Stop)	Western Cape	(021) 467-6829	(021) 476-6830
Serg. N Jacobs	North West	(018) 299-7119	(018) 299-7058
Serg. H van Vreden (Captain Crime Stop)	North West	(018) 299-7119	(018) 299-7058
Inspector Y Bouwer	East Rand	(011) 951-1395	(011) 951-1382
Capt. W de Koker (Captain Crime Stop)	East Rand	(011) 951-1395	(011) 951-1382

Capt Salomie Dir. Potgieter	Northern Province	(015) 290-6726/23	(015) 290-6701
Serg. J Seabi (Captain Crime Stop)	Northern Province	(015) 290-6726	(015) 290-6701
Insp R Lombard	Mpumalanga	(013) 249-1041	(013) 249-1188
Insp J Moyake	Northern Cape	(053) 838-4357	(053) 833-1275
Insp H van Niekerk (Captain Crime Stop)	Northern Cape	082 808 6647	(063) 838-4410
Captain F le Roux	Free State	(051) 447-0017	(015) 430-6264
Inspector September	Eastern Cape	(041) 394-6695	(041) 394-6506/07
Superintendent Gadebe	KwaZulu-Natal	(031) 360-4870	(031) 360-4838
Sergeant S Vink (Captain Crime Stop)	KwaZulu-Natal	(031) 451-8055	(031) 451-8055
Superintendent Makaringe	Gauteng	(011) 407-0113	(011) 407-0229
Insp M Leballo (Captain Crime Stop)	Gauteng	083 574-8028	(012) 353-4458

Secure Care Facilities

Province	DSD Facilities Currently Accommodating Children Awaiting Trial			
	Name	Physical Address	Tel Nr	Saps Service Area
Mpumalanga	• Hendrina Child and Youth Care Centre (SC.1) (Hendrina) [Being renovated]	Farm 1, Birmingham, Hendrina	(013) 293-7290	SAPS: Whole Mpumalanga
KwaZulu-Natal	• Excelsior Place of Safety in Pinetown (SC.2) CP 74	Bamboo Lane 24, Pinetown	(031) 702-5371	SAPS: CR Swart, Pinetown
	• Valley View Place ofSafety in Sydenham Durban (CR Swart, Phoenix, Verulum) CP 20	178 Clare Road, Sydenham	(031) 207-2519	SAPS: Umlazi, Chatsworth, Pinetown, Durban
	• Ocean View Place of Safety in Bluff Durban CP 15	850 Marine Drive, Bluff, Beach, Austerville, Pinetown, Inanda, Chatsworth	(031) 468-5415	SAPS: Durban, CR Swart, Ntuzuma, Brighton
	• Greenfield's place of Safety in Greytown CP 10	Greytown	(0331) 501-1630/1	SAP: Greytown
	• Pata Place of Safety in Pietermaritzburg CP 35	Pata Location	(0331) 81646	SAPS: Pietermaritzburg, Whole Midlands
Eastern Cape	• Enkuselweni Secure Care Centre in PE (WSC.3) CP 60	Mbilini Road, Kwazakhele	(041) 466-1661	SAPS: Kwazakela
	• Erica Child and Youth Care Centre in PE CP 50	Bob Price Street, Hillside	(041) 456-2112	SAPS: Galvondale
	• Protea Child Care Centre in PE	Blackthorn Avenue, Forest Hill	(041) 585-8577	SAPS: Humemood
	• Maluti POS/SC			
	• John X Merriman in East London CP 25			
Gauteng	• Dyambu Youth Centre in Randfontein CP 500	10 Tom Muller Drive, Wesrand, Krugersdorp	(011) 660-6227	SAPS: Randfontein
	• Walter Sisulu Child and Youth Care Centre in Noordgesig CP 90	Modder Street, Noordsig	(011) 935-5505	SAPS: Orlando

Province	DSD Facilities Currently Accommodating Children Awaiting Trial			
	Name	**Physical Address**	**Tel Nr**	**Saps Service Area**
	• Protem Detention Centre in Cullinan CP 120	Sonderwater Road, Cullinan – Rayton Road	(012) 734-1027	SAPS: Cullinan
	• Jabulani Detention Centre in Soshanguwe CP 130	Soutpan Road, Soshanguve	(012) 797-8302	SAPS: Soshanguwe
	• Norman House Place of Safety in Edenvale, JHB CP 5	C/o First avenue and Fourth Street, Edenvale	(011) 453-7803	SAPS: Edenvale
	• Tutela Place of Safety in Pretoria North CP 5	162 Tolbos Street, Pretoria North	(012) 5460640/44	SAPS: Pretoria North
	• Van Rhyn Place of Safety Benoni CP 60	Tesessebe Street Apex, Benoni	(011) 4223183	SAPS: Benoni
Limpopo	• Polokwane Secure Care CP 70 MALES	Plot 303, Sterkloop	(015) 2931181	SAPS: Whole Province
Northern Cape	• Molehe Mampe Secure Care Centre in Galeshewe, Kimberley (SC.6) CP 60	420 Tshangaan Street, Galeshewe, Kimberley	(053) 871-1151	SAPS: Whole Kimberley, De Aar
	• Marcus Mbetha Sindisa Secure Care Centre in Upington CP 40	65 Toermalyn Street, Belvue, Upington	(054) 339-2260/1	SAPS: Upington, Calvinia, Springbok
	• Lerato Place of Safety in Kimberley CP 50	Ether Street	(053) 871-1251	SAPS: Whole Kimberley, De Aar
Free State	• Tshirilotsong Place of Safety in Bloemfontein CP 48	Maphisa Road, Phahameng	(051) 435-3319	SAPS: Whole Free State – less serious offences
	• Matete Matches Secure Care Centre in Kroonstad (SC.8) CP 40	Smaldeel Road, Kroonstad	(056) 212-3445/6	SAPS: Whole Free State – serious offences
North West	• Reamogetswe Secure Care Centre in Bruits (SC.9) CP35	Sonop, Brits	(012) 256-6141/3	SAPS: Bruits, Whole North West
	• Pabalelo Place of Safety in Garankuwa CP 20	2829 Sedumedi Street, Garankuwa	(012) 703-3563	SAPS: Garankuwa, Odi and whole North West
Western Cape	• Bonnytoun House in Wynberg, Cape Town CP 190	Mimosa Complex, 41 Rosmead Avenue, Wynberg	(021) 761-5057	SAPS: Wynberg and CT Central
	• Outeniekwa House in George (mainly) CP77 MALES	Gold Street, Parkedene, George	(044) 875-0402	SAPS: George, Oudtshoorn, Beaufort West
	• The Horizon Youth Centre in Faure (SC.10) (Klawer mainly but whole W.Cape) CP 185 MALES	C/o Old Faure Road and Spine Road, Extension Eerste River	(021) 843-3860	SAPS: Mfuleni, Mitchell's Plain, CT Central
	• Vredelust House in Elsies River CP 10 FEMALES	C/o 16the Avenue and 26th Street, Leonsdale, Elsies River	(021) 931-0233	SAPS: Elsies River
	• Lindelani Place of Safety, Stellenbosch CP 60 MALES	Elsenburg Road, Koerenhof	(021) 882-2634	SAPS: Stellenbosch
	• Clanwilliam secure Care Centre CP 50 MALES	Park street,Clanwilliam	(021) 482-1900/1/2	

Secure Care Facilities and places of safety from the Department of Social Development

Province	Facility	Capacity
KwaZulu Natal	1. Excelsior 2. Valley View 3. Ocean View 4. Greenfield's 5. Pâté 6. Ngwelezana Place of Safety 7. Umlazi Place of Safety	70 20 15 10 35 15 10
Eastern Cape	1. Enkuselweni Secure Care Centre 2. Erica Child and Youth Care Centre 3. John Merrimen 4. Umtata Place of Safety	50 50 25 50
Gauteng	1. Mogale Secure Care 2. Walter Sisulu Secure Centre 3. Protem Secure Care 4. Jabulani Secure Centre 5. Norman Place of Safety (females) 6. Tutela Place of Safety (females) 7. Van Ryn Secure Care	500 90 120 130 5 5 60
Limpopo	1. Polokwane Secure Care	120
Northern Cape	1. Marcus Mbetha Sindisa 2. Molehe Mampe 3. Lerato	40 60 50
Free State	1. Tshirilotsong 2. Matete Matches	48 40
North West	1. Reamogetswe Care Centre Brits 2. Pabalelo Place of Safety (Odi) (not functioning moving to Gauteng)	35
Western Cape	1. Bonnytoun House 2. Outeniekwa House 3. The Horizon 4. Vredelust House 5. Lindelani 6. Clanwilliam	190 77 185 10 60 50
Mpumalanga	1. Hendrina Secure Care Centre	60

Heads of Provincial Units for Inclusive Education

Organisation	Name and Address	Tel and Fax no	E-mail
Gauteng	Mr Anthony Meyers K Makgaga Private Bag X7710 Johannesburg 2000	011 355 0835 (T) 011 355 0833 (F) 011 355 0813 (T) 011 355 0747 (F) 083 570 4959 (C)	anthonym@gpg.gov.za

	111 Commissioner Street Johannesburg 2001		
Eastern Cape	Mrs NP Nabe Mrs NT Yabo Eastern Cape Department of Education Education Park Building, Zone 6, Zwelitsha, 5605 Private Bag X0032 Bisho 5605	040 608 4219 (T) 040 608 4276 (F) 040 608 4286 (T) 040 608 4276 (F) 084 728 7652 (C)	nabe@edu.ecprov.gov.za fakuj@edumhop.ecape.gov.za
Northern Cape	Mrs Hawa Abass Private Bag X5029 Kimberley 8300	053 839 6642 (T) 053 839 6633 (T) 083 456 6176 (C) 053 839 6580/1 (F) 053 839 6589 (F)	habass@per.ncape.gov.za
Western Cape	Dr MJ Theron Private Bag X9114 Cape Town 8000	021 467 2027/8 (T) 083 303 8402 (C) 021 425 7465 (F)	mtheron@pgwc.wcape.gov.za
North-West	Mrs JJ van Wyk Private Bag X2044 Mmabatho 2735 Room 188 Old Parliament Building Mmabatho Zelbia Sprang Chief Directorate: Professional Support Inclusive Education North West Department of Education 3105 Dr Albert Luthuli Drive Mmabatho	018 387 2071/3 (T) 018 387 2347 (F) 018 387 2123 (F) 018 389 8153 (T) 018 389 8245 (F)	 zsprang@nwpg.gov.za
Limpopo	Ms Asnath Mojapelo Private Bag X9489 Pietersburg 0700	015 290 7686 (T) 015 290 7663 (T) 082 878 9301 (C) 015 297 4877 (F)	mojapeloa@edunorprov.gov.za

Mpumalanga	Mr JR Molai: Director-General Education Ms Nelly Lekgau P O Box 5265 Nelspruit 1200	013 766 5358 (T) 084 738 3328 (C) 013 766 5585 (F) 013 766 5593 (F) 013 766 5306 (T) 082 399 8032 (C) 013 765 5577 (F)	jmolai@nel.mpu.gov.za mlekgau@nel.mpu.gov.za
KwaZulu-Natal	Ms Thobile Sifunda Private Bag X04 Ulundi 3838	035 879 2018 (T) 083 460 7519 (C) 035 879 2020 (T) 083 648 8808 (C) 035 879 2049 (F)	thobiles@kznedu.kzntl.gov.za
Free State	Ms MC Liphapang Mr P Hansen Private Bag X20565 Bloemfontein 9300	051 404 8226/5 (T) 083 287 2087 (C) 051 404 8235 (T) 082 325 3597 (C) 051 404 8233 (F)	maphol@edu.fs.gov.za

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Explosives	S/Supt van Sittert	Office: 012 393 2748 Mobile: 082 7789653 Fax: 012 323 1711 Email: deklerks@saps.org.za chiefinspectorofexplosives@saps.org.za
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Scientific Analysis	Dir Sonja de Klerk	Office: 012-8455650 Mobile: 082 778 9249 Fax: 012-8455915 Email: deklerks@saps.org.za
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Eastern Cape	S/Supt A Horn	Office: 041 - 4076814/6 Fax: 041 - 407 6800 Mobile: 082 778 9250 Email: ec:head ballistics (global)
KwaZulu Natal	S/Supt J Martins	Office: 031 - 9131374 Mobile: 082 778 3546 Fax: 031 - 9038350 Email: martinsj@saps.org.za

Contact your local NICRO office or one of the provincial offices listed below.

National Office:	**021 462 0017**
Email:	nicro@wn.apc.org
Website:	www.nicro.org.za

Eastern Cape:	041 582 2555
Free State:	051 447 6678
Gauteng:	011 403 2953
KwaZulu-Natal:	031 304 2761
Limpopo:	015 297 7538
Mpumalanga:	013 755 3540
Northern Cape:	053 831 1715
North West:	014 592 9280
Western Cape:	021 422 1690

NICRO Offices		
Cape Town	(021) 422-1225	(021) 422-1550
Bloemfontein	(051) 447-6678/0678	(051) 447-6694
Cape Town	(021) 447-4000	(021) 447-4616
Durban	(031) 304-2761/2/3	(031) 304-0826
Kimberley	(053) 831-1715/6877	(053) 831-1715
Nelspruit	(013) 755-3745/3540	(013) 755-3541
Pietersburg	(015) 297-7538/83	(015) 297-7539
Port Elizabeth	(041) 484-2611/2	(041) 484-4772
Rustenburg	(014) 592-9280/3	(014) 592-9273

Biology Section: Science Laboratory

Change of contact details: biology section: forensic science laboratory

1. Kindly note that the contact details and address of the Biology Section, Pretoria and his personnel have changed and are as follows:

2. Postal Address:
Private Bag 18
ARCADIA
0007

3. Address:
Biology Section
Forensic Science Laboratory Building
c/o Beckett- and Pretorius Street
Arcadia
Pretoria

4. Contact Details of Section Head: Biology: Dir PJ Joubert

4.1 Tel: (012) 421 0316

4.2 Fax: (012) 421 0235

4.3 Email address: joubertpi@saps.org.za

5. Contact Details for enquiries of Forensic Biological Casework (DNA/ Hair/ Comparisons/ Facial Comparisons)
Help Desk
DNA Casework with Court Dates etc
(Help Desk)

5.1 Tel: (012) 421 0271 / 0150

5.2 Fax: (012) 421 0420

5.3 Email address: venterl@saps.org.za

6. Section Commander: DNA Casework: Snr Supt Frazenburg

6.1 Tel: (012) 421 0436

6.2 Fax: (012) 421 0420

6.3 Email address: frazenburgl@saps.org.za

7. Team Leader: DNA Casework I: Supt(f) M Thompson

7.1 Tel: (012) 421 0198

7.2 Fax: (012) 421 0420

7.3 Email address: thompsonm@saps.org.za

8. Team Leader: DNA Casework II: Supt(f) K Botha

8.1 Tel: (012) 421 0237

8.2 Fax: (012) 421 0420

8.3 Email address: bothak@saps.org.za

9. Team Leader: DNA Casework III: Supt G De Wet

9.1 Tel: (012) 421 0479

9.2 Fax: (012) 421 0420

9.3 Email address: dewetg@saps.org.za

10. Team Leader: Monitoring of Casework with court dates: Supt P Khellawanlal/ Supt L Venter

10.1 Tel: (012) 421 0221 / 0298

10.2 Fax: (012) 421 0420

10.3 Email address: khelawanlallp@saps.org.za

..... Assistant Commissioner

Head: Forensic Science Laboratory

EK Ngokha

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Mr CS Mshunqane 041 398 1063
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Head: St Albans Medium A
Mr F R De Villiers

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Area Commissioner: East London

Private Bag X9021
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Wesbank Street
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Head: Community Corrections: Sada
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Mount Fletcher Correctional Centre
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Mr ZJ Maphalala 016 370 2271
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Head: Groenpunt Medium
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Head: Community Corrections: Sasolburg

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1 Ford Street
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Head: Mr MS Pule 051 881 0566
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Wepener Correctional Centre
Private Bag X12
Wepener
9944

De Wet Street 17
Wepener
9944

Tel: 051 583 1182/1682
Fax: 051 583 1257

Head: Mr MJ Phiri 051 583 1182
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Head: Community Corrections: Wepener
Mr A Mokheseng 051 583 1182
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Area Commissioner: Colesberg

Private Bag X3
Colesberg
9795

Petrusville Road
Colesberg

Tel: 051 753 0564/0201
Fax: 051 753 1222

Area Commissioner
Mr Ma Plaatjies 051 753 1576

Head: Colesberg
Mr ZW Dumezweni 051 753 0564

De Aar Correctional Centre
Private Bag X1007
De Aar
7000

41 Grobler Street
De Aar
700

Tel: 053 631 0004/5
Fax: 053 631 1114

Head: Mr S Makaleni 053 631 2657
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Richmond Correctional Centre
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Richmond
7090

Mark Street
Richmond

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Fax: 053 693 0187

Mr EF Vries 053 693 0187
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Victoria West Correctional Centre
Private Bag X306
Victoria West
7070

Rivier Street
Victoria West
7070

Tel: 053 6210025
Fax: 053 6210580

Head: Mr H Bergh 053 621 0736

Hopetown Correctional Centre
Private Bag X8
Hopetown
8750

Wiid Street
Hopetown
8750

Tel: 053 203 0004
Fax: 053 203 0467

Head: Mr E Makaleni 053 203 8157
Cell: 082 333 6164

Area Commissioner: Kimberley

Private Bag X6006
Kimberley
8300

Du Toitspan Building
Du Toitspan Road
Kimberley
8300

Tel: 053 8361800
Fax: 053 8314977

Head:Correctional Centre
Private Bag X5036
Kimberley
8300

Schmidtsdrift Road
Kimberley
8300

Tel: 053 8619800
Fax: 053 8612857

Mr T Fourie 053 861 9800
Cell: 082 806 3610

Head: Community Corrections: Kimberley
Kenilworth Road
Kimberley
8301

Mr OL Manake 053 832 3659 831 5277 (F)

Barkly West Correctional Centre
Private Bag X4
Barkly West
8375

C/O Digger and Hill Street
Barkly West
8375

Tel: 053 531 0641
Fax: 053 531 0414

Mr M Maarman 053 531 1856
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Head: Community Corrections: Barkly West
Mr Pieters 053 531 0641
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Douglas Correctional Centre
Private Bag X1

Douglas
8730

Prieska Street
Douglas
8730

Tel: 053 298 8100
Fax: 053 298 8120

Mr GF Enslin	053	298 8102	
Cell: 082 333 6145			

Head: Community Corrections: Douglas

Mr AM Chabalala	053	298 8131/33	
Head Community Corrections	053	298 8129	2988130 (F)
Assistant Head	053	298 8132	
Monitoring Officers	053	298 8131	

Area Commissioner: Upington

Private Bag X5942
Upington
8800

Diedericks Road
Upington
8800

Tel: 054 337 5100
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Mr JE Joseph	054	337 5100
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Head: Upington

Mr Johan Massyn	054	337 5105
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Springbok Correctional Centre
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Springbok
8240

65 Van Riebeeck Road
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8240

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Kuruman
8460

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8460

Tel: 053 712 0006/7
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Area Commissioner: Goedemoed

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9750

Goedemoed Road
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Area Commissioner
Mr RE Marcus 051 631 5201 (D)
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Head: Goedemoed Medium A
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Head: Goedemoed Medium B
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Head: Community Corrections: Edenburg
Mr MJ Nyhleka 051 743 1742/1895 743 1369
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Fauresmith
9978

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9978

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Bethulie
9992

4 Martin Street
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Head: Community Corrections: Bethulie
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9950

Eerstelaan
Zastron

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Head: Community Corrections: Zastron
Mr P E Boikanyo 051 673 1002
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Area Commissioner: Kroonstad Training College

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9500

Admin Street
Training College Terrein
Kroonstad
9499

Tel: 056 215 2030/1
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Mr TN Sejake 056 212 3594 (D)
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Area Commissioner: Kroonstad

Private Bag X23
Kroonstad
9499

Brits Street
Kroonstad
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Brits Street
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Head: Kroonstad Medium C
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Head: Kroonstad Medium D
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Head: Community Corrections: Kroonstad
Mr IN Makwa 056 215 2684
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Ventersburg Correctional Centre
Private Bag X6
Ventersburg
9480

Blackwood Street
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9450

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9430

Bloudrif Road
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Head: Community Corrections: Virginia
P/Bag X30
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9600

Ad Keet Street
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Head: Community Corrections: Senekal
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Bethlehem Correctional Centre
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Bethlehem
9700

President Boshof Street
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Tel: 058 303 3927
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Ms MEM Viviers 058 303 3927
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Head: Community Corrections: Bethlehem
058 303 2137

Ficksburg Correctional Centre
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9480

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9880

End of Laksman Road
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Mr MJ Seobi 058 713 5034/5 (T&F)
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9445

C/O Voortekker and Totius Street
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9445

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Head: Community Corrections: Hennenman
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Gauteng

Area Commissioner: Baviaanspoort

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Lynn-East
0039

Old Cullinan Road
Pretoria

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012 841 8661
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Mr TH Malingai 012 841 8662
Cell: 082 577 3741

Head Baviaanspoort Medium
Mr MB Modisadisadife 012 841 8666
Cell: 083 663 6281

Head: Baviaanspoort Maximum
Mr DS Maseko 012 841 8665
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Emthonjeni Correctional Centre
Mr T Magagula 012 841 8646
Cell: 082 770 9017

Area Commissioner: Boksburg

Private Bag X54
Boksburg
1460

Barry Marius Road
Boksburg
1460

Tel: 011 898 3700/1
Fax: 011 913 3902

Mr T Ludada Cell: 082 375 0458	011	896 3256 (D)	898 3836 (F)
Head: Boksburg Correctional Centre A Mr MJ Khuzwayo Cell: 082 811 1630	011	898 3913	913 1840 (F)
Head Boksburg Correctional Centre B (Juveniles) Ms Tsehoole: Cell 082 692 5178	011	898 3715	898 3836 (F)
Head Boksburg Correctional Centre C Acting Head: Mr IK Shabangu Cell: 073 364 4076	011	892 5002	898 3836 (F)
Head: Community Corrections: Boksburg Acting Head: Mr IK Shabangu Cell: 082 578 0508	011	892 5002	898 3836 (F)

Area Commissioner: Heidelberg

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Rensburg
2401

Old Durban Road
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2400

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Mr IK Shabang Cell: 073 364 7076 Email: deondp@hdb1.pwv.gov.za	016	341 2141
Head: Heidelberg Mr N Maharaj Cell: 082 293 9209		

Area Commissioner: Johannesburg

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Mondeor
2110

9 Main Street
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2110

Tel: 011 983 7135 933 7131/2 933 7015
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Samantha	012	933 7033
Area Commissioner Mr KD Bouwer Cell: 082 578 0525	011	942 2928 (D) 942 4904 (F)

Dir: Area Coordinator: Corporate Services

Mr E Khoza	011	933 7058/134	

Dir: Area Coordinator: Finance
Mr Tp Mothusi 011 933 7200/3/4

Dir: Area Coordinator: Development and Care
Dr G Nthangeni 011 933 7195/7

Head: Johannesburg Correctional Centremed A
Mr TT Tana 011 933 7154

Head: Johannesburg Correctional Centre Med B
Mr TA Thokolo
Cell: 083 270 7075

Head: Johannesburg Correctional Centre Juvenile C
Mr MS Maphuthoma 011 933 7063
Cell: 084 400 1785

Head: Johannesburg Female
Mr G. Mokauto
Cell: 082 742 9024 011 933 7087

JHB CC Head: Mr Tshabalala	011	376 8803	376 8820

Area Commissioner: Krugersdorp

Private Bag X2023
Krugersdorp
1740

C/O Luipaards & Crematorium Street
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1740

Tel: 011 950 0000 011 950 0130
011 953 4341 011 660 4133
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Mrs TE Chaka-Ramila 011 665 5137
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Head: Krugersdorp
Mr PJ Khuzwayo 011 950 0074
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Head of Training
Mr FJ Cronje 011 953 4341 665 4501 (F)
Cell: 082 562 8201 011 950 0002(D)

Head: Community Corrections: Krugersdorp
Mr ME Chaphi 011 660 2774 660 3966 (F)
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Area Commissioner: Leeuwkop

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Bryanston
2021

Main Road
Bryanston
2021

Tel: 011 2600017/9 2600350/9 2600420/1 2600340 / 0017
Fax: 011 2600241

Area Commissioner:
Mr NW Mashiya 011 260 0420 260 0241 (F)
Cell: 082 887 0120

Head: Leeuwkop Correctional Centre Med A
Ms FM Monma 011 208 9508 260 0241 (F)
Cell: 072 218 3949

Head: Leeuwkop Correctional Centre B (Juvenile)
Mr JB Muller 011 208 9578 260 0079 (F)
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Head Leeuwkop Correctional Centre Med C
Mr PD Zaayman 011 208 9532 260 0241
Cell: 082 856 6651
Head: Leeuwkop Maximum
Mr RD Tladi 011 208 9523 260 0241
Cell: 082 221 7651

Head: Community Corrections: Leeuwkop
011 789 8664 789 8670 (F)

Area Manager: Modderbee

Private Bag X1045
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1500

C/O Paul Kruger Road and Modder East Road
Benoni
1500

Tel: 011 360 8138 011 360 8009
Fax: 011 816 2172

Mr N Baloyi 011 366 2658 (D) 816 2172 (F)
Cell: 082 577 3741
Head: Modderbee
Mr Matemane 011 360 8028 366 2910
Email: faniet@mdb2.pwv.gov.za

Head: Mod. Correctional Centre
Mr NA Malemane
Cell: 082 291 3874

Head: Community Corrections: Modderbee (Benoni)
Mr MO Mkhaliphi 011 746 5500/5522 422 5320 (F)
Cell: 082 577 3742 011 746 5503

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Benoni
1500

General Building
90 Elston Street
Benoni
1500

Devon Correctional Centre
Private Bag X1
Leslie
2265

Acting Head: Mr EL Steenberg 017 688 9101 688 0737 (F)
Cell: 083 413 0380

Nigel Correctional Centre
Private Bag X3009
Nigel
1490

2 Johnson Street
Pretoriusstad
Nigel
1490

Tel: 011 814 8138/9
Fax: 011 814 3343

Mr GP Underhay 011 814 8334
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Head: Community Corrections: Nigel
Mr PJ Mashiloane 011 814 1173 814 1246 (F)
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082 578 9202

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1490

OK Centre
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Nigel
1490

Area Commissioner: Pretoria

Private Bag X45
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0001

Potgieter Street
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0001

Tel: 012 334 3417/8

Fax: 012 326 1702

Co-Ordinator Corp. Serv.	Dr. Koekemoer	Cell:	082 887 2164
Co-Ordinator Dev./Care	Ms TD Makhuza Basie	Cell: 011	082 906 2861 334 3381

Area Commissioner:
Mr JM Mkabela 012 334 2692
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Head: Pretoria Central
Acting: Mr M Ntshehi 012 314 1905 (D) 323 4442 (F)
Cell: 083 650 8038

Head: Pretoria Female
Ms VN Mqweba 012 314 1782 323 1523

Head: Pretoria Local
Mr JS Gerber 012 314 1904 (D) 323 2022 (F)
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Records: 012 314 1761/853/835/831
Frans: 012 314 1854/955

Head: C-Max Correctional Centre
Mr R Maake 012 314 1908 323 0103 (F)
Cell: 084 678 5650

Head: Community Corrections: Pretoria
Mr SS Magaga 012 307 2602 328 6674 (F)
Cell: 082 4644916
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Head: Atteridgeville Correctional Centre
Private Bag X45
Voortrekkerhoogte
0143

No 1, Pierre v Rynevel Road,
From Pretoria West, Behind Iscor,
Turn Left, 200m,
Centre on the left hand side.

Mr Mr SM Chuene 012 651 9902 654 9916 (F)
Cell: 082 850 9303

Head: Odi Correctional Centre
Mr DM Mkhwanazi 012 702 3371-4 702 3375 (F)

Marula Sun Road
Left 8 Km (Mabopane)

Head: Community Corrections: Odi
Mr Malokotsa 012 702 0104 701 5302
Cell: 073 418 2565 012 702 9969 702 0102

Area Commissioner: Zonderwater

Private Bag X1003

Cullinan
1000

N4 To Witbank,
Rayton off ramp,
Through Rayton on the
way to Cullinan

Tel: 012 305 7277/8/9
Fax: 012 734 1924

Jan Botes	012	305 7146	734 3992

Area Commissioner
Mr CL Olckers 012 734 1781 (D)
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Head: Correctional Centre Med A
Mr T.B. Makasane 012 305 7177 734 0257 (F)
Cell: 082 441 2292

Head: Correctional Centre B
Mr DS van der Merwe 012 305 7110 305 1626 (F)
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Head: Community Corrections: Zonderwater
Mr TG Skosana 012 305 7296 734 0231
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Area Commissioner: Zonderwater Training College

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1000

Tel: 012 301 4700
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KwaZulu-Natal

Area Commissioner: Durban Westville

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Head: Durban Medium B
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Head: Durban Medium C
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Head: Durban Youth Centre
Ms TY Ngcobo 031 204 8852
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Head: Durban Female
Mr BV Malembe 031 204 8826
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Head: Community Corrections: Durban
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Head: Community Corrections: Umzinto
Mr M B Jwara 039 978 1057
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Area Commissioner: Pietermaritzburg

Private Bag X9022

Pietermartizburg
3200

Eugene Marais Road
Napierville
Pietermartizburg

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Mr MA Mdledye 033 394 0994 (D)
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Head: Community Corrections: Pietermaritzburg
Mr EM Nene 033 342 6970 (D) 342 3859 (F)
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Head Correctional Centre (Med A)
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Head Correctional Unit (Med B)
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New Hanover Correctional Centre
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3440

2 Dale Street
New Hanover
3440

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Head: R Harryparsad 033 502 0288 (D)
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Head: Community Corrections: New Hanover
Mr MH Madlala 033 502 0088 (D) 502 0183 (F)
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3200

Elandskop
Pietermaritzburg

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Head: Mr J Stuart 033 926 1762 (D)
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Sevontein Community Corrections
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Head: Community Corrections: Ixopo
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Area Commissioner: Glencoe

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Northfield Mine
Glencoe

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Area Commissioner
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Head: Glencoe
Mr Rs Mchunu 034 311 10/2/3 x 224
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Head: Community Corrections: Glencoe
Mr HD Mchunu 034 212 5683/4/5 212 5690
Cell: 082 372 3742

Head: Greytown (Closed For Renovations)
Private Bag X5550 033 413 2151 417 0310 (F)
Greytown
3500

Estcourt Correctional Centre
Private Bag X7021

Estcourt
3310

2A Macfarlane
Estcourt
3310

Tel: 036 352 2220
Fax: 036 352 4010

Head: Mr FJ du Plessis (Acting) 036 352 2224
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Ladysmith Correctional Centre
Private Bag X9902
Ladysmith
3370

19 Malcom Road
Ladysmith
3370

Tel: 036 637 6931/5/6/7
Fax: 036 637 3324

Head: Mc Mkhize 036 637 6920
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Head: Community Corrections: Ladysmith
Mr SH Shelembe (Acting) 036 637 8106
Cell: 082 577 4243

Head: Kranskop
Private Bag X217
Kranskop
3550

Mr A Maharaj 033 444 1730 444 1421 (F)
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Kranskop Community Corrections
MZ Mkhize 033 444 1415 444 1421 (F)
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Bergville Correctional Centre
Private Bag X1617
Bergville
3550

C/O Sharraz and South Street
Bergville
3550

Tel: 036 448 1304
Fax: 036 448 1326

Head: Mr TR Ndlangisa 036 448 1304
Cell: 084 788 9060

Bergville Community Corrections
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Dundee Correctional Centre
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3000

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Pomeroy Correctional Centre
Private Bag X530
Pomeroy
3020

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Mr SD Mkhaliphi 034 662 1004
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Pomeroy Community Corrections
MW Dlamini 034 662 1004

Area Commissioner: Empangeni

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Empangeni
3880

C/O Main Road and Gwalagwala Road
Empangeni

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Area Commissioner
Mr JB Hlatshwayo 035 772 2881-5
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Head: Qalakabusha
Mr N Nayager 035 772 5262
Email: nad.nayager@dcs.gov.za

Head: Empangeni
Mr HJ van Rensburg 035 772 1152
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Head: Community Corrections: Empangeni
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Mtunzini Correctional Centre

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3867

Head: Mr TV Mdlalose	035	340 1610	340 2315 (F)
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Eshowe Correctional Centre
Private Bag X531
Eshowe
3815

C/O Dlangubo Street
Nkandla

Tel: 035 474 1170/1/2
Fax: 035 474 1076

Head: Mr SE Dlamini	035	474 5039	
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Head: Community Corrections: Eshowe			
Mr EB Dlamini	035	474 4252	4745776 (F)
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Head: Ingwavuma
Private Bag X2224
Ingwavuma
3968

Main Street
Ingwavuma

Fax: 035 591 0012

Mr JA Sibiya	035	591 0012	

Stanger Correctional Centre
Private Bag X10680
Stanger
4450

89 Rood Street
Stanger
4450

Tel: 032 551 1197
Fax: 032 551 2007

Head: Mr TB Fihlelai	032	551 1197	

Head: Community Corrections: Stanger			
Mr KD Singh	032	551 2141/2/3	551 2283 (F)
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Head: Maphumulo

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Area Commissioner: Waterval

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Head: Waterval Medium A
Mr MM Mgaga 034 321 1662 x 204
Cell: 082 487 4461

Head: Waterval Medium B
Mr VR Ndlovu 034 321 1661 x 207
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Ekuseni Correctional Centre
Private Bag X6668
Newcastle
2940

Go Through Newcastle, Go Through Indian Suburb Lenningstone Straight For ±13 Km, Take First Tarred Road To Left Chelmsford Dam Carry On Straight For 12 Km, Take First Tarred Road To The Right D502 Turn Right, Centre Is Straight Ahead

Tel: 034 388 1000
Fax: 034 388 1011

Head: Mr VDPS Nkosi 034 388 1010
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Utrecht Correctional Centre
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2980

Mr BL Sibiya 034 333 13118 331 3430(F)
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Newcastle Correctional Centre
Private Bag X6639
Newcastle
2940

2 Hospital Street
Newcastle

2940

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Fax: 034 312 5078

Head: Mr RS Mchunu 034 312 3316
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Head: Community Corrections: Newcastle
Mr Z Mthethwa 034 312 1806/9 3151203
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Area Commissioner: Ncome

Private Bag X9420
Vryheid
3100

Tel: 034 972 9340
Fax: 034 972 9303

Mr EP Korabie 034 972 9310

Head: Ncome Medium A
Mr FW Khumalo 034 972 9340
Cell: 083 380 5303

Head: Ncome Medium B
Mr VP Jiyane 034 972 9340
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Ncome Community Corrections
Mr JV Mathenjwa 034 271 0689 271 0689(F)
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3100

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Ms MS Smuts 034 981 5224 983 2082
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Head: Community Corrections: Vryheid
Mr JZ Sithole 034 981 5427
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Nongoma Correctional Centre
Private Bag X6055
Nongoma
3950

Lot 97
Main Street
Nongoma
8950

JM Mbatha Cell: 072 925 6777	035	831 0437	831 0056 (F)
<u>Community Corrections Nongoma</u> VG Buthelezi Cell: 073 295 6100	035	831 0056	831 0056 (F)

<u>Melmoth Correctional Centre</u>
Private Bag X801
Melmoth
3835

23 Opposition Street
Melmoth

Fax: 035 450 3040

Mr B Dludla Cell: 073 203 6331	035	450 2291
<u>Melmoth Community Corrections</u> CS Mbatha Cell: 083 404 6635	035	450 7593

<u>Nkandla Correctional Centre</u>
Private Bag X122
Nkandla
3855

C/O Nalanbubos Street
Nkandla

Mr NS Mbeje Cell: 082 299 7997	035	833 0071
<u>Community Corrections Nkandla</u> ZC Majola Cell: 072 339 0981	035	833 0071

Area Commissioner: Kokstad

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4700

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Area Commissioner Mr DJ Makhaye Cell: 082 806 6920	039	797 2001(D)
Head: Maximum Ebongweni Mr JF Joubert (Acting)	039	797 2042(D)

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Email: jacques.joubert@dcs.gov.za

Head: Kokstad Medium
Mr N Nayager 039 797 2158(D)
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Email: nad.nayager@dcs.gov.za

Head: Community Corrections: Kokstad
Mr Z Pamla 039 727 2355(D) 727 2306(F)
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Port Shepstone Correctional Centre
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Port Shepstone
4240

1 Court House Street
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4240

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Port Shepstone Community Corrections
Mr TM Nqenqa 039 682 0735
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Limpopo, Mpumalanga and North-West Regions

Area Commissioner: Polokwane

Private Bag X9393
Polokwane
0700

C/O Landdros Mare and Grobler Street
Polokwane

Tel: 015 295 2009 295 2212
Fax: 015 295 2832 295 2815

Mr Paul Sello 015 295 2009 295 2212
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Ms Masokameng 015 297 6039 297 6034
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Tzaneen Correctional Centre
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Tzaneen
0850

Annecke Street
Tzaneen
0850

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Head: Community Corrections: Tzaneen
Mr MV Shikwambana 015 307 4228/4202 3074242
Cell: 082 655 5067
Modimole Correctional Centre (Nylstroom)
Private Bag X1014
Nylstroom
0510

Nelson Mandela Drive
Modimolle

Mr E Mocke 014 717 2573 717 3402
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Head: Community Corrections: Nylstroom
Mr FW Mulaudzi 014 717 2264 717 2264
Cell: 082 577 3735
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Area Commissioner: Barberton

Private Bag X611
Barberton
1300

Tel: 013 712 9500
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Mr ES Mndawe Cell: 072 501 4167 Email: sunnyboy.mndawe@dcs.gov.za	013	712 3602(D)	712 9632
Head: Barberton Maximum Mr MA Mashabane Cell: 082 742 7013	013	712 9519	712 2194
Head: Barberton Medium A Mr RT Fakude Cell: 082 255 8748	013	712 9560	712 2194
Head: Barberton Medium B Mr NJ Smit Cell: 082 924 9637	013	712 9538	712 2194
Unit Manager: Barberton Town De Villiers Street, Barberton			
Mr AM Sithole Cell: 082 351 7481	013	712 3155	712 4997
Head: Community Corrections: Tonga Mr TV Myeni Cell: 082 885 5754	013	780 3154	780 0745
Head: Community Corrections: Barberton Mr DA Louw Cell: 072 237 5978	013	712 3161	712 4997

Nelspruit Correctional Centre
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Nelspruit
1200

7 Henshall Street
Nelspruit
1200

Mr EN Shongwe (Acting) Cell: 082 885 2014	013	752 4297	752 7679

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1120

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Lydenburg

Mr NS Mbuyane Cell: 082 377 8006 Email: sydney.mbuyane@dcs.gov.za	013	235 2051	235 1398

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2310.

C/O Kleynhans Street and Eufees Street
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Mr AV Ndlovu Cell: 082 775 9317 Email: amos.ndlovu@dcs.gov.za	017	647 6434	647 3676
Head: Bethal Mr DA Nzimande Cell: 082 450 6761 Email: dumisane.nzimande@dcs.gov.za	017	647 6434	647 3676

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2310

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Ermelo
2350

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Fax: 017 819 5416

Mr BM Mabaso Cell: 083 524 8806 Email: mike.mabaso@dcs.gov.za	017	819 7510/1	819 5416

Standerton Correctional Centre
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Standerton
2430

Bauman Street
Standerton

Head Correctional Centre Mr P Kitshoff Cell: 082 774 5564 Email: petrusk@dcs.gov.za	017	714 0010/1	714 1114
Head Standerton Medium A Ms AE Downs Cell: 082 928 5062	017	714 0010/1	714 1114

Head: Standerton: Medium B
Ms AJ van Vuuren 017 714 0010/1 714 1114
Cell: 082 822 2684

Volksrust Correctional Centre
Private Bag X9017
Volksrust
2470

De Jager Street
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Mr LM Nkomo 017 735 5090 735 1686
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Piet Retief Correctional Centre
Private Bag X27
Piet Retief
2380

Hille Street
Piet Retief

Mr BP Mazibuko 017 826 1466 826 4233
017 826 1635 826 2405
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Area Commissioner: Witbank

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Witbank
1035

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Area Co-Ordinator: Corporate Services
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1035

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Area Co-Ordinator: Corrections
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1035

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1035

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Head: Mr HV Mnguni 017 843 1048

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1185

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Mr Mthimunye

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2570

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2680

90 & 92 Kerk Str
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Head: Community Corrections: Potchefstroom

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Head: Community Corrections: Carletonville

Mr JT Motloung	018	786 3830	786 3834 (F)
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Head: Community Corrections: Bothaville
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Area Commissioner: Rooigrond

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Mmabatho
2735

Lichtenburg & Mafikeng Road
Rooigrond
2473
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Mr BH Eksteen	018	381 1588 (D)	3811602/7
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Head: Rooigrond Medium A

Mr JK Nomandla	018	645 0709 x 111	6450763 (F)
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Head: Rooigrond Medium B

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Head Community Corrections: Vryburg
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Zeerust Unit
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Zeerust
2865

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Head: Community Corrections: Zeerust
Mr Phege 018 642 1101 642 3884 (F)
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Area Commissioner: Rustenburg

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Rustenburg
0300

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0299

Tel: 014 592 5180
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Mr EC Bruwer 014 596 7323 (D)
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Head Rustenburg Correctional Centre
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0300

Thabizimbi Main Road
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Head: Community Corrections: Rustenburg

Vacant	014	594 2810	594 2815

Losperfontein Correctional Centre
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Brits
0250

Tel: 012 254 0144-9
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Mr RE Mokgoko	012	254 0144	254 0038
Cell: 082 577 3861			

Head: Community Corrections: Brits

Mr RJ Kekana	012	252 3363	252 3363
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Brits Unit (Satelite)
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0250

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Mogwase Correctional Centre
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Mogwase
0314

Mr PE Ntatisang	014	555 5630	555 5726
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Head: Community Corrections: Mogwase

Mr MF Malebye	014	555 5981	555 5147
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Area Commissioner: Thohoyandou

Private Bag X2434
Sibasa
Venda

0970

Tel: 015 963 8500
Fax: 015 963 3811

Mr MA Sikhwivhulu 015 963 3815 (D)
Cell: 082 655 5046

Head: Vondwe Men
Mr RJ Marwala 015 963 8817
Cell: 083 280 6454

Head: Unsentenced Correctional Centre
Mr NN Nedzamba 015 963 1033
Cell: 082 675 3077

Head: Female (Juvenile)
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