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SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
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- A. The National Head  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
- B. All Provincial Commissioners
- C. All Divisional Commissioners
- D. All District Commissioners
- E. All Heads  
HEAD OFFICE
- F. All Section Heads  
HEAD OFFICE
- G. All Commanders  
SAPS COLLEGES AND TRAINING CENTRES
- H. All Deputy National Commissioners
- I. The Secretary  
CIVILIAN SECRETARIAT FOR THE SOUTH AFRICAN POLICE SERVICE

**INSTRUCTIONS RELATING TO ARREST AND DETENTION OF SUSPECTS**

A-G. 1. Arrest, by definition, constitutes a serious restriction of an individual's freedom of movement, and can also affect his or her dignity and privacy. Therefore, arrest is fully regulated by legislation. It follows that an arrest is lawful only when effected in accordance with the relevant statutory provisions. The arrest (with or without a warrant) must have been properly authorised by a statutory provision. The object of an arrest must be to bring the arrested person before a court to be charged, tried, and then either convicted or acquitted. There are various methods by which an accused's attendance at a trial may be secured. Although arrest is one of these methods, it constitutes one of the most drastic infringements of the rights of

an individual and a member should therefore regard it as a last resort. Arrest is never an obligation, irrespective of the offence. The decision to arrest must be rational, taking all relevant circumstances into account.

2. The Constitutional Court held in *De Klerk v Minister of Police* [2019] SACCC 32 that the South African Police Service (the Service) can be held liable for entire period of detention of a person (even after appearing in court), if the detention resulted from an unlawful arrest.
3. In the light of above 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.
4. It has also come to my attention that there are commanders (including provincial commissioners, district commissioners (cluster commanders), and station- and unit commanders) 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 millions of Rands in compensation for such persons. This situation is totally unacceptable and **must stop with immediate effect.**
5. 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 [J534] 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 –*
- (i) *no warrant of arrest was issued;*
  - (ii) *the assaults were not committed in the presence of members; and*
  - (iii) *the assaults 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.

**(Assault GBH** consists of an assault committed with the intention to do grievous bodily harm to the victim. In order to arrest a person without a warrant as contemplated in section 40(1)(b) of the Criminal Procedure Act, 1977, the alleged **Assault GBH** must constitute an offence referred to in Schedule 1 of the Criminal Procedure Act, 1977. In order to arrest a person without a warrant for **Assault GBH**, a dangerous wound, therefore, must have been inflicted or an attempt must be made to inflict it on a victim. The mere fact that a person has committed assault GBH does not necessarily mean that he or she has inflicted or attempted to inflict a dangerous wound on a victim. A dangerous wound means one which itself is likely to endanger life or the use of a limb or organ. If an arrest was made without a warrant for **Assault GBH**, the arrest statement must clearly indicate the elements of the offence, extent of the wound and any other factor he or she based his or her belief that the wound constitutes a .)

- (c) *Instructions requiring members to arrest a person purely for purpose of taking a warning statement.*
- (d) *Instructions requiring members to arrest persons for shoplifting simply because the shop owner or security office 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 Criminal Procedure Act, 1977, to ensure the presence of the perpetrator at the trial.

- (e) *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 indicated 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.*
- (f) *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-defense or private defense 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.*

(g) *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.*

(h) *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 arrest will be regarded as serious misconduct.*

6. Any instructions of the aforementioned or a similar nature are accordingly hereby **withdrawn with immediate effect.**
7. It has also come to the attention of this office by means of court judgements, media reports and complaints against the Service that there are deliberate non-compliance with legislation, case law, National Instructions and risk prevention guidelines when arrest and detention are being executed by the members of the Service.
8. It is only in exceptional circumstances where a member is specifically authorised by an Act of Parliament (for example, sections 40 and 41 of the Criminal Procedure Act, 1977) to arrest a person without a warrant, that a person may be arrested without a warrant. Any arrest without a warrant, which is not specifically authorised by law, will be unlawful.
9. It is impossible to lay down hard and fast rules regarding the manner in which the attendance of an accused at a trial should be secured. Each case must be dealt with according to its own merits. A member must always exercise his or her

discretion in a proper manner when deciding whether a suspect must be arrested or rather be dealt with as provided for in paragraph 12 (below). The member must, upon arrival at the police station, complete the Arrest Statement (SAPS 3M(i)), amongst other things explaining why arrest was necessary. Factors that the member should consider to exercise his or her discretion in a proper manner are whether —

- (a) there is a likelihood that the arrested person, if released, will endanger the safety of the public or any particular person or commit another *Schedule 1* offence;
- (b) there is a likelihood that the arrested person, if released, will attempt to evade his or her trial;
- (c) there is a likelihood that the arrested person, if released, will attempt to influence or intimidate witnesses or conceal or destroy evidence;
- (d) there is a likelihood that the arrested person, if released, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system; or
- (e) in exceptional circumstances, there is a likelihood that the release will disturb public order or undermine the public peace and security.

10. A member, even though authorised by law, should normally refrain from arresting a person if —

- (a) the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977 (If a member is satisfied that the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, the member must open a docket and refer it to the public prosecutor for the public prosecutor to have a summons issued. The summons may then be served on the person. Pocket Book and Occurrence Book entries must be made in all these instances.); or
- (b) the member believes on reasonable grounds that a magistrate's court, on convicting such person of that offence, will not impose a fine exceeding the

amount determined by the Minister from time to time by notice in the *Government Gazette* (currently, R 5000, 00), in which event such member may hand to the accused a written notice [J 534] as a method of securing his or her attendance in the magistrate's court in accordance with section 56 of the Criminal Procedure Act, 1977. If the person must be taken to the police station to be issued with a J 534, such person must be taken immediately to the police station. Pocket Book and Occurrence Book entries must be made in all these instances.

11. 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 paragraph 7 of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person), 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 applied with caution 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.
  
12. The detention of a person is a serious and humiliating infringement upon his or her freedom of movement and must be limited to the minimum period of time that may be necessitated by the *interests of justice*. Based on the information provided and subject to the conditions set out in National Instruction 3 of 2016 (Bail and the release of Persons), the arresting member, community service centre commander or the senior member in charge must consider the release a person —
  - (a) on written warning (section 72 of the Act) [SAPS 496];
  - (b) on written notice (section 56 of the Act) [J 534];
  - (c) on bail (sections 59, 59A and 60 of the Act) [J398 or J399];
  - (d) after a charge has been withdrawn through an arrangement with the Public Prosecutor; or



- (e) if he or she was detained as a suspect, but is released from detention before the expiry of the 48-hour period because no charge is brought against him or her (section 50(1)(c) of *the Act*) [SAPS 328].
13. 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.
14. 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. Where appropriate the person must be allowed to apply for bail in terms of section 59A of the Criminal Procedure Act, 1977 (an application may be made to a public prosecutor in respect of offences referred to in Schedule 7 of the Criminal Procedure Act, 1977)). An entry must also be made in the Occurrence Book (SAPS 10) and the investigation diary (SAPS 5) whether the person should be detained and reasons therefor (why the person cannot be released).
15. 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 as set out in paragraph 12 (above). 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. A tendency seems to have developed in certain districts (clusters) 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 arrest a suspect after 16:00 on a Wednesday or Thursday afternoon and who fails to take



that suspect to a 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.

16. Once an investigation officer is satisfied that a suspect who is in detention cannot be released as set out in paragraph 12, I expect the investigation 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. The investigation officer ensure that the docket contains —
  - (a) a completed SAPS 3M(k) form;
  - (b) where relevant, a detailed affidavit setting out the grounds or basis for opposing bail;
  - (c) exhibits, if any, relating to the bail hearing; and
  - (d) the bail opposing report from the Criminal Record Centre of the arrested person (report can be obtain from function 2.21.4.1 or 2.21.4.2 on the CRIM system).
  
17. If the investigating official is unable to obtain the necessary information to complete the SAPS 3M(k)-form properly before the first appearance of the arrested person in court, he or she must inform the prosecutor and the reasons therefore. The investigating official must request the prosecutor to request the court to postpone the bail application for a period of up to 7 days. This must be properly recorded in the Investigation Diary (SAPS 5) in the case docket. If the prosecutor supports such request he or she should be requested to sign the SAPS 5 entry.
  
18. Every station commander, or a person designated by him or her for that purpose, must inspect the Custody Register, the SAPS 22 and Occurrence Book daily to

ensure that a person is not detained longer than he or she was supposed to be detained.

19. The arrest and detention of a child in conflict with the law must be dealt with in accordance with National Instruction 2 of 2010 (Children in conflict with the law).
20. Provincial commissioners, district commissioners (cluster commanders), station- and unit commanders must thoroughly study and apply the contents of this letter 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. Losses suffered by the Service as a result of a failure to comply with these instructions by an employee will in terms of National Instruction 25 of 2019 (Management of Civil Claims in the South African Police Service) be recovered from that employee.
21. 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.

22. The content of this circular must immediately be brought to the attention of all members.

H – I 1. For your information.

A large, stylized handwritten signature in black ink, appearing to be 'KJ Sitole', is written over the printed name.

**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE**  
**KJ SITOLE (SOEG)**

**GENERAL**

Date: 2019/11/19

## Offence committed

Child in conflict with the law must be dealt with in terms of National Instruction 2 of 2010 (Children in

Before arrest first consider can attendance in court be secured by means of the following

- Written notice [J 534]
- Summons as provided for in section 54 of the Criminal Procedure Act, 1977

See Paragraph 7 of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person), regarding 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.

- Arrest with a warrant of arrest (see section 43 of the CPA) to secure attendance in court
- Arrest without a warrant of arrest (see section 40 of the CPA) to secure attendance in court

**Result of arrest = detention****Consider:**

- Release if he or she was detained as a suspect, but is released from detention before the expiry of the 48-hour period because no charge is brought against him or her (section 50(1)(c) of the CPA [SAPS 328] (consultation with IO)
- Release on written warning (section 72 of the CPA) [SAPS 496] (consultation with IO)
- Release on Notice (section 56 of the CPA) [J534] (consultation with IO)
- Release on Bail (sections 59 and 59A of the CPA [J398 or J399] (consultation with IO)
- Release on after a charge has been withdrawn through an arrangement with the Public Prosecutor  
**Not released**

Taken to Court asap, but within 48 hours

Bail application in terms of section 60 of the CPA (also in terms of section 59A of the CPA)

IO must –

- completed SAPS 3M(k) form;
- where relevant, a detailed affidavit setting out the grounds or basis for opposing bail;
- exhibits, if any, relating to the bail hearing; and
- the Bail opposing report from the Criminal Record Centre of the arrested person (report can be obtained from function 2.21.4.1 or 2.21.4.2 on the CRIM system).