

**SUBORDINATE LEGISLATION IN RESPECT OF THE WITNESS PROTECTION
ACT, 1998 (ACT NO. 112 OF 1998)**

(a) Establishment of branch offices of the Office for Witness Protection in terms of section 2(2) of the Witness Protection Act, 1998 (Act No, 112 of 1998) published in Government Notice No. R. 646 of 20 July 2001 (Government Gazette No. 22469):

“I, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, acting in terms of section 2 (2) of the Witness Protection Act, 1998 (Act No. 112 of 1998), hereby establish the branch offices of the Office for Witness Protection mentioned in Column A of the Schedule in the defined areas mentioned in Column B of the Schedule.

P. M. MADUNA

Minister for Justice and Constitutional Development

SCHEDULE

Column A	Column B
Western Cape Branch.....	The Province of the Western Cape
Free State Branch.....	The Provinces of the Free State and the Northern Cape
North West Branch.....	The Province of the North West and the Northern Province
Gauteng Branch.....	The Provinces of Gauteng and Mpumalanga
Eastern Cape Branch.....	The Province of the Eastern Cape, excluding— (a) the magisterial districts falling within the area of jurisdiction of the Kei and Wild Coast District Councils; and (b) the magisterial districts of Aliwal North, Lady Grey, Hershel, Wodehouse, Indwe, Elliot, Barkley East, Maclear and Xalanga.
KwaZulu-Natal Branch.....	The Province of KwaZulu-Natal, including—

- | | |
|--|--|
| | <p>(a) the magisterial districts falling within the area of jurisdiction of the Kei and Wild Coast District Councils; and</p> <p>(b) the magisterial districts of Aliwal North, Lady Grey, Hershel, Wodehouse, Indwe, Elliot, Barkley East, Maclear and Xalanga.”.</p> |
|--|--|

(b) Regulations made under section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), published by Government Notice No. R. 2204 of 31 July 1992 (Government Gazette No. 14196):

[Section 185A of the Criminal Procedure Act, 1977 has been repealed by the Witness Protection Act, 1998 (Act No. 112 of 1998, but the regulations made under this section have not yet been repealed and are still in operation.]

“The Minister of Justice has, under section 185A(5) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), made the regulations in the Schedule.

SCHEDULE

ARRANGEMENT OF REGULATIONS

CHAPTER 1:

GENERAL PROVISIONS

Regulation

- | | |
|----|--|
| 1. | Definitions |
| 2. | Application and authorization for protective custody |
| 3. | Prohibition on disclosure of certain information |
| 4. | Transfer |
| 5. | Discharge from protective custody |
| 6. | Expenses in connection with protective custody |

CHAPTER 11:

DETENTION IN PROTECTIVE CUSTODY

- | | |
|----|------------------------------|
| 7. | Detention in place of safety |
|----|------------------------------|

- 8. Search
- 9. Seizure
- 10. Disposal of private property of detainee
- 11. Orders to detainee
- 12. Duties of person in charge of place of safety
- 13. Access to detainee
- 14. Payment of allowances to detainee

CHAPTER III:

PLACING UNDER PROTECTIVE CUSTODY

- 15. Placing under protective custody
- 16. Search
- 17. Seizure
- 18. Orders to protected person
- 19. Duties of commander
- 20. Complaints or requests by protected person
- 21. Access to protected person
- 22. Payment of allowances to protected person

CHAPTER IV:

OFFENCES AND PENALTIES

- 23. Offences and penalties

ANNEXURE

Form

- A. Application by witness or prospective witness to be detained in or placed under protective custody
- B. Authorization by witness or prospective witness to be detained in or placed under protective custody

- C. Authorization by a member of the family or household or a dependant of a witness or prospective witness or of such a member to be detained in or placed under protective custody
- D. Application for discharge from detention/waiver of protection

CHAPTER I:

GENERAL PROVISIONS

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and unless the context otherwise indicates –

“commander” means the person who is in charge of the police station or prison and who has placed a protected person in custody or the person designated in terms of regulation 15(2)9a) to deal with a placing;

“detainee” means a person detained in protective custody under section 185A(2)(a)(i) of the Act;

“Director-General” means the Director-General: Justice or an officer in the public service designated by him in general or for a particular matter;

“medical officer” means a medical officer as defined in section 1 of the Correctional Services Act, 1959 (Act No. 8 of 1959);

“member” means a member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), a member of the Correctional Service as referred to in section 2(1) of the Correctional Services Act, 1959 (Act No. 8 of 1959), or a temporary warder appointed as such under section 9(1) of the Correctional Services Act, 1959;

“place of safety” means a place referred to in regulation 7 where a detainee is detained in protective custody;

“protected person” means a person placed under protective custody under section 185A (2)(a)(ii) of the Act;

“security officer” means a person designated a security officer in terms of regulation 15; and

“the Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Application and authorization for protective custody

2. (1) Any witness or prospective witness referred to in section 185A(1) of the Act shall make application in the form of Form A in the Annexure for protective custody for himself, any member of his family or household, or any dependant of his or of such member.

(2) Any witness or prospective witness who has made application under subregulation (1) for protective custody for himself, or where such witness or prospective witness is a minor his parent or guardian, shall give authorization in the form of Form B in the Annexure for protective custody before he is detained in or placed under protective custody.

(3) Any member of the family or household of a witness or prospective witness or any dependant of such witness or any dependant on behalf of whom application is made under subregulation (1) for protective custody, or where such member or dependant is a minor his parent or guardian, shall give authorization in the form of Form C in the Annexure for protective custody before he is detained in or placed under protective custody.

Prohibition on disclosure of certain information

3. No person shall furnish any other person with any information that has the effect that –

- (a) the identity of any person who applied for protective custody or who gave authorization thereto or who is or was in protective custody; or
- (b) the place where a detainee or protected person is in protective custody, is disclosed, except with the permission or the attorney-general of for official purposes or for the purpose of judicial proceedings.

Transfer

4. (1) (a) A detainee may at any time by or by order of the person in charge of the place of safety where he is being detained, in consultation with the attorney-general, be transferred to another place of safety or be transferred to a place where he is to be placed in protective custody.

(b) A protected person may at any time by or by order of the commander, in consultation with the attorney-general, be transferred to another place in protective custody or be transferred to a place of safety where he is not be detained in protective custody.

(2) (a) Any detainee transferred to a place where he is placed in protective custody in terms of subregulation (1)(a) shall be deemed to be discharged from all the provisions of the regulations applicable to a detainee, and shall *mutatis mutandis* become subject to all the provisions of the regulations applicable to a protected person, as if he had in the first instance been detained in protective custody.

(b) Any protected person transferred in terms of subregulation (1)(b) to a place of safety where he is detained in protective custody shall be deemed to be discharged from all the provisions of the regulations applicable to a protected person and shall *mutatis mutandis* become subject to all the provisions of the regulations applicable to a detainee, as if he had in the first instance been detained in protected custody.

Discharge from protective custody

5. Subject to the provisions of section 185A(4) a detainee or protected person shall remain under protective custody until –

- (a) he, or if he is a minor his parent or guardian, has completed and signed a discharge from detention or a waiver of protection in the form of Form D in the Annexure and has submitted it to the person in charge of the place of safety or the commander, as the case may be; or
- (b) the person in charge of the place of safety where a detainee is being detained, or the commander in respect of a protected person discharges him on the grounds of the written advice of the attorney-general referred to in section 185A (3) of the Act.

Expenses in connection with protective custody

6. (1) The Director-General may authorize that any expenses incurred under these regulations in connection with the protective custody of any person be defrayed from public funds.

(2) The Director-General may, for the purposes of this regulation, enter into an agreement with any person.

CHAPTER II:**DETENTION IN PROTECTIVE CUSTODY****Detention in place of safety**

7. Any person who has applied in accordance with regulation 2 to be detained in protective custody and has given authorization thereto shall be detained in a prison as defined in section 1 of the Correctional Service Act, 1959 (Act No. 8 of 1959), or a police cell or lock-up.

Search

8. A detainee may be searched by any member or at the direction of such member, if such member deems it necessary: Provided that the searching of any detainee shall be conducted with strict regard to decency and order and that a man shall be searched by a man only and a woman shall be searched by a woman only.

Seizure

9. Any object which, in the opinion of any member, is not in the interest of the detainee's safety or the safety of any other person or in the interest of good order in the place of safety may be seized by such member, noted in a register and taken into safe-keeping.

Disposal of private property of detainee

10. (1) The private property of a detainee which is in the possession of or under the control of the person in charge of the place of safety shall –

- (a) be handed to the detainee on discharge; or
- (b) be handed to the detainee's wife, child or next-of-kin if the detainee has escaped and cannot be traced within 60 days or has died.

(2) If a detainee's wife, child or next-of-kin cannot be traced or is unwilling to take possession of the property referred to in subregulation (1), the property shall, after six months, be sold by auction and the proceeds of the auction shall be paid into the State Revenue Fund.

(3) The Treasury may give permission for the amount which has been deposited in the State Revenue Fund under subregulation 92) or a part thereof to be paid to the detainee or his wife, child or next-of-kin.

Orders to detainee

11. A member may give such orders to a detainee as he may deem reasonable and necessary in the circumstances in order to maintain discipline and order and to ensure the protection or safety of the detainee or any other person.

Duties of person in charge of place of safety

12. The person in charge of a place of safety shall see to it that –

- (a) a detainee is exposed to the public as little as possible;
- (b) all necessary measures are taken to ensure a detainee's safety;
- (c) all necessary measures are taken to protect a detainee against the disclosure of his identity, unlawful attacks and intimidation;
- (d) a detainee is visited daily and that his accommodation and any complaint or request of his receive attention;
- (e) the place where the detainee is detained is visited at least twice a week at irregular times during the night to ensure that everything is in order;
- (f) an ill or injured detainee is visited as often as is necessary by a medical officer and that any detainee who complains that he is ill or injured is examined and treated by a medical officer and that the orders of the medical officer in relation to such detainee are complied with;
- (g) a detainee is examined and treated in accordance with paragraph (f) by a private medical practitioner if so requested by the detainee and if he is able to pay the

costs of such examination and treatment and accepts full liability for the payment of such costs;

- (h) a detainee is interviewed as close to his discharge as possible;
- (i) a detainee's physical and mental needs are satisfied as far as possible; and
- (j) any matter which a detainee wishes to bring to the attention of the attorney-general is conveyed to the attorney-general forthwith.

Access to detainee

13. (1) no person except a sheriff, judge of the Supreme Court of South Africa, an officer in the service of the State who acts in his official capacity, or a legal practitioner and a private medical practitioner at the request of a detainee shall have access to the detainee.

(2) The person in charge of a place of safety may, if the detainee wishes to receive a visit, unless the attorney-general, having regard to the safety of the detainee or any other person, in general or in a particular case orders otherwise, and subject to the instructions of the attorney-general, give permission to any person to visit the detainee for any special or general purpose.

Payment of allowance to detainee

14. (1) A detainee shall, for the period during which he is detained in protective custody, be entitled to an allowance of R10 per day minus any amount which he may receive as witness fees, if he does not receive any income as a result of the fact that he is in protective custody.

(2) The Director-General may, on satisfactory proof having been produced that a detainee has forfeited income as a result of the fact that he is or was detained in protective custody, order that an allowance equal to the actual amount of income so forfeited, minus the

daily allowance payable to him in terms of subregulation (1) and any witness fees payable to him, up to a maximum amount of R400 per day, be paid to the detainee.

(3) The Director-General may authorize that the tariff prescribed by subregulation (2) may be exceeded if he is satisfied that the application of that subregulation is causing a detainee or his dependants or family financial hardship.

(4) A detainee may be provided with suitable clothing and other necessary requirements to a maximum purchase amount of R400 if he, in the opinion of the person in charge of the place of safety, has unserviceable clothing or no clothing and is not able to purchase suitable clothing or other necessary requirements from his own funds, including the allowances referred to in subregulations (1) to (3) and any witness fees: Provided that if the person in charge of the place of safety is satisfied that the said amount is insufficient, he may obtain authorization from the Director-General to exceed that amount.

(5) Any expenses incurred by the State in terms of subregulation (4) in respect of a specific detainee, or to render medical care to a detainee may be brought into account before an allowance is paid to the detainee in terms of this regulation.

CHAPTER III:

PLACING UNDER PROTECTIVE CUSTODY

Placing under protective custody

15. (1) The person in charge of the police station or prison where a witness or prospective witness applies, in accordance with the provisions of regulation 2, to be placed under protective custody shall, after consultation with the witness or prospective witness who desires protection, determine the place where such witness or prospective witness shall be placed and he shall designate one or more persons as security officers to take care of the safety of the witness or prospective witness in accordance with the instructions issued by him.

(2) (a) If the person in charge of the police station or prison referred to in subregulation (1) is not able to determine a place for placing or to designate a security officer for the witness or prospective witness who desires protection, he shall submit the application and authorization for protective custody of the witness or prospective witness concerned to a person designated generally or specifically for that purpose by the Commissioner of the South African Police or the Commissioner of Correctional Services.

(b) The person designated in terms of paragraph (a) shall determine, after consultation with the witness or prospective witness, the place where such witness or prospective witness shall be placed, and he shall designate one or more persons as security officers to take care of the safety of the witness or prospective witness in accordance with the instructions issued by him.

(3) The commander may according to circumstances designate other security officers in respect of a particular protected person and may amend the instructions referred to in subregulation (1) or (2)(b).

(4) In this regulation “witness” includes any member of his family or household or any dependant of his or of such member.

Search

16. A protected person may be searched if the security officer deems it necessary: Provided that the searching of any protected person shall be conducted with strict regard to decency and order and that a man shall be searched by a man only and a woman shall be searched by a woman only.

Seizure

17. Any object which, in the opinion of the security officer, is not in the interest of the protected person’s safety or the safety of any other person or in the interest of good order in the

place where the protected person is being protected, may be seized by such officer, noted in a register and taken into safe-keeping.

Orders to protected person

18. A security officer may give such orders to a protected person as he may deem reasonable and necessary in the circumstances in order to achieve efficient security or such orders as may contribute to the safety of the security officer, the protected person or any other person.

Duties of commander

19. The commander shall see to it that –

- (a) all necessary measures are taken for the continuous safety of a protected person and give or cause to be given further orders in this regard to the relevant security officer;
- (b) measures are taken for the safe-keeping of all moneys or valuables or any other article in the possession of a protected person, if the latter so requests and it is deemed necessary or desirable;
- (c) an ill or injured protected person is visited s often as is necessary by a medical officer and that any protected person who complains that he is ill or injured is examined and treated by a medical officer ant that the orders of the medical officer in relation to such person are complied with;
- (d) a protected person is examined and treated in accordance with paragraph (c) by a private medical practitioner if so requested by the protected person and if he is able to pay the costs of such examination and treatment and accepts full liability for the payment of such costs;

- (e) a protected person's physical and mental needs are satisfied as far as possible; and
- (f) any matter which a protected person wishes to bring to the attention of the attorney-general is conveyed to the attorney-general forthwith.

Complaints or requests by protected person

20. A security officer shall give attention to each complaint or request of a protected person and bring it forthwith to the attention of the commander or any person designated by him.

Access to protected person

21. (1) No person except a sheriff, a judge of the Supreme Court of South Africa, an officer in the service of the State who acts in his official capacity, or a legal practitioner and a private medical practitioner at the request of a protected person shall have access to the protected person.

(2) The security officer may, if the protected person wishes to receive a visit, unless the attorney-general, having regard to the safety of the protected person or any other person, in general or in a particular case orders otherwise, and subject to the instructions of the attorney-general, give permission to any person to visit the protected person for any special or general purpose.

Payment of allowances to protected person

22. (1) A protected person shall, for the period during which he is placed under protective custody, be entitled to an allowance of R10 per day minus any amount which he may receive as witness fees, if he does not receive any income as a result of the fact that he is in protective custody.

(2) The Director-General may, on satisfactory proof having been produced that a protected person has forfeited income as a result of the fact that he is or was placed under protective custody, order that an allowance equal to the actual amount of income so forfeited, minus the daily allowance payable to him in terms of subregulation (1) and any witness fees payable to him, up to a maximum amount of R400 per day, be paid to the protected person.

(3) The Director-General may authorize that the tariff prescribed by subregulation (2) may be exceeded if he is satisfied that the application of that subregulation is causing a protected person or his dependants or family financial hardship.

(4) A protected person may be provided with suitable clothing and other necessary requirements to a maximum purchase amount of R400 if he, in the opinion of the commander, has unserviceable clothing or no clothing and is not able to purchase suitable clothing or other necessary requirements from his own funds, including the allowances referred to in subregulations (1) to (3) and any witness fees: Provided that if the commander is satisfied that the said amount is insufficient, he may obtain authorization from the Director-General to exceed that amount.

(5) Any expenses incurred by the State in terms of subregulation (4) in respect of a specific protected person, or to render medical care to a protected person may be brought into account before an allowance is paid to the protected person in terms of this regulation.

CHAPTER IV:

OFFENCES AND PENALTIES

Offences and penalties

23. (1) Any person in protective custody who refuses or fails to comply with an order under regulations 11 or 18 shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

(2) Any person who contravenes any provision of regulation 3 shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

(3) Any person who gains or causes access or attempts to gain or to cause access to a person in protective custody contrary to the provisions of regulations 13 or 21 shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

ANNEXURE

FORM A

**APPLICATION BY WITNESS OR PROSPECTIVE WITNESS TO BE DETAINED IN
OR PLACED UNDER PROTECTED CUSTODY**

[Section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)]

1. I,a)
hereby make application that –

(i) I
*and

(ii)b)

myc)

be detained in or placed under protective custody seeing that I have reason to believe that *my safety/ and *the safety of the above-mentioned *person/persons is being threatened byd)

in thate)

2. I –

* (i) gave or shall give evidence onf)

at.....g)

or

*(ii) shall possibly give evidence onf)

atg)

or

*(iii) have material information at my disposal and am willing to testify in a criminal court,

in the case againsth)

with regard to the offence of

.....

.....

.....

.....i)

3. The nature of the evidence that I *may/shall give is as follows:

.....

.....

.....

.....

.....

I,

hereby declare that the above-mentioned information is, to the best of my knowledge, true, complete and correct and that I am aware of the fact that it is an offence if I willfully furnish information or make a statement which is false or misleading.

.....

(Signature/mark/thumbprint of deponent)

4. I,.....

hereby certify that I have interpreted truly and to the best of my abilities correctly in relation to the contents of this statement and any question put to the deponent by the member.

.....
(Signature of interpreter)

.....
(Full name)

.....
[Designation (Rank)]

.....
.....
.....
.....
(Address of employment)

5. I,.....
hereby certify that before the deponent affixed *his/her mark, thumbprint or signature to
this form, I read the statement to *him/her and informed *him/her that it is an offence
willfully to furnish information or make a statement which is false or misleading.

.....
(Signature of official)

.....
(Full name)

.....
[Designation (Rank)]

.....

.....
.....
.....

(Address of employment)

Remarks:

- a) State name and surname of witness/prospective witness.
- b) State name and surname of members of the family/household in respect of whom protective custody is required.
- c) State relationship.
- d) State particulars of the person/persons who threatens/threaten the safety of the person/persons in respect of whom protective custody is required (if known).
- e) State the circumstances as a result of which protective custody is required (e.g. death threat).
- f) State date of trial (if known).
- g) State place of trial (if known).
- h) State name of person who committed the offence (if known).
- i) State offence referred to in Schedule 1 to the Criminal Procedure Act, 1977, or the offence of bribery, extortion, defeating the ends of justice or perjury.
- * Delete whichever is not applicable.

FORM B

**AUTHORIZATION BY WITNESS OR PROSPECTIVE WITNESS TO BE DETAINED
IN OR PLACED UNDER PROTECTIVE CUSTODY**

1. I,.....

* witness/prospective witness, hereby give authorization that I –

* (i) be detained in protective custody;

or

* (ii) be placed under protective custody.

2. I have the following physical injuries:

.....
.....
.....
.....a)

3. I,
hereby declare that the above-mentioned information is, to the best of my knowledge,
true, complete and correct and that I am aware of the fact that it is an offence if I willfully
furnish information or make a statement which his false or misleading.

.....
(Signature/mark/thumbprint of deponent)

4. I,
*parent/guardian of the above-mentioned witness, hereby give authorization for the
above-mentioned person to be so protected.

.....
(signature/mark/thumbprint of parent/guardian)

5. I,
hereby certify that I have interpreted truly and to the best of my abilities correctly in
relation to the contents of this statement and any question put to the deponent by the
member.

.....
(Signature of interpreter)

.....
(Full name)

.....
[Designation (Rank)]

.....

.....
.....
.....

(Address of employment)

6. I,
hereby certify that before the deponent affixed *his/her mark, thumbprint or signature to
this form, I read the statement to *him/her and informed *him/her that it is an offence
willfully to furnish information or make a statement which is false or misleading.

.....
(Signature of official)

.....
(Full name)

.....
[Designation (Rank)]

.....
.....
.....
.....

(Address of employment)

Remarks:

- a) Attach medical certificate (if available).
- * Delete whichever is not applicable.

FORM C
AUTHORIZATION BY A MEMBER OF THE FAMILY OR HOUSEHOLD OR A
DEPENDANT OF A WITNESS OR PROSPECTIVE WITNESS OR OF SUCH A
MEMBER TO BE DETAINED IN OR PLACED UNDER PROTECTIVE CUSTODY

1. I,.....a)

ab)
ofc)

hereby give authorization that I –

* (i) be detained in protective custody;

or

* (ii) be placed under protective custody.

2. I have the following physical injuries:

.....
.....
.....
.....d)

3. I,
hereby declare that the above-mentioned information is, to the best of my knowledge,
true, complete and correct and that I am aware of the fact that it is an offence if I willfully
furnish information or make a statement which is false or misleading.

.....

(Signature/mark/thumbprint of deponent)

4. I,
*parent/guardian of the above-mentioned person hereby give authorization for the above-
mentioned person to be so protected.

.....

(Signature/mark/thumbprint of parent/guardian)

5. I,
hereby certify that I have interpreted truly and to the best of my abilities correctly in
relation to the contents of this statement and any question put to the deponent by the
member.

.....

(Signature of interpreter)

.....

(Full name)

.....

[Designation (Rank)]

.....

.....

.....

.....

(Address of employment)

6. I,
hereby certify that before the deponent affixed *his/her mark, thumbprint or signature to
this form, I read the statement to *him/her and informed *him/her that it is an offence
willfully to furnish information or make a statement which is false or misleading.

.....

(Signature of officer)

.....

(Full name)

.....

[Designation (Rank)]

.....

.....

.....

.....

(Address of employment)

Remarks:

- a) State name of the member of the family or household of the witness or prospective witness who requires protection.
- b) State relationship to witness or prospective witness.

- c) State name of witness or prospective witness.
- d) Attach medical certificate (if available).
- * Delete whichever is not applicable.

FORM D

APPLICATION FOR DISCHARGE FROM DETENTION/WAIVER OF PROTECTION

Whereas I,a)
 gave authorization on.....19....b) at.....c)
 that I be *detained in/place under protective custody, I now make application to be *discharged
 from detention/*released from protective custody.

.....

(Signature/mark/thumbprint)

.....

(Signature/mark/thumbprint of parent/guardian of above-mentioned person)

Remarks:

- a) State name and surname of detainee/protected person.
- b) State date of authorization for protective custody.
- c) State place where the authorization was given.
- * Delete whichever is not applicable.